

**Town of Gorham
 Planning Board Meeting
 May 1, 2023**

ITEM 4 – Private Way – Smith, Steven and Marcia - Whoopie Pie Way – a request for approval of a 500’ private way to provide street frontage and access to three lots. Map 40, Lot 5. Zoned UR. The applicant is represented by Jayson Haskell, P.E., with DM Roma Consulting Engineers.

INDEX OF PACKET ENCLOSURES	
DESCRIPTION	PAGE NUMBER
1. Overview	2
2. Items of Note	2
3. Aerial Photograph	2
4. Staff Reviews	2-3
5. Private Way Review Report, Findings of Fact, Conditions of Approval and Motions	4-8

PROJECT TRACKING

DESCRIPTION	COMMENTS	STATUS
Pre-Application (optional)		None held
Private Way Review		May 1, 2023
Site Walk		

The following staff notes are written to assist the Applicant with compliance to the Town of Gorham Land Use Development Code and are not necessarily inclusive of all project requirements. Staff notes contain review comments and recommendations from Town Staff and may include comments from any of the Town’s peer review consultants, regarding applicability to the Gorham Land Use and Development Code and standard engineering practices.

The Planning Board refers to staff notes during the review process; however, it shall be noted that staff recommendations are noncommittal and all final decisions are those of the Planning Board and not Town Staff.

Jim Anderson, Chair, Gorham Planning Board

1. OVERVIEW

This is the first time the application has come before the Planning Board for review. The applicant is represented by Jayson Haskell, P.E. with DM Roma Consulting Engineers.

The applicant is proposing to convert an existing named driveway “Whoopie Pie Way” into a 2-6 lot-standard private way. The purpose of the project is to create the necessary lot frontage to build a new single family dwelling on a new lot split from map 40, lot 5, currently a single family residence addressed as 22 Whoopie Pie Way. As proposed the new private way would serve a total of 3 lots, each of which would have a single family residence.

2. ITEMS OF NOTE

- The typical section included in the engineering plans for the drainage swale include a trapezoidal design, which does not match the “V” shaped design specified in Section 2-5 of the town’s land use ordinance. However, the trapezoidal design has been identified by the Gorham Town Engineer to be the preferred engineering practice, and is an acceptable design for this site.
- A number of comments (eight) have been identified in the 3rd party engineering review memo which should be addressed.
- The document “Plan of Private Way” has a stamp from the land surveyor, however does not have an engineering stamp. The plan also does not show the actual location of the private way.

3. AERIAL PHOTOGRAPHS

The aerial photograph below is from the Town of Gorham’s online GIS:



4. STAFF REVIEWS

Planning Department: 04/24/2023

- The proposed private way has sufficient capacity to serve the 3 proposed dwellings. Additional capacity would be available for 1 additional accessory dwelling unit on each lot if the owners elected to have one constructed in the future.
- The driveway for the existing home at 22 Whoopie Pie Way is shown coming off the end of the hammerhead turnaround. To maintain emergency vehicle access, driveways should not be located in this location.

Assessing Department: 04/14/2023

Would like plan showing lots on whoopee pie way with their map and map and lots shown.

Fire Department: 04/18/2023

I have revived the Plans stamped dated April 10, 2023

1. The buildings will meet all applicable sections of NFPA 1 *Fire Code* and NFPA 101 *Life Safety Code*.
2. The buildings shall be protected under the Fire Suppression Systems Ordinance as applicable. The sprinkler plans shall be submitted to the Fire Department and the State Fire Marshal's Office for review and permitting. The plans submitted to the Fire Department shall be

submitted at least two weeks prior to the start of the installation of the system. Sprinkler test papers will be required to be submitted to the Fire Department at the time a CO is issued.

3. The buildings shall be properly numbered in accordance with E911 standards including height, color and location. Numbers that cant been seen from the street shall require additional numbers at the street.

4. The hammer head width needs to be 20’ wide and 50’ deep. Please show measurements on the plans. **No drive ways** will be allowed off the Hammer Head. Please show driveway’s on future plans.

5. A "No Parking - Tow Away Zone" or “No Parking - Fire Lane" sign should be added to the hammer head.

6. Past history has repeatedly shown that private ways/drives are very poorly maintained, and wintertime poses a very serious issue of emergency vehicle access, with very little enforcement available to the Town. I would state for the record and make notice that the Fire Department cannot and will not be held responsible for incidents where we cannot gain access to buildings or incidents on these private ways/drives that are not properly maintained.

7. We may have more requirements as this progresses through the planning process.

Code Department: No comments.

Police Department: No comments.

Public Works Department, Town Engineer: 04/26/2023

Good Afternoon, Damon.

In my opinion, the specific design of ditches should be determined by the engineer of record. Though the ditch design submitted for Whoopie Pie deviates from cross section requirements in our land use code, it is incumbent upon the engineer to propose a ditch design that best suits the site specific hydraulic conditions.

My opinion for the superelevated portion of Whoopie Pie Way is consistent with the ditch design. The engineer of record has clearly stated their justification for the deviation and in my opinion has provided sound engineering judgement.

For the reasons stated above, the variances should be granted for this project.

Please let me know if anything additional is needed from my end.

Town Attorney: 04/18/2023

These are fine.

Wright-Pierce: 04/21/2023

As requested by the Town of Gorham, Wright-Pierce has reviewed the Private Way Application submission for the Whoopie Pie Way off of State Street (Route 25) in Gorham. The Applicant intends to divide the 3.6-acre Urban Residential lot (Map 40, Lot 5) into two parcels, one which will contain the existing residential house (Lot A) and one as a developable lot (Lot B). A portion of this parcel is proposed to be conveyed to an abutting lot owned by the Applicant. The two proposed lots and expanded existing lot will be accessed by the proposed 500-foot-long private way named Whoopie Pie Way.

Documents Reviewed by Wright-Pierce

- Private Way Application Package Whoopie Pie Way – Private Road - prepared by DM Roma Consulting Engineers (April 10, 2023)
- Plan of Private Way - prepared by Boundary Engineering Survey Technology (April 10, 2023)
- Plan and Profile: Whoopie Pie Way (Sheets PP-1) and Details (D-1) - prepared by DM Roma Consulting Engineers (April 10, 2023)

Review Comments

Applicant should provide written responses to the review comments recommending clarification or further information to be provided by the Applicant.

General Standards of Performance

1. Environmental – The proposed project is not located in a Shoreland Zone, floodplain, delineated wetlands, or other sensitive natural resource area. Erosion controls are proposed downslope of proposed disturbances. We do not have concerns about the project’s environmental impacts.
2. Traffic – The Applicant states that at this time this proposed extension road will serve only three residential lots and that nearly 10 trips per day are anticipated with nearly one trip expected in the AM and PM peak hours. We do not believe the anticipated traffic will have an adverse effect on the area.

Private Way Requirements

1. The Gorham Standard Private Way Plan notes from the Private Way application need to be added to the Plan of Private Way.
2. Per Section 2-5, Paragraph H.2 of the Gorham Land Use and Development Code (LUDC), the Plan and Profile plan shall contain a note which shall read: “The Town of Gorham shall not be responsible for the maintenance, repair, plowing, or similar services for the private way shown on this plan, and if the private way has not been built to public way standards, the Town Council will not accept it as a public way.”
3. A “No Parking” sign should be installed at the hammerhead turnaround.
4. 4”x4” granite monuments are proposed, however, 5”x5” monuments are required by Section 2-5, Paragraph G.7.A of the Gorham LUDC.

5. The Plan of Private Way only shows the proposed property and right of way boundaries and does not show the proposed private way. Refer to the requirements of Section 2-5, Paragraph H.2 of the LUDC.
6. The Plan and Profile includes two typical sections: Typical Superelevated Roadway Section (Begin to STA 0+80) and Typical Crowned Roadway Section (1+50 to End). The typical crowned roadway section should be updated to reflect the typical section of Whoopie Way from STA 1+50 to End by showing ditches on both sides. The typical superelevated roadway section does represent what is shown on the plan from Begin to STA 0+80; however, having the private way superelevated instead of crowned and flat bottoms in the ditches are variances from the Town's 2-6 Lot Gravel Private Way cross-section requirements. We believe the variances are acceptable; however, Town to provide comment on whether a waiver request letter is required or not.
7. Centerline radii of the proposed private way should be shown.
8. The Entrance Apron Paving Section should be updated to match the standards outlined in Section 2-5, Paragraph 4 of the Gorham LUDC.

Stormwater Management Requirements

1. Although the proposed private way is located within the Town's MS4 Urbanized Area, it is not required to comply with Chapter 2 of the Town's Stormwater Ordinance (Post-Construction Stormwater Management) because the construction activity results in less than one acre of disturbed area. However, it is recommended that maintenance of the proposed ditches and culverts be specifically referenced in the submitted Declaration of Maintenance of a Private Way.
2. The submitted stormwater calculations show the proposed culverts are appropriately sized for the 25-year, 24-hour storm.

**TOWN OF GORHAM PLANNING BOARD
FINDINGS OF FACT
FOR
SMITH, STEVEN AND MARCIA – WHOOPIE PIE WAY, PRIVATE WAY**

May 1, 2023

Applicant: The applicants are Steven and Marcia Smith, 3 Whoopie Pie Way, Gorham, ME 04038.

Property Owner: The property owner is Marcia E. Smith, 3 Whoopie Pie Way, Gorham, ME 04038.

Property: The lot is identified as Tax Map 4, Lot 5, and is located off State Street (Route 25).

Consultant: Jayson Haskell, P.E. with DM Roma Consulting Engineers.

Project Description: The applicant is requesting approval of a 500' private way to provide street frontage and access to three lots.

Applicability: The Planning Board has the ability to approve private ways.

Zoning: Urban Residential (UR)

Variances: None requested.

Waivers: None requested.

Pursuant to the Application:

A private way review was held on May 1, 2023

The projects and plans and other documents considered to be a part of the approval by the Planning Board in this ruling consist of the following:

DM Roma Consulting Engineers plans (the plans) for a private way, prepared by Jayson Haskell, P.E., consist of the following:

<p>Sheet 1 of 3 – Boundary Survey – Dated, 04/10/2023; Revised through, 04/10/2023; Received, 04/10/2023</p> <p>Sheet 2 of 3 – PP1 – Plan and Profile: Whoopie Pie Way – Dated, 04/10/2023; Revised through, 04/10/2023; Received, 04/10/2023</p> <p>Sheet 3 of 3 – D-1 – Details – Dated, 04/10/2023; Revised through 04/10/2023; Received, 04/10/2023.</p>

Other documents submitted consist of the following:

Private Way Application – 04/10/2023
Declaration of Maintenance – 04/10/2023
Stormwater Narrative – 04/10/2023
Road Maintenance Agreement -04/10/2023
Planning Department – 4/24/2023
Fire Department – 04/18/2023
Assessor Comments – 04/14/2023
Code Department – No comments.
Public Works Department, Town Engineer – 04/26/2023
Town Attorney – 04/18/2023
Wright Pierce – 04/21/2023

FINDINGS OF FACT

CHAPTER 2, SECTION 2-5, H. Standards for Private Ways

(This section is modified for brevity. See the current Land Use and Development Code for exact wording.)

- 1) Each lot having access from an approved private way may be improved with no more than two dwelling units and related accessory buildings and uses.

The lots served by the private way are required to meet the requirements of the Urban Residential zoning district. The maximum number of dwelling units allowed to be served by the private way is up to 6 lots or dwelling units.

The existing name of the paved driveway is “Whoopie Pie Way.”

Finding: The private way is designed to the 2-6 lots/dwelling units private way standard and no more than six dwelling units can be served by the private way.

- 2) A plan showing the private way shall be prepared by a registered land surveyor. The plan shall be drawn in permanent ink on permanent transparency material and shall be sealed by the registered professional engineer preparing the plan.

The private way plan was designed by Jayson Haskell, P. E. The engineering stamp needs to be added to Sheet 1.

The Plan title block reads "Plan of Private Way in Gorham Cumberland County Maine."

The Plan has an approval block that reads: “Private Way, Approved by Town of Gorham, Maine Planning Board.”

The approval block also has a line for the signatures of a legal majority of the Planning Board, and includes a line for the date of approval.

The Plan does not include information sufficient to establish the exact location on the ground, direction, width and length of the private way right-of-way.

The street plan and profile, and street cross sections are in accordance with Chapter 2, Section 2-5., E., 3 or have been granted a waiver for those elements which variances have been deemed acceptable by the Town Engineer.

The Plan has a note that reads, "The Town of Gorham shall not be responsible for the maintenance, repair, plowing, or similar services for the private way shown on this plan, and if the private way has not been built to public way standards, the Town Council will not accept it as a public way."

Finding: The Plan of Private Way has been sealed by a registered land surveyor and by a registered professional engineer meeting the requirement for private ways.

- 3) If a private way provides access to 2 or more lots, a maintenance agreement shall be prepared for the lots accessed by any private way.

The Board may want to discuss a waiver from this requirement because the owners own the road and have the responsibility for the maintenance and upkeep in accordance with town standards.

Finding: The private way maintenance agreement identifies the rights and responsibility of each lot owner with respect to the maintenance, repair, and plowing of the private way as outlined in this section.

- 4) Private ways shall have a minimum right-of-way width of 50 feet and a paved apron 20 feet in length commencing at the existing edge of pavement where it intersects with the private way.

The proposed private way paved apron will be built to the following standards:

- a) 9" of MDOT Spec. 703.06 Type E;
- b) 12" of base gravel MDOT Spec. 703.06 Type D;
- c) 3" of 1 ½" crushed gravel, Type A or reclaimed;
- d) a minimum of 4" of paved surface, or greater as specified by the Town Engineer;
- e) a negative 2.0% grade from the existing edge of pavement to an appropriate drainage way, but in no case less than 5 feet from the travel surface of the public way it intersects;
- f) approach radius shall be specified by the Town Engineer.

Finding: The right-of-way width and a paved apron have been designed to conform to the paved apron standards outlined in this section.

- 5) Private ways shall be designed to conform to the standards presented in Tables 1 and 2 and the typical cross sections depicted in Figures 9 and 10.

The applicant's proposal varies from the standards depicted in the land use ordinance. See comments from Write Pierce and the Town Engineer,

Finding: *The private way meets all the criteria and design requirements presented in Table 1 and 2 and the typical cross sections depicted in Figures 9 of the Gorham Land Use and Development Code.*

- 6) Notwithstanding other provisions of the Code to the contrary, no gravel surfaced private way shall provide access to or serve in any way to provide compliance with the requirements of the Code for more than the greater of six lots or six dwelling units; provided; however, nothing in this paragraph 8) shall serve to limit the use of such private way for occasional use by and for agricultural purposes.

The proposed private way may serve up to six (6) lots. The applicant proposes to serve three (3) residential dwelling units.

Finding: *The private way is proposing to serve three (3) residential dwelling units.*

- 7) The land area of the private way may not be used to satisfy the minimum lot area requirements for any lot (whether the lot(s) to be served or any front lot over which the private way runs).

Each of the lots will need to retain enough area to meet the lot sizes in the Urban Residential Zoning District.

Finding: *The land area of the private way is not being used to satisfy the minimum lot area requirements for the existing lot or any proposed future lot.*

- 8) The Planning Board shall have the ability to require improvements to both public roads and private ways serving any proposed private way to ensure off-site access is suitable to serve the proposed private way.

The proposed private way will be off State Street (Route 25) which is suitable to serve the proposed private way extension.

Finding: *The proposed private way will be off of State Street (Route 25) which is suitable to serve the proposed private way.*

Conditions of Approval

1. That this approval is dependent upon, and limited to, the proposals and plans contained in this application and supporting documents submitted and affirmed by the applicants and that any variation from the plans, proposals and supporting documents is subject to review and approval by the Planning Board, except for minor changes which the Town Planner may approve;
2. That prior to the commencement of construction of the private way, the applicant is responsible for obtaining all required local, state and federal permits;

3. That the applicant shall provide property line information and site information in auto-cad format to the Town Planner prior to the pre-construction meeting;
4. That the revision details from staff and Wright Pierce shall be completed prior to Planning Board signature;
5. That at least one week prior to the date of the pre-construction meeting, four complete sets of the final approved plan set will be delivered to the Planning Office to be distributed to: (1) Code Office, (2) Public Works Director, (3) Inspecting Engineer, and (4) Town Planner;
6. That prior to the pre-construction meeting, the applicant must provide estimated costs for the proposed improvements and must establish the performance guarantee per the Land Use and Development Code;
7. That the applicant shall provide an escrow for field inspection based on costs for improvements shown on the plan and meeting the requirements of Gorham's Land Use and Development Code;
8. That prior to commencement of construction, the applicant, applicant's engineer and earthwork contractor shall have a pre-construction meeting with the Town's Engineer, Town Planner, Code Enforcement Officer, Public Works Director and Fire Chief;
9. That the approved amended private way maintenance agreement shall be recorded in the Cumberland County Registry of Deeds prior to a certificate of occupancy being given to any proposed new lot with a recorded copy of the private way maintenance agreement to be returned to the Planning Office;
10. That the Planning Board Chairman is authorized by the Planning Board to sign the Findings of Fact on behalf of the entire Board; and
11. That these conditions of approval must be added to the private way plan and the private way plan shall be recorded in the Cumberland County Registry of Deeds within thirty (30) days of endorsement of the plan by the Planning Board, and that a recorded copy of the private way plan shall be returned to the Town Planner prior to the Pre-construction Meeting.

SUGGESTED MOTIONS:

FOR APPROVAL:

Move to grant Steven and Marcia Smith's request for approval for Whoopie Pie Way, a 500 foot private way designed to the Town's 2-6 lot/dwelling unit gravel private way standard, located on Map 40, Lot 5 and situated in the Urban Residential zoning district, based on Findings of Fact and with Conditions of Approval as written by the Town Planner (and amended by the Planning Board).

OR

TO TABLE APPROVAL:

Move to table further review of Steven and Marcia Smith’s request for approval for Whoopie Pie Way pending responses to remaining issues (and finalizing revisions to the plan).

OR

TO CONSENT AGENDA:

Move further review of Steven and Marcia Smith’s request for approval for Whoopie Pie Way to a future Consent Agenda pending the submission of revised information addressing outstanding staff and Planning Board comments.