

Town of Gorham Planning Board Meeting May 4, 2020

ITEM 6 - Private Way: Tom Dore and Catherine Perez are requesting approval of a 970 foot long private way built to the 2-6 lot private way standard to serve 4 dwelling units. The property is located off Longfellow Road on Map 10 Lot 10 in the Rural/Manufactured Housing zoning district. The applicant’s agent is Andrew Morrell, P.E., of BH2M.

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PROJECT TRACKING

DESCRIPTION	COMMENTS	STATUS
Pre-Application (optional)		None held
Private Way Review		March 2, 2020
Site Walk		
Private Way Review		May 4, 2020

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.

George Fox, Chairman Gorham Planning Board

1. OVERVIEW

This is the second time the application has come before the Planning Board for review. The applicant came before the Board in March as well. Draft minutes from that meeting are included with the Boards' packets. The applicant addressed the comments made at that time and has received additional comments described below. The applicant is represented by Andrew Morrell, P.E., with BH2M.

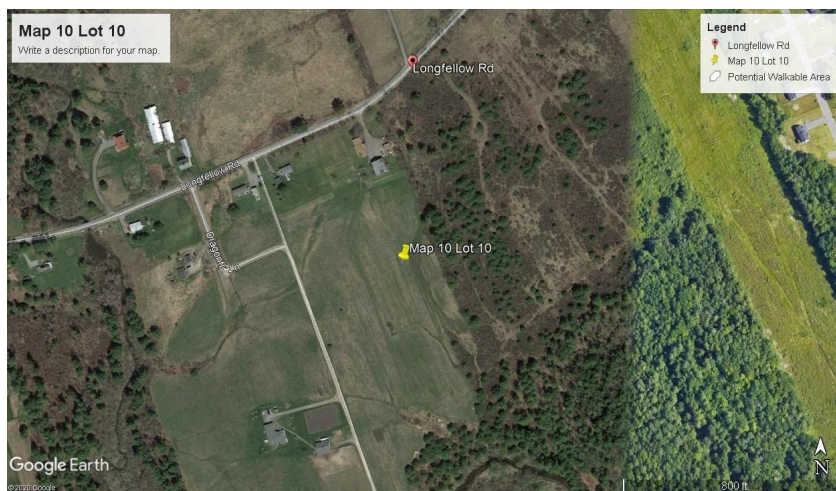
Although this is not considered a subdivision, there are two (2) lots currently shown on the plan. Lot 1 is 3.94 acres and Lot 2 is 4.2 acres. They have roughly 400 feet or more of street frontage.

2. WAIVER REQUEST

No waivers requested.

3. ITEMS OF NOTE

- A. The Woodard & Curran peer review engineering memo dated March 24, 2020 provides details for revisions to the plan. Those should be completed prior to Planning Board signature. This could be a condition of approval and it has been added.
- B. Legal review emails dated April 24 and 27, 2020 of the question of subdivision have confirmed that it is not a subdivision.
- C. Google Earth image as of July 2019



4. PEER AND STAFF REVIEWS

Planning Department: February 25, 2020

Plan of Private Way

- a. Add a sheet index to the plan.
- b. Add the following plan note: “The approval of this plan is for private way only. The lots shown on this plan are for illustrations only and have not been reviewed and approved

under the “ Land Use and Development Code for the Town of Gorham, Maine” for compliance with the Chapter 1, “Zoning Regulations”, Chapter 2 “General Standards of Performance”, or Chapter 3, “Subdivision.”

- c. “Stroudwater River” is misspelled on Sheet 2.
- d. The property markers at the intersections need to be 6” x 6” monuments.

April 27, 2020: Determined not to be a subdivision by town attorney.

Assessing Department:

February 3, 2020

1. What is lot size of Dore lot?
2. What is lot size of Perez lot?
3. Is Dore Drive part of Perez lot?
4. Preliminary Map/Lot Dore – Map 10 Lot 10-9
5. Preliminary Map/Lot Perez – Map 10 Lot 10-10
6. Preliminary Map/Lot existing house – Map 10 Lot 10

March 31, 2020: no comments

Code Department:

February 26, 2020

Two deeds have been received but there are four possible lots created on this plan from the original lot Map 10, Lot 10. Three on the north side of the Stroudwater River and one on the south side. This may be a subdivision, which requires additional review by the Planning Board.

As of April 27, 2020: no additional comments

Fire Department: February 3, 2020

I have reviewed the submitted plan for the private way off Longfellow Rd. for Tom Dore and have the following requirements.

1. The private way shall be properly signed and named with a Town approved street sign; the name of the road shall be approved by the Police and Fire Chiefs. The street sign shall be put in place as soon as the road is constructed.
2. Houses shall be properly numbered with the numbers being visible from the street year around.
3. The private way shall be maintained to allow access for emergency vehicles year around.
4. Is Public Water being considered being brought into the subdivision? If Public water is brought to the site a hydrant shall be placed at the corner of the private way

and Longfellow Road. Public Water is approximately 700 to 800 feet back towards Westbrook.

5. All the homes shall be sprinkled meeting all applicable requirements of the Town of Gorham's Sprinkler Ordinance. The sprinkler plans shall be submitted to the State Fire Marshal's Office and the Gorham Fire Department for review and permitting. The plans for the Fire Department shall be submitted at least two weeks prior to the start of installation of the system.
6. Sprinkler Test papers shall be provided to the Fire Department before a certificate of occupancy is issued.
7. **Past history has repeatedly shown that private ways 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 that are not properly maintained.**

As of April 27, 2020: no additional comments

Police Department: No comments.

Public Works Department: March 25, 2020

I see no issues with this.
Terry Deering

Town Attorney: January 31, 2020

I've reviewed the private way declaration for the Dore Road. Since it follows the Town's standard form, it's fine.

April 23, 2020 email

Carol,

I have gone over the deeds and other materials provided for this application. In addition, I had to review a couple of deeds in the Registry. Laurent Boivin acquired the original parcel in 1947. There were 3 transfers prior to 1970 (the date of the current subdivision law) and one in 1980. Between 1987 and 1991, 7 lots were created. All of these were gifts to relatives and so were treated as exempt from subdivision review. The remainder of the parcel passed to Lillian Boivin by devise in 2002. In 2008, the lot was split with a conveyance to Susan Sato. No further division of the remaining Boivin land occurred until 2019. At that time, two out deeds occurred, with a retention of the homestead adjacent to Longfellow Road, occupied by Anthony Boivin, who has a life estate in that parcel; he previously released a life estate in other portions

of the property. The other two parcels were conveyed to Thomas Dore and Catherine Perez, both on October 29, 2019. The original deeds to these two lots described each as consisting of two lots (Lots 1 and 2 in one deed and Lots 2 and 3 in the other) as shown on the Exhibit B plan that was included in the BH2M submission dated March 12, 2020. That plan was recorded on October 30, 2019. While the two deeds referred to a total of 4 lots, the conveyances were of two parcels, one allowed under the homestead exemption and the other as the first division within a 5-year period. The original deeds to Thomas Dore and Catherine Perez were replaced with corrective deeds on January 6, 2020. Those deeds conveyed the same property, but described each one as a single lot rather than as two separate lots. The current configuration of the lots is as shown on Sheet 2 (Boundary Survey and Existing Conditions, dated Jan. 2020). Because these divisions did not trigger subdivision review in 2019, there is not a subdivision issue at this time. However, if either parcel is divided prior to 2024, the division will trigger subdivision review for the entire parcel, except for the homestead lot, unless the division falls within one of the exemptions in the subdivision law. The gift to a relative exemption, however, will not be available for use until 2024. It would also be helpful to have the corrected Boundary Survey plan recorded, with a note that it replaces the October 30, 2019 plan, so that there is no confusion about how many lots are allowed at this time without subdivision review.

Please let me know if you have any questions.

Thanks, Natalie

April 27, 2020 email

Carol,

I just spoke with Freeman about his concern about this. There is a lot that is not shown on the current boundary survey that remains under Boivin ownership. We discussed that the lot, at least for subdivision purposes, remains part of the original lot as set forth in *Bakala* decision. In addition, he had a question about the Boivin lot and whether it qualified for a homestead exemption. We had discussed this before and I said I thought it didn't, but on further reflection I have told him that I think it does. So this can go forward to the Planning Board and does not require subdivision review at this time.

Thanks, Natalie

Woodard & Curran: February 11, 2020

Woodard & Curran has reviewed the Private Way Application for the Dore Drive private way to be located on Longfellow Road, in Gorham, Maine. We have reviewed the project for compliance with the applicable Town of Gorham Land Use and Development Codes and General Engineering practices. The proposed development will consist of an approximately 970-foot private way to support up to four residential dwellings in the future. The following documents were reviewed:

- Private Way Application and attachments, dated January 28, 2020, prepared by BH2M, Inc., on behalf of Tom Dore.

- Engineering Plans, Sheets 1-3, dated January 2020, prepared by BH2M, Inc., on behalf of Tom Dore.

We provide the following comments:

General Civil Engineering

- In accordance with “Standard Private Way Plan Notes” provided in the Private Way Application, please include Note 10 if the private way is not being reviewed in conjunction with a subdivision proposal.
- The application indicates that the construction activity will disturb one acre or more. A Maine Construction General Permit NOI is required for projects disturbing over an acre; the Applicant should confirm an NOI will be submitted for the proposed project.
- Please show proposed driveway apron locations. Additionally, please provide a standard detail for driveway aprons that includes general culvert information such as minimum cover requirements.
- Please provide curb radii labels at the Longfellow Road intersection. Curb radii should be 15’ per Table 1 of the Gorham Land Use and Development Code.
- Grading appears to extend outside of the property boundary into adjacent property owned by Gillian Gelder. The applicant should confirm all required easements have been established.
- Silt fence is required downgradient of earth-disturbing activities. It appears that a silt fence will be required west of the proposed roadway during construction. Please revise the Plan of Private Way accordingly.
- A 12” storm drain is proposed along the Longfellow Road ditch line. For open roadway sections, 15” diameter storm drains are recommended. The applicant should evaluate upsizing this pipe.
- Please provide a detail for the stabilized construction entrance.
- The winter construction period begins on November 1st per the Maine DEP Erosion and Sediment Control BMP Manual; please revise Winter Construction Note 1 on Sheet 3 accordingly. Additionally, Erosion and Sediment Control Plan Note 15 and Winter Construction Note 7 provide conflicting information with respect to distances from wetlands, and the first contraction oversight note refers to construction of a pond. The applicant should review all the erosion control notes on Sheet 3 for conformance with the Maine DEP BMP Manual and applicability to the project and make revisions accordingly.

Please contact our office if you have any questions.

**TOWN OF GORHAM PLANNING BOARD
REVIEW MEMORANDUM AND
FINDINGS OF FACT
FOR
TOM DORE/KATHERINE PEREZ – DORE DRIVE PRIVATE WAY**

May 4, 2020

Applicant/Property Owner: The applicants/owners are Tom Dore and Katherine Perez, 84G Warren Avenue, Westbrook, Maine 04092.

Property: The lot is identified as Tax Map 10, Lot 10, and is located off Longfellow Road.

Consultant: Andrew Morrell, P.E., and Robert C. Libby, Jr., P.L.S., with BH2M Engineers.

Project Description: The applicant is requesting approval to construct a 970 foot private way to the 2-6 lot standard, located off Longfellow Road to potentially serve four (4) lots. The lot is identified as Max Map 10, Lot 10, and is located in the Rural/MH zoning district.

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

Zoning: Rural/Manufactured Housing (R/MH)

Variances: None required.

Waivers: None requested.

Pursuant to the Application:

A Private Way review was held on March 2, 2020.

A Private Way review was held on May 4, 2020.

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:

BH2M plans (the plans) for a private way, prepared by Andrew Morrell, P.E., consist of the following:

Sheet 1 - Plan of Private Way – as revised through 1/28/20 and received 03/12/20
Sheet 2 – Boundary Survey & Existing Conditions – as revised through 1/28/20 and received 03/12/20
Sheet 3 – Details – as revised through 1/28/20 and received 03/12/20

Other documents submitted consist of the following:

Private Way Application – 01/28/20
Wetland Delineation – Mark J. Hampton, C.S.S., Mark Hampton Associates – 01/28/20
Declaration of Maintenance of Private Way – 01/28/20
Gorham Town Planner – 02/25/20; 04/27/20
Gorham Fire Department – 02/03/20
Gorham Assessor Comments – 02/03/20
Gorham Code Enforcement – 02/26/20
Gorham Public Works – 03/25/20
Woodard & Curran – 02/11/20; 03/24/20
Town Attorney – 01/30/20; 04/24/20; 04/27/20

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 Rural zoning district. The maximum number of lots/dwelling units allowed to be served by the private way is up to 6 lots or dwelling units.

The proposed name of the private way is “Dore Drive.” The proposed name meets the required E911 standards.

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 W. Pelkey, checked by A. Morrell P.E. #13285 and sealed by Robert Libby, PLS #2190.

The Plan title block reads "Plan of a Private Way."

The Plan has an approval block that reads: “Private Way, Approved by the Town of Gorham 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 Plans show 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.

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 private way maintenance agreement has been submitted and meets the requirements of this section.

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 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 is proposing to construct the 2 – 6 lot private way to meet the private way standard. The private way plan shows the required 2-6 lot/dwelling unit private way standard cross section.

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.

- 8) 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 potentially serve four (4) residential dwelling units.

Finding: The private way will potentially serve four (4) residential dwelling units.

- 9) 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).

The lots will need to retain enough area to meet the lot sizes in the Rural 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.

- 10) 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 Longfellow Road which is suitable to serve the proposed private way.

Finding: The proposed private way will be off of Longfellow Road 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 based on the comments provided by Woodard & Curran 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 Tom Dore and Catherine Perez's request for approval for Dore Drive, a 970 foot private way designed to the Town's 2-6 lot/dwelling unit private way standard, located on Map 10, Lot 10 and situated in the Rural/Manufactured Housing zoning district, based on Findings of Fact and with Conditions of Approval as written by the Town Planner (and amended by the Planning Board).

TO CONSENT AGENDA: Move further review of Tom Dore and Catherine Perez's request for private way approval to a future Consent Agenda pending the submission of revised information addressing outstanding staff, peer review and Planning Board comments.