

**Town of Gorham
 Planning Board Meeting
 November 7, 2022**

ITEM 9 - Private Way – Correale, Anthony – a request for approval of a private way off the end of Libby Avenue. Zoned, Suburban Residential (SR). Map 50, Lot 12-2.

INDEX OF PACKET ENCLOSURES	
DESCRIPTION	PAGE NUMBER
1. Overview	2
2. Items of Note	2
3. Aerial Photograph	3
4. Waiver Request	3
5. Staff Reviews	4-6
6. Findings of Fact	7-10
7. Conditions of Approval & Motions	10-11

PROJECT TRACKING

DESCRIPTION	COMMENTS	STATUS
Pre-Application (optional)		
Private Way Review		November 7, 2022
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 private way application has come before the Planning Board for review. The parcel and proposed extension is located at the end of Libby Avenue. The applicant intends to request that the town accept this as a public road.

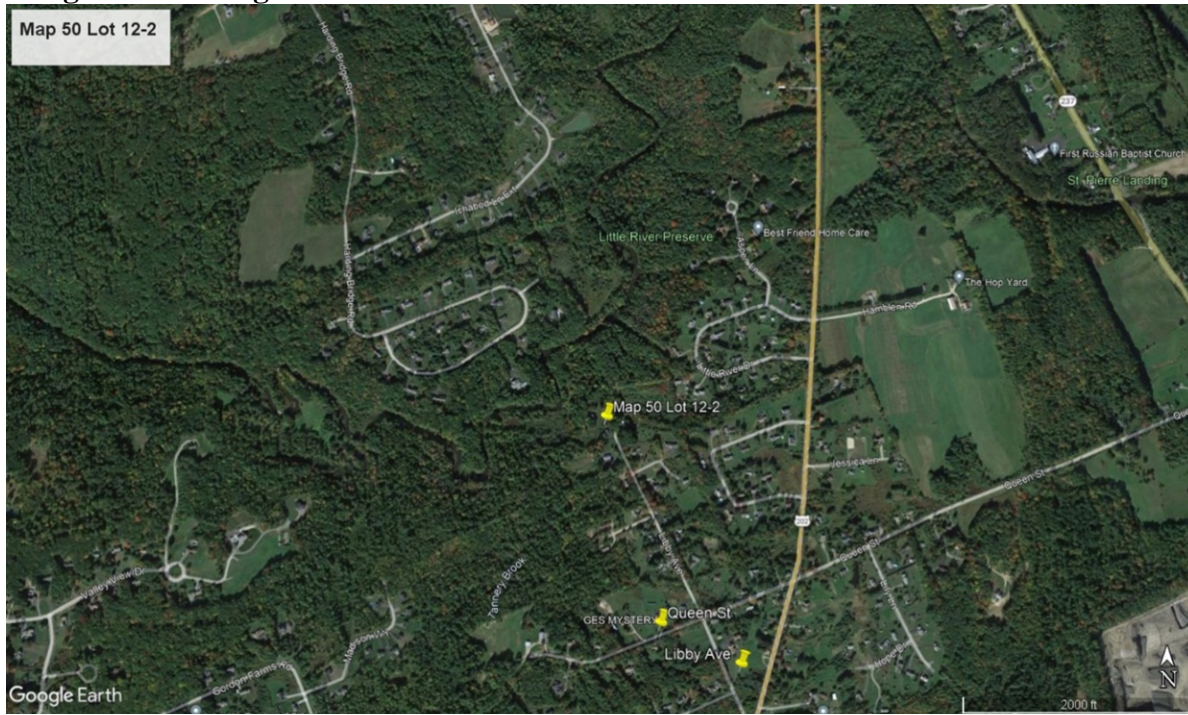
The applicant is represented by David C. St. Clair Jr., P.L.S., with St. Clair Associates.

2. ITEMS OF NOTE

- The applicant is proposing to extend an existing paved street, Libby Avenue, and create a private way to one lot. The applicant is required to utilize the tables and figures provided within the ordinance as “typical” sections. The applicant should confirm with Public Works Director on the following ordinance requirement, so that the Planning Board will have direction as to the right of way width and proposed street figure provided on Sheet 2: “Any street or way proposed to be dedicated as a public street or way shall be previously constructed in accordance with the following specifications: 1. All streets shall be designed to conform with the public way standards presented in Table 1 and shown in Figures 1 through 8 unless otherwise agreed to and permitted in writing by the Planning Board. The Planning Board may require design modifications if it finds special provisions to be necessary to protect the public health and safety as a result of a specific development proposal.... Standards and dimensions contained herein shall be considered as minimum and modifications may be recommended to the Planning Board by the Public Works Director or the Director’s designee to meet specific site conditions.”
 - The applicant is proposing a 49.70 foot right of way rather than the required 50 foot. The Planning Board does not have the ability to waive this standard.
 - The figure shown on Sheet 2 is a “typical rural access section” rather than what is required by town ordinance.
- Town Council Action = Item #2022-9-11 Action to consider authorizing a private way on a public easement on a discontinued section of Libby Avenue constructed to the Town’s Rural Access Street Standard. (Councilor Pratt Spon.) Proposed Order #22-109 Moved by Councilor Shepard, seconded by Councilor Wilder Cross and Ordered, that the Town Council authorizes the construction of a private way over the public easement of the discontinued section of Libby Avenue providing that the property owner provides through the Planning Board review process all concerns with abutting property access are met, public easement access is maintained, and the property owner provides for a public works turn around that meets the Town’s public road standard. Order #22-109 was VOTED 4 yeas, 2 nays (Hartwell, Phillips)

3. AERIAL PHOTOGRAPH

Google Earth Images November 2015



4. WAIVER REQUEST

No waivers requested.

5. STAFF REVIEWS

Planning Department: 10/31/2022

October 31, 2022

- The Public Works Director indicated that the road name should continue throughout as only “Libby Avenue.”
- The applicant is proposing a 49.70 foot right of way rather than the required 50 foot. The Planning Board does not have the ability to waive this standard.
- The applicant is proposing to extend an existing paved street, Libby Avenue, and create a private way to one lot. The applicant is required to utilize the tables and figures provided within the ordinance as “typical” sections.
- The applicant should get direction from the Public Works Director on the following ordinance requirement, so that the Planning Board will have direction as to the right of way width and proposed street figure provided on Sheet 2: Any street or way proposed to be dedicated as a public street or way shall be previously constructed in accordance with the following specifications: 1. All streets shall be designed to conform with the public way standards presented in Table 1 and shown in Figures 1 through 8 unless otherwise agreed to and permitted in writing by the Planning Board. The Planning Board may require design modifications if it finds special provisions to be necessary to protect the public health and safety as a result of a specific development proposal.
- There is question by town staff whether the applicant has the right to extend the street. Legal peer review of the right, title and interest question is pending.

Assessing Department: 10/24/2022

October 24, 2022

4. Anthony Correale – 50-2 No comment

Code Department: No Comment Received

Fire Department: 10/25/2022

October 25, 2022

MAP 50 Lot 12 – 2

I have revived the Plans dated Oct. 17, 2022

1. The hammer head width needs to be 20’ wide and 50’ deep. No drive ways will be allowed off the Hammer Head.

2. There shall be “No Parking - Tow Away Zone” or “No Parking - Fire Lane” signs added to the hammer head. Please show on the Plans
3. Street name need to be approved by Police and Fire Chief as well as be properly posted. Please provide 3 Names.
4. All buildings will meet all applicable sections of NFPA 1 *Fire Code* and NFPA 101 *Life Safety Code*. Building plans shall be submitted to the Fire Inspector for review.
5. 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.
6. 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.
7. **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.**
8. We may have more requirements as this progresses through the planning process.

Police Department: No Comment Received

Public Works Department: 11/01/2022

November 1, 2022

Carol - the only difference that I see is ditching on both sides, this is acceptable. The applicant should explain the ROW width as I would believe is what they may have found as existing. If that is the case then that would I believe also be acceptable.

Town Attorney: 11/01/2022

November 1, 2022

I have reviewed the letter. Is your questions whether this is sufficient RTI for improvement of Libby Avenue Extension as a private way? Based on the letter, it appears that the Town Council approved the proposed improvements in September.

If so, it appears that there is sufficient RTI to improve the retained public easement, with or without the other owner's approval.

Please let me know if you have additional questions.

Wright Pierce: Comments Pending

**TOWN OF GORHAM PLANNING BOARD
PRIVATE WAY REVIEW
FINDINGS OF FACT
FOR
CORREALE, ANTHONY – LIBBY AVENUE PRIVATE WAY**

November 7, 2022

Applicant/Property Owner: The applicant is Anthony Correale; 211 Chandlers Wharf, Portland, Maine 04101. The owner of the property is Anthony M. Correale, Trustee of the Anthony M. Correale Revocable Trust; 211 Chandlers Wharf, Portland, Maine 04101.

Property: The lot is identified as Tax Map 50, Lot 12-2.

Consultants: David C. St. Clair Jr., P.L.S., #2317, with St. Clair Associates; Nancy J. St. Clair, P.E., #6877, with St. Clair Associates.

Project Description: The applicant is requesting approval to construct a private way at the north end of Libby Avenue. The lot is identified as Map 50, Lot 12-2, and is located in the Suburban Residential (SR) zoning district.

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

Zoning: Suburban Residential (SR)

Variiances: None requested.

Waivers: None requested.

Pursuant to the Application:

A private way review was held on November 7, 2022.

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:

Sebago Technics plans (the plans) for a private way, prepared by St. Clair Associates consist of the following:

Sheet 1 – Plan of Private Way – 1 Lot – Dated, 08/08/2022; Revised through, 10/17/2022; Received, 10/17/2022
Sheet 2 – Plan and Profile – Private Way – Dated, 08/08/2022; Revised through, 10/17/2022; Received, 10/17/2022
Sheet 3 – Details – Dated, 08/08/2022; Revised through, 10/17/2022; Revised through, 10/17/2022

Other documents submitted consist of the following:

Private Way Application – 10/17/2022
Plans – 10/17/2022
Maintenance Agreement and Easement – 10/17/2022
Legal Memo – 10/28/2022
Gorham Town Planner – 10/31/2022, comments within this review memo
Gorham Fire Department – 10/25/2022
Gorham Assessor Comments – 10/24/2022
Gorham Code Enforcement – No Comments Received
Gorham Public Works Director – 11/01/2022
Town Attorney – 11/01/2022
Wright Pierce – Comments Pending

6. 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 Suburban Residential zoning district. The maximum number of lots/dwelling units allowed to be served by the private way is one (1) lot or dwelling unit.

The name of the private way extension will be determined by the town staff.

Finding: The private way is designed to the one (1) lots/dwelling units private way standard and no more than one (1) 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 Nancy J. St. Clair, P.E.

The Plan title block reads "Plan of a Private Way -1 Lot."

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 shows 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 applicant has proposed only one lot for this private way. A maintenance agreement would not be required.

Finding: *A maintenance agreement is not required since this is for one lot only.*

- 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 shall be 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 extend an existing paved street, Libby Avenue, and create a private way to one lot.

Finding:

- 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 one (1) lot. As described in the written materials, the applicant proposes to serve one (1) lot.

Finding: *The private way is proposing to serve one (1) lot.*

- 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 lot retains enough area to meet the lot sizes in the Suburban 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.*

- 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 extension will be off Libby Avenue which is off Gray Road, both of which are suitable to serve the proposed private way extension.

Finding: *The proposed private way will be off of Libby Avenue and Gray Road which are both 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 Planning Board Chairman is authorized by the Planning Board to sign the Findings of Fact on behalf of the entire Board; and
10. 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 Anthony Correale’s request for approval for Libby Avenue extension, a private way designed to the Town’s private way standard, located on Map 50, Lot 12-2 and situated in the Suburban 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 Anthony Correale’s request for private way extension approval pending responses to remaining issues (and finalizing revisions to the plan).