

**Town of Gorham  
 Planning Board Meeting  
 March 4, 2024**

**ITEM A - Discussion - Private Way - Cummings, Dakota - 59 Wood Road** – a request for a private way to serve a single family house lot. M54 L16. Zoned R. The applicant is represented by Andrew Morrell, P.E., with BH2M.

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**PROJECT TRACKING**

<b>DESCRIPTION</b>	<b>COMMENTS</b>	<b>STATUS</b>
Pre-Application/Sketch (optional)		June 5, 2023
Planning Board Review		February 5, 2024 March 4, 2024

The following staff notes are written to assist the Applicant with compliance to the Town of Gorham Land Use Development Code and may not be all inclusive of project requirements. Staff notes are review comments and recommendations prepared by the Town Planner and, if applicable, the Town’s peer review consultant, regarding applicability to The Gorham Land Use 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 non-committal and all final decisions are those of the Planning Board and not Town Staff.

*Vincent Grassi, Chair, Gorham Planning Board*

## 1. OVERVIEW

This is the third time this application has come before the Planning Board. It was before the Board for Sketch Plan review in June, 2023, and for review on February 5, 2024.

The applicant proposes the construction of a one-lot private way in order to create a buildable lot for a single-family home at the rear of Map 54 Lot 16. Map 54 Lot 16 currently has a single-family home with 2 outbuildings.

The applicant is represented by Andrew Morrell, P.E. with BH2M.

## 2. ITEMS OF NOTE

**Below are topics the Planning Board may want to discuss with the applicant. The discussion topics are written as a guide for the Planning Board. It should be noted that the discussion topics are noncommittal and all decisions on relevant discussion topics are those of the Planning Board.**

### Site Conditions

- An existing shed was located approximately 5 feet from the right-of-way boundary for the proposed private way. It has now been relocated 23 feet from the property boundary, which meets the required 20-foot side setback.

### Zoning

- The site is zoned as Rural, and this zoning is consistent with the future land use plan from the town's Comprehensive Plan
- The zoning allows for single-family residential development.
- The proposed private way and lot split create the necessary frontage and allows for the proposed lot to meet standards for the rural zoning district.
- Chapter 2: General Standards of Performance, Section 2-5 "Minimum Standards for the Design and Construction of Streets and Ways" will apply.

### Historic Preservation & Natural Resource Protection

The Town of Gorham GIS map and the State Beginning with Habitat maps both show that the site does not contain any rare wildlife, plant communities, or other critical habitat. They also do not indicate the presence of wetlands or vernal pools.

### Other items

- The applicant has submitted the Street and Driveways Name Approval Form with 3 proposed names for review.
- The applicant has changed the culvert section to accommodate the Gorham Public Works Director recommendation that the length of the culvert at the intersection with Wood Road should be a single section of 50-foot pipe instead of a 44-foot pipe with 4-foot section added. Additionally, the front right of way should be ditched.

- The applicant has added arborvitae and a note to the plan to protect existing vegetation along the common property line nearest the existing swimming pool of the abutters Timothy and Shane Zerillo, located at 17 Jordan Drive (Map 54 Lot 16-301).
- The abutters located at 29 Jordan Drive, located at Map 54 Lot 16-302, have raised a question about whether the applicant has appropriate right, title and interest due to a question of whether or not the property is encumbered by a mortgage in the name of a 3<sup>rd</sup> party.
  - This matter has been reviewed by the Town Attorney, who requested that the applicant provide additional information.
  - The applicant provided additional information on February 26, 2024. The Town Attorney review this information and has indicated that the applicant has sufficiently established the applicant's relationship to the purchase and sale agreement, and that the underlying fee in the proposed access to the development property will be included in the transfer of the development parcel.

### 3. AERIAL PHOTOGRAPH

Town of Gorham GIS Imagery



#### 4. STAFF COMMENTS

**Assessing Department:** No comments.

**Code Division:** 01/29/2024

If approved: Forestry is permitted in accordance with Maine Forest Practices Act. However, no ground disturbance (ie., grubbing, soil disturbance, etc.) is permitted without obtaining an approved building permit.

Chris Poulin

**Director of Community Development:** No comments.

**Economic Development Division:** No comments.

**Fire Department:** 05/19/2023, 01/22/2024, 02/21/2024

**05/19/2023**

59 Wood Road Private way Dakota Cummings

I have reviewed the plans (May 15, 2023) and have the list of comments below

1. The building 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.

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. **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.**

**01/22/2024**



Dakota Cummings  
59 Wood Road Private Way  
M54/L16

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Map 54 Lot 16

I have reviewed the submitted plans stamped Dated 1-16-2024

All my requirements have been met.

**02/21/2024**

Map 54 Lot 16

I have reviewed the submitted plans stamped Dated 2-14-2024

All my requirements have been met.

**Planning Division: 01/25/2024**

- The applicant should be advised that the private way standards are based on the number of dwelling units. Therefore, the one-lot standard would not permit future development of an accessory dwelling unit on the parcel to be created.

**Police Department:** No comments.

**Public Works Department: 01/24/2024**

The entrance pipe is listed at 44ft, that being said there will be a 4ft section added somewhere to this pipe. I would like to see this be a 50ft pipe, small sections depending on how they are installed can be problematic. All the frontage shall be ditched during construction.

**Stormwater Compliance: 01/23/2024**

Stormwater comments for this project are as follows:

1. While not a requirement, the Town would like the applicant to consider utilizing Low Impact Development techniques. If the applicant chooses not to implement LID practices, please show why this is not feasible for this project.
2. A reminder that the Winter Construction season has begun and **runs through May 1st**. Winter Construction erosion and sedimentation controls / BMP's have a different set of standards than the rest of the year. Please refer to the Maine DEP's Erosion and Sediment Control Practices Field Guide for Contractors for specific requirements during winter construction.

Thank you,  
Ethan Moskowitz  
Stormwater Compliance Officer/ GIS Technician

**Town Engineer: 01/29/2024**

Good Afternoon, Laura.

Dakota Cummings  
59 Wood Road Private Way  
M54/L16

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No comments from Engineering/Facilities.

Thank You,

Chuck  
**Charles E. Norton, P.E.**

**Recreation Department:** No comments.

**Town Attorney:** 2/14/2024, 2/26/2024

**02/14/2024**

Damon,

I've looked at all of the provided materials. I have a few questions:

1. The applicant for the private way is Dakota Cummings. The owner of the land is Brandon Gavett, but the listed buyer is Stax Builders. **Has the purchase and sale agreement been assigned to the applicant? If not, what is the applicant's claim of right, title and interest?**
2. **It was not entirely clear to me whether the proposed private way was intended to be deed in fee to the buyer or was to be included as an easement.** The purchase and sale agreement was not clear on this issue.
3. The mortgage cited in the letter from the Willetts is a home equity line of credit, which does give the lender an interest in the property if money has been drawn from the line.
4. If the transfer occurs under the provided purchase and sale agreement, one of the requirements is that the property be free from all encumbrances. This means that the seller would provide at closing either a full or partial release of the HELOC or would have something from the lender stating that no release is necessary due to the nature of the mortgage interest. This is standard procedure in transfers. You could also ask the applicant to describe to the Board what will happen at closing so that it is on the record to support the Board's finding that the applicant has sufficient right, title or interest in the property to pursue the application.

The applicant should provide the following information:

1. Proof of the applicant's interest in the property. This could be a new or amended purchase and sale agreement, or an assignment of the rights of Stax Builders under the p&s that has also been approved by the seller.
2. If you don't know the answer to either of the questions in bold above, the applicant will need to provide answers.

Dakota Cummings  
59 Wood Road Private Way  
M54/L16

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3. The answers to the RTI questions should be included in the final findings if the Board approves the application.

Thanks,

Natalie

**Natalie L. Burns, Esq.**  
Attorney

**2/26/2024**  
Carol,

The assignment satisfactorily addresses the question concerning the relationship of the applicant to the purchase and sale agreement. The plan shows that the underlying fee in the proposed access to the development property will be included in the transfer of the development parcel. If you or the Board require additional information on either of these issues, you can request it.

Thanks,

Natalie

**Natalie L. Burns, Esq.**  
Attorney

**Abutter Comments: 02/04/2024, 02/05/2024**

See abutter comments at end of this document.

Dakota Cummings  
59 Wood Road Private Way  
M54/L16

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**TOWN OF GORHAM PLANNING BOARD  
FINDINGS OF FACT  
FOR  
DAKOTA CUMMINGS - 59 WOOD ROAD PRIVATE WAY**

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March 4, 2024

Applicant/Property Owner: The applicant/owner is Dakota Cummings, P.O Box 981, Windham, ME 04062

Property: The lot is identified as Tax Map 54, Lot 16, and is located at 59 Wood Road.

Consultant: Andy Morrill, P.E., BH2M

Project Description: The applicant is requesting approval to construct a 447 foot private way to the 1 lot gravel private way standard, located off Wood Road to serve one (1) lot. The lot is identified as Tax Map 54, Lot 16, and is located in the Rural zoning district.

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

Zoning: Rural (R)

Variances: None requested.

Waivers: None requested.

Pursuant to the Application:

Sketch Plan Review for the proposal was held on June 5, 2023. A private way review was held on February 5, 2024 and March 4, 2024.

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 Engineering plans (the plans) for a private way, prepared by Andy Morrill, P.E., consist of the following:

<p>Sheet 1– Plan of Private Way; Dated 05/15/2023; Revised through 02/14/2024; Received 02/14/2024 Sheet 2 – Erosion Control Details; Dated 05/15/2023; Revised through 02/14/2024; Received 02/14/2024 Sheet 3 – Standard Details; Dated 05/15/2023; Revised through 02/14/2024; Received 02/14/2024</p>
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Other documents submitted consist of the following:

Private Way Application – 01/12/2024  
Plans – 01/12/2024, 02/14/2024  
Declaration of Maintenance – 01/12/2024  
Planning Department – 01/25/2024  
Street and Driveway Name Approval Form – 01/16/2024  
Purchase and Sale Agreement – Dated January 13, 2023  
Fire Department – 05/19/2023, 02/21/2024  
Assessor Comments - No comments  
Code Department – 01/29/2024  
Town Engineer – 01/29/2024, 02/20/2024  
Town Stormwater – 01/23/2024  
Public Works Director – 01/24/2024

## **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) The lot having access from the approved private way may be improved with no more than one 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 1 lot or dwelling unit.

*Finding: The private way is designed to the 1 lot/dwelling units private way standard and no more than one dwelling unit 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 Andy Morrill, P. E.

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

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.

This standard does not apply. A draft maintenance agreement has been provided but is not relevant to this review.

*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 is proposing to build a 1 lot gravel private way. Sheet 1 shows the required 1 lot/dwelling unit gravel private way standard cross section. The plan shows a grade at the intersection with Wood Road of -2.00%, meeting the allowed 2% grade per ordinance.



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 one (1) lot. The applicant proposes to serve one (1) residential dwelling unit.

Finding: *The private way is proposing to serve one (1) 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 lot will need to retain enough area to meet the lot size 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 Wood Road, which is suitable to serve the proposed private way extension.

Finding: *The proposed private way will be off Wood 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 from staff and peer reviewers 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 Chair 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.
11. That a landscape buffer, fencing, or other appropriate privacy screen be installed on the western edge of the private way abutting the property located at Map 54, Lot 16-301.

**SUGGESTED MOTIONS:**

**FOR APPROVAL:** Move to Dakota Cummings request for approval for a 447 foot private way off Wood Road designed to the Town's 1 lot/dwelling unit gravel private way standard, located on Map 54, Lot 16 and situated in the Rural 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 CONSENT AGENDA:** Move further review of Dakota Cummings request for approval for a 447 foot private way off Wood Road to a future Consent Agenda pending the submission of revised information addressing outstanding staff, peer review and Planning Board comments.

# ZERILLO

LAW FIRM, LLC

1250 Forest Avenue, Ste 3A, Portland, ME 04103  
www.ZerilloLaw.com 207.228.1139

February 3, 2024

**VIA EMAIL**

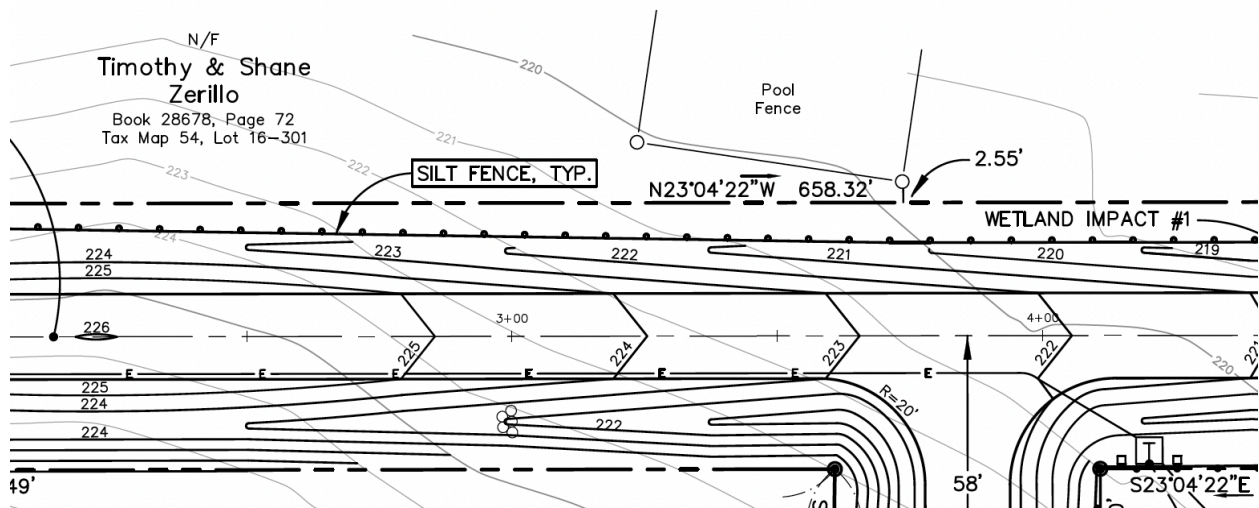
**Thomas M. Poirier, tpoirier@gorham.me.us**  
**Carol Eyerman, ceyerman@gorham.me.us**  
**Damon Yakovleff, dyakovleff@gorham.me.us**  
O/B/O Gorham Planning Board

**RE:** *Private Way Application of Dakota Cummings  
59 Wood Road - Tuscan Way*

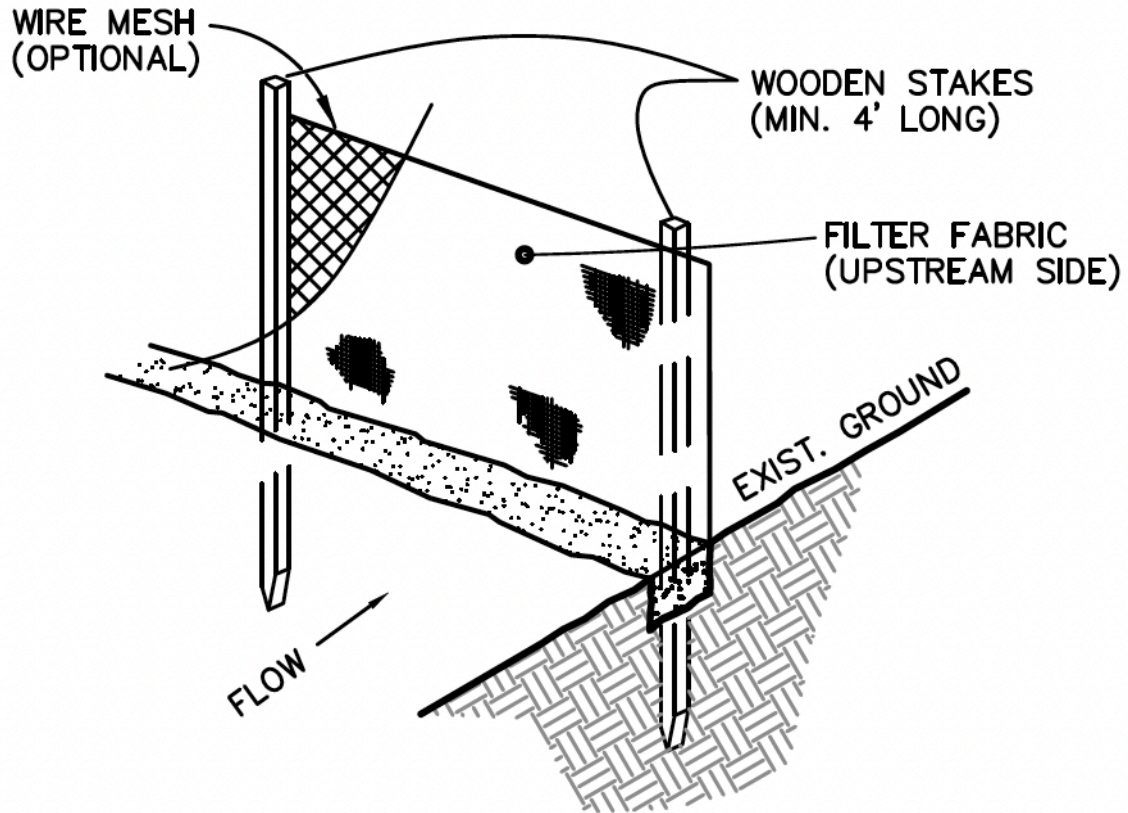
Dear Planning Board Members:

I apologize for the weekend submission objecting to the above private way application, but I was serving in hearings the previous week in Farmington, Maine, and had no time to reply. My Wife, Shane Zerillo, and I are abutters to the proposed private way described above. We have lived in this property on Jordan Drive since 2005.

The plan submitted essentially allows for a driveway through my backyard. While the land beyond my pool fence is not owned by me, it is a plan that will create a nuisance, and change what is plainly a quiet, wooded property behind two homes. The plans will convert these woods into a driveway, passing within feet of my pool.



The planning for this private way appears to try to protect my property from this driveway with a very short silt fence. This will not only be ugly, it will be ineffective. From the plans submitted this is the only solution proposed.





By way of illustration, I took the following photo, standing inside of my home, looking toward the subject property, on today's date. Following is the photo:



The photo, showing my pool covered with snow and the fence behind it, illustrates just how close the proposed public way is. The proposed gravel way passes within a few feet of that fence. I do not love the idea of being on a pool float in the summer and waving at the neighbors as they drive by over their short silt fence.

As you can see, this will dramatically change the nature of the aptly-named “wood” road. While I cannot believe someone would want to create such a long private way through backyards to build this property (this is, of course, a rural zone in Gorham, not Portland), but it seems they do. I am certainly respectful of anyone's desire to build a home, but this is a rather strange plan which dramatically changes the nature of the property in general.

I see no plan to provide privacy vegetation in the form of large and fast growing trees or stockade fencing. All that is proposed to protect us from the construction and use is a short silt fence. To preserve the nature of this property, one would think such things should be considered. At the least (and I do not concede it would solve the problem) privacy vegetation the entire length of the way and at least a 10 foot high stockade fence—not a silt fence—should be considered.



Of course, as this Board knows, Maine law permits for various actions related to the concerns raised herein. Without limiting our legal remedies, I would note that it is plain that the construction and use of the proposed private way will create a nuisance action, which I seek to avoid. Notably, “any person injured in his comfort, property or the enjoyment of his estate by a common and public or a private nuisance may maintain against the offender a civil action for his damages, unless otherwise specially provided.” 17 MRSA §2701. Likewise, nuisance actions are also available at common law. *See Johnston v. Maine Energy Recovery Co., Ltd. Partnership*, 2010 ME 52, 997 A.2d 741 (Me. 2010) (“Any person, injured in his comfort, property, or the enjoyment of his estate, by any nuisance, as before described, *or at common law* ... may maintain, against the party guilty thereof, an action on the case for the recovery of the damages, which he has thereby sustained, unless it be otherwise specially provided by law.”)

An action by this Board approving the plans as proposed may also result in the need to proceed with a preliminary injunction. The party seeking a preliminary injunction generally must produce *prima facie* evidence of the following: (1) that plaintiff will suffer irreparable injury if the injunction is not granted, (2) that such injury outweighs any harm which granting the injunctive relief would inflict on the defendant, (3) that plaintiff has exhibited a likelihood of success on the merits (at most, a probability; at least, a substantial possibility), and (4) that the public interest will not be adversely affected by granting the injunction. *Bangor Historic Track, Inc. v. Dept. of Agriculture*, 2003 ME 140, ¶ 9, 837 A.2d 129 (citing *Dep’t of Envtl. Prot. v. Emerson*, 563 A.2d 762 (Me. 1989)).

I ask you to reject the proposed private way for the reasons set forth above. Thank you for reviewing this submission.

Truly yours,



Timothy E. Zerillo  
ZERILLO LAW FIRM, LLC  
[tim@zerillolaw.com](mailto:tim@zerillolaw.com)

cc: Andrew S. Morrell, Project Engineer (*via* hand delivery)  
Stephanie Willett (*via* email)

# DAN & STEPHANIE WILLETT

29 Jordan Drive, Gorham

(Direct Abutters to 59 Woods Road Project)

February 4, 2024

VIA EMAIL

Tom Poirier @ tpoirier@gorham.me.us

Carol Eyerman @ ceyerman@gorham.me.us

Damon Yakovleff @ dyakovleff@gorham.me.us

(TO BE READ INTO THE RECORD DURING PUBLIC COMMENT)

RE: *Private Way Application for "Tuscan Way" at 59 Wood Road, Gorham, ME*

Dear Planning Board Members:

We are writing this letter as direct abutters to the proposed "Tuscan Way" private road being proposed at 59 Wood Road, Gorham, Maine. While we favor responsible growth in town, we are not in favor of a project which seeks to bypass proper permitting, as this project is trying to do.

Two issues stand out to us on this application:

- The first relates to "right, title, and interest" – which is a precursor for the board's review of the application. This creates issues both for:
  - Standing before the board on this hearing, and on the subdivision application, and;
  - Any ability to record an enforceable "Declaration of Maintenance," or any other title or deed restriction required by the Town Ordinance.
- The second issue relates to standards required by this board which do not seem to have been met in this proposed street plan, namely, that the plan not permit the driveway to extend from either fork of the turnaround.

**Lack of Standing & Lack of Enforceability due to Failure of Right, Title, and Interest in Real Estate:**

In order for an applicant to present to the board, the applicant must show it has "right, title, and interest" in the land. This standard is most often met, as here, by the prospective developer simply submitting a purchase and sale agreement for the land. Although the developer has provided a purchase and sale agreement here, critically missing from this submission is evidence that the underlying owner actually has the ability to convey the land.



Absent valid right, title, and interest, an applicant not only fails to meet the standing requirement, but also cannot show that any requirements imposed by this can validly recorded as necessary to impose the Town's requirements, including the mandatory "Declaration of Maintenance."

In this case, the applicant has failed to disclose that the underlying land of Brandon Cavett is encumbered by a mortgage to Bank of America. *See* Mortgage Deed recorded in the Cumberland County Registry of Deeds in Book 34034, Page 10. A screen-snip from Page 3 of this mortgage is inset on the just below. A copy is available online at: <https://i2k.uslandrecords.com/ME/Cumberland/D/Default.aspx>

(Snip Below of Page 3 of Mortgage, showing Property Encumbered by Mortgage)

DOC :23567 BK:34034 PG:12

SCHEDULE A ATTACHED HERETO AND MADE A PART OF.

which currently has the address of 59 WOOD RD

GORHAM  
[City]

MAINE  
[State]

[State]

04038  
[Zip Code]

("Property Address")

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

ADVANCES. During the Draw Period described in the Agreement, the Borrower may repeatedly take and remove any advances that Lender makes to Borrower under the terms of the Agreement and this Security Instrument.

The applicant has failed to produce any evidence of a partial release (which does not appear in the registry), and has also failed to provide any assurance from Bank of America that the bank will release the land of the Owner from its first-position mortgage on the property.

Without the release, the bank holds first position rights on the land subject to this application – including the road – meaning a foreclosure would *wipe out* the proposed road agreement, or any other deeded restrictions imposed by this board.

To be clear, *in addition* to failing to show valid "right, title, and interest" necessary for standing before this board, the absence of clear title *also means* that the applicant cannot meet the requirement to record the "Declaration of Maintenance" that this board requires for the road.

It is clear the applicant does not have standing to be before you on this matter as a threshold issue, *but even if they did*, the applicant cannot show that the required deed restrictions and/or "Declaration of Maintenance" are valid due to an existing, first-position mortgage.

We encourage you to check with the town's attorney on this matter before hearing this application.

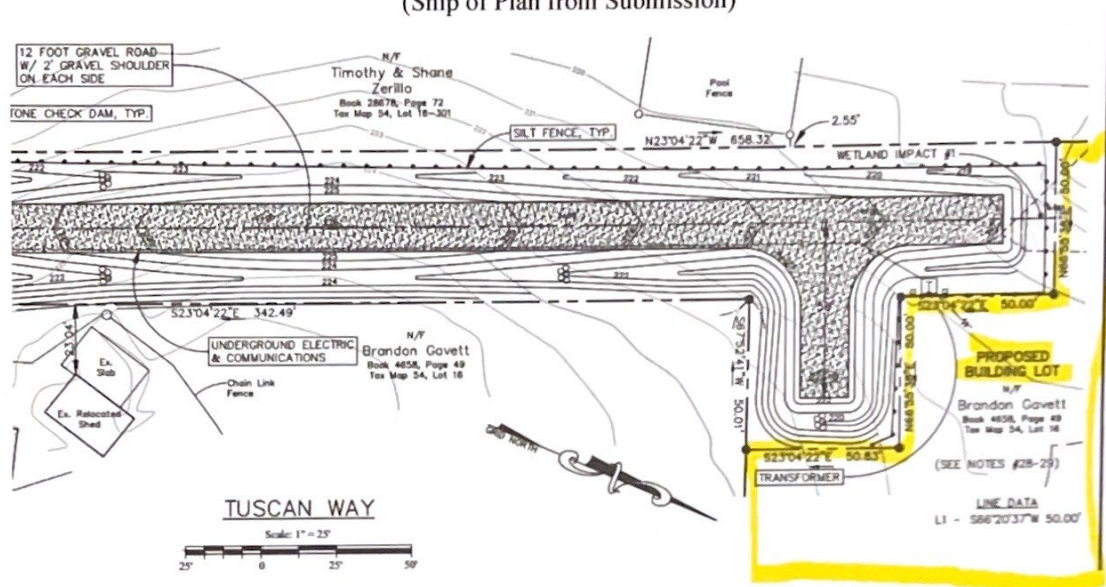
**Failure to Meet Plan Requirements of This Board: "No Drive off Turnaround":**

The applicant notes at the bottom of its cover letter (see Bullet 2 addressing May 31, 2023 sketch plan requirements) that this application is subject to a restriction imposed during the ongoing Sketch Plan Review, namely, that the “driveway for the proposed lot shall not be allowed off either end of the hammerhead turnaround.”

Unfortunately, as designed, there is *nowhere else* for the driveway to originate from.

This requirement is critical, as it relates to health and safety, and was imposed by the fire department. It makes sense that a driveway would not block the emergency turnaround areas created by this requirement. As shown on the snip below, the only frontage established by the plan is *along the turnaround*. See the highlighted area below for reference.

(Snip of Plan from Submission)



Although the applicant points to Plan Note 28 to fix this issue, the note only recites the requirement that a driveway is “not allowed off either end of the hammerhead turnaround as required by fire department.” So, the issue persists, in that there is nowhere else for a driveway to stem from as designed.

As designed, there is simply no way the lot could be built *without* protruding from some portion of the hammerhead because the only portions of the lot contacting the road *do so* within the “L” created by the hammerhead.

**Conclusion:**

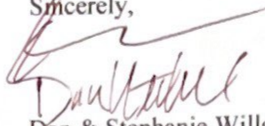
We encourage this board to set aside this application due to the standing issues created by the absence of sufficient “right, title, and interest” in the land (which also impacts the substance of the application).



Even if there was standing, the plans, as designed, do not meet this board's own requirements from its May 2023 sketch plan meeting.

Thank you for your consideration on these important matters.

Sincerely,



Dan & Stephanie Willett  
29 Jordan Drive, Gorham  
(Abutter to Project)

cc: Timothy Zerillo (*via* email)