

**Town of Kittery  
Planning Board Meeting  
July 22, 2021**

**ITEM 2—Wetland Alteration Plan—Charles Hill Road (Map 63 Lot 34)**

Action: Accept/deny plan as complete, continue to subsequent meeting, set site walk and/or public hearing, approve or deny application. Pursuant to §16.9 *Design and Performance Standards for Natural Environment* and 16.3 *Land Use Regulations* of the Town of Kittery Land Use and Development Code, owner/applicant Mark and Anna Kramer requests approval to alter a wetland by 2,600-sf to accommodate a driveway to access the lot’s buildable sections on real property at Tax Map 63 - Lot 34, located within the Residential-Rural (R-RL) zone and the Shoreland (OZ-SL-250) and Resource Protection (OZ-RP) Overlay Zones.

**PROJECT TRACKING**

REQ'D	ACTION	COMMENTS	STATUS
NO	Sketch Plan	N/A	
NO	Site Visit	At the Board’s discretion	
YES	Preliminary Plan Review Completeness/Acceptance	7/22/21	Pending
NO	Public Hearing	At the Board’s discretion	
YES	Final Plan Review and Decision	May occur at the 7/22/21 meeting	Pending

**Applicant: Prior to the signing of the approved Plan any Conditions of Approval related to the Findings of Fact along with waivers and variances (by the BOA) must be placed on the Final Plan and, when applicable, recorded at the York County Registry of Deeds. PLACE THE MAP AND LOT NUMBER IN 1/4” HIGH LETTERS AT LOWER RIGHT BORDER OF ALL PLAN SHEETS. As per Section 16.4.4.13 - Grading/Construction Final Plan Required. - Grading or construction of roads, grading of land or lots, or construction of buildings is prohibited until the original copy of the approved final plan endorsed has been duly recorded in the York County registry of deeds when applicable.**

**Background**

Planning Board review of this project is required by Title 16.10.3.2 *Other Development Review* and Title 16.9.3 *Conservation of Wetlands including Vernal Pools* because a portion of the proposed development is located in the Shoreland Overlay Zone and the proposed development is a new structure/activity within a wetland greater than 501 square feet in size. The existing property is an undeveloped, 7.53-acre conforming lot with a flood zone crossing the rear end of the lot.

The proposed development is a 12-foot gravel driveway leading from Charles Hill Road to the buildable area, located within the upper third of the lot. Approximately 2/3rds of the lot is in the Shoreland Overlay Zone, therefore a portion of the driveway will be subject to the regulatory standards of the Shoreland Overlay Zone. No portion of the driveway is within the 100-foot base zone setback. The proposed driveway will also cross a wetland, not within the Shoreland Overlay Zone, creating a disturbance of 2,631 square feet.

**Staff Review**

1. The intent of the driveway is to access a single-family dwelling, which is a permitted use in the R-RL and OZ-SL-250 zone. Driveways are a permitted activity within regulated wetlands, pending Planning Board approval.
2. A portion of the proposed driveway and proposed house are within 250-feet of a tidal wetland and will be subject to the devegetated coverage limits of the Shoreland Overlay Zone. At the time of review, it appears that the applicant will be well under the devegetation limit as indicated on the site plan. Further, it appears that the dwelling unit is outside the base zone setback of the regulated wetland and edge of the costal wetland (shoreland overlay zone).
3. The proposed development requires tree clearing, limited to what is necessary for development. No clearing is proposed within the 100-foot buffer. Shoreland Overlay Zone regulations permit clearing a maximum of 25% of the regulated lot area, or ten thousand square feet, whichever is greater. Exact clearing totals are missing from the plan; however, staff estimates the proposed clearing would not violate this provision. Board may want to consider the applicant add this information of the plan, or have the Code Enforcement Officer confirm this at the time of the building permit application.

4. Per Title 16.9.3.2 Wetland Boundaries, Planning Board approval to alter a wetland area one acre or larger in size is contingent upon the submission of a wetlands delineation map and summary. The total size of the wetland is missing from the plan. Nevertheless, it appears on the site plan that the wetland is greater than an acre. The Board may want to have the applicant confirm the size of the wetland and have it depicted on the plan.
5. Title 16.9.3.9 requires a mitigation plan to offset potential adverse environmental impact. A mitigation plan for development that impacts more than 501 square feet of regulated wetlands includes the preservation of an undisturbed upland buffer zone adjacent to the wetland boundary equal in size to the area of the wetland to be altered. The applicant has provided a 4,450-sf 'no-cut' buffer on the plan and mitigation infrastructure such as a culvert for water and wildlife passage. It appears, given the scale of the disturbance and corresponding infrastructure and mitigation efforts, that the stormwater, wildlife and ecological impacts to the affected wetland and connecting wetlands would be minimum.
6. It is unclear of the type and origin of the materials to be used to alter the wetland. The Board may want to inquire into the constitution of the fill materials and measures to be implemented to ensure polluted fill will not be imported and further derogate the wetland.
7. A wetland mitigation report is required for activities that, in total, affect or fill more than five hundred (501) square feet of wetlands. Given that the total impact will be 2,631-sf, a report from Michael Cuomo, Maine Soil Scientist, was submitted for review. The report concludes that the functionality of the wetland will not be adversely impact due to the scale of alteration and mitigations methods to be deployed. Moreover, the wetland itself functions primarily as an overflow buffer for the costal wetland / flood plain to the south of the lot.
8. Board should decide if a peer review of the materials is necessary or if a consultation from the Conservation Commission is needed.
9. The wetland alteration application appears to meet the standards of Title 16 with the following minor adjustments.
  - a. Include a plan note addressing proposed tree clearing in the Shoreland Overlay Zone;
  - b. Depict the size of wetland, in its entirety, on final plan;
  - c. Add "Wetland Alteration" from the plan title; and
  - d. Add recording block.
10. Given the scope of the project, staff is of the opinion that work proposed, testimony given, and information provided are sufficient for the Board to move forward with a vote to accept application and make a final vote. If a vote to approve is the will of the Board, staff has submitted a list of recommended conditions of approval.
11. This application is also associated with impact fill fee. According to Appendix A. within the Kittery Town Code, a \$4 per square foot fill fee is required. Based on the amount of square footage planned to be filled, a fee of \$10,524.00 would be yielded.

## **Planning Board Procedural Steps**

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After the Board has been presented with the application and deliberation has exhausted, the following procedural sequence must take place:

1. Continue the application to a subsequent meeting;
2. Debate if a public hearing or site walk is necessary
3. Consider the merits and necessity of a peer review or review of the Conservation Commission so as to make a more informed decision;
4. If no public hearing is necessary, but more time is needed by the Board to consider the application, move to continue the application to a subsequent meeting;
5. Approve with or without conditions; or
6. Deny the application.

## **Recommended Motions**

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Below are recommended motions for the Board's use and consideration:

### *Motion to continue application*

Move to continue the shoreland development plan application to the August 12, 2021 Planning Board meeting from owner/applicant Mark and Anna Kramer requesting approval to alter a wetland by 2,600-sf to accommodate a driveway to access the lot's buildable sections on real property at Tax Map 63 - Lot 34, located within the Residential-Rural (R-RL) zone and the Shoreland (OZ-SL-250) and Resource Protection (OZ-RP) Overlay Zones.

### *Motion to accept the plan*

Move to accept the plan owner/applicant Mark and Anna Kramer requesting approval to alter a wetland by 2,600-sf to accommodate a driveway to access the lot's buildable sections on real property at Tax Map 63 - Lot 34, located within the Residential-Rural (R-RL) zone and the Shoreland (OZ-SL-250) and Resource Protection (OZ-RP) Overlay Zones.

### *Motion to set site walk*

Move to schedule a site walk on (insert date) at (insert time).

### *Motion to set public hearing*

Move to schedule a public hearing for the August 12, 2021, Planning Board meeting from owner/applicant Mark and Anna Kramer requesting approval to alter a wetland by 2,600-sf to accommodate a driveway to access the lot's buildable sections on real property at Tax Map 63 - Lot 34, located within the Residential-Rural (R-RL) zone and the Shoreland (OZ-SL-250) and Resource Protection (OZ-RP) Overlay Zones.

### *Motion to approve with conditions*

Move to approve the wetland alteration plan application from owner/applicant Mark and Anna Kramer requesting approval to alter a wetland by 2,600-sf to accommodate a driveway to access the lot's buildable sections on real property at Tax Map 63 - Lot 34, located within the Residential-Rural (R-RL) zone and the Shoreland (OZ-SL-250) and Resource Protection (OZ-RP) Overlay Zones.

1. Prior to the issuance of a building permit, the applicant shall submit an updated deed of the property to the Code Enforcement Officer describing therein a restriction prohibiting the impairment or removal of the 'no-cut' wetland mitigation buffer. The deed restriction shall reference the approved Planning Board plan, dated July 1, 2021, provided by Attar Engineering Inc. Further, the applicant shall record the approve plan referenced herein at the York County Registry of Deeds.
2. Prior to the commencement of grading and/or construction of the driveway and dwelling unit, as shown on the Plan, the owner and/or developer must stake the location thereof. These markers must remain in place until the Code Enforcement Officer determines construction is completed and there is no danger of damage to areas that are, per Planning Board approval, to remain undisturbed.
3. No trees are to be removed without prior approval by the Code Enforcement Officer.
4. Prior to the issuance of a building permit for the dwelling unit, the applicant shall submit to Code Enforcement a bill of lading of all imported materials used for filling the wetlands to create the driveway, which will contain at a minimum the following information:
  - a. The type and point of origin of the materials and the receiving location for the material.
5. All fill materials delivered may include only clean sand, gravel, clay, stone, quarried rock or other subsurface products free from solid waste, with an aggregate size of six inches or less, and have no solid waste, refuse, junk, industrial waste, or volatile, explosive or flammable materials. The fill material shall have no concentration of oil or hazardous material, toxic substance, or infectious biological material greater than federal, state or local reportable or action criteria or materially greater than pre-fill conditions prevailing in the area to be filled. The fill material shall also be free from organic material such as trees, stumps, garbage, building materials, and construction and demolition debris.

Kittery Planning Board

**UNAPPROVED**

**Findings of Fact**  
**For Charles Hill Road (Tax Map 63 Lot 34)**  
**Wetland Alteration Plan Review**

**WHEREAS: Owner/applicant Mark and Anna Kramer requests approval to alter a wetland by 2,600-sf to accommodate a driveway to access the lot's buildable sections on real property at Tax Map 63 - Lot 34, located within the Residential-Rural (R-RL) zone and the Shoreland (OZ-SL-250) and Resource Protection (OZ-RP) Overlay Zones.**

Pursuant to the Plan Review meetings conducted by the Town Planning Board as noted {in the plan review notes prepared for 7/22/2021 }

Wetland Alteration Plan Review	7/22/2021
Approval	7/22/2021

And pursuant to the application and plan and other documents considered to be a part of a plan review decision by the Planning Board in this Finding of Fact consisting of the following (hereinafter the "Plan"): {as noted in the plan review notes prepared for 7/22/2021 }

1. Wetland Alteration Application, dated 6/30/21
2. Wetland Alteration Site Plan, dated 7/1/21, Attar Engineering Inc.
3. Wetland functional Assessment and Report, dated 7/1/21, Michael Cuomo, Soil Scientist

**NOW THEREFORE**, based on the entire record before the Planning Board and pursuant to the applicable standards in the Land Use and Development Code, the Planning Board makes the following factual findings and conclusions:

**FINDINGS OF FACT**

**Chapter 16.3 LAND USE ZONE REGULATIONS**

**16.3.2.17.D Shoreland Overlay Zone**

*1.d The total footprints of the areas devegetated for structures, parking lots and other impervious surfaces, must not exceed twenty (20) percent of the lot area, including existing development, except in the following zones...*

Findings: Maximum devegetated area in the Shoreland Overlay Zone is 20%. The proposed development does not exceed devegetated coverage amounts

Conclusion: The requirement appears to be met.

Vote of \_\_\_ in favor \_\_\_ against \_\_\_ abstaining

## Chapter 9 DESIGN AND PERFORMANCE STANDARDS – NATURAL ENVIRONMENT

### Article III Conservation of Wetlands Including Vernal Pools

#### **16.9.3.7 Wetlands Alteration Approval Criteria**

**A. In making the final determination as to whether a wetland application should be approved, the Planning Board will consider existing wetland destruction and the cumulative effect of reasonably anticipated future uses similar to the one proposed.** Preference will be given to activities that meet wetland setbacks, have a reasonable stormwater management plan (subject to Planning Board review and approval), and that dedicate easements for the purposes of maintaining the wetland and the associated drainage system. Approval to alter a wetland will not be granted for dredging or ditching solely for the purpose of draining wetlands and creating dry buildable land areas. An application for a wetlands alteration will not be approved for the purpose of creating a sedimentation or retention basin in the wetland. Increased peak runoff rates resulting from an increase in impermeable surfaces from development activities are not allowed.

Findings: The 2,631 square foot wetland impact does not appear to have an adverse impact on the remaining wetland.

Conclusion: This requirement appears to be met.

Vote of \_\_\_ in favor \_\_\_ against \_\_\_ abstaining

**B. It is the responsibility and burden of the applicant to show that the proposed use meets the purposes of this Code and the specific standards listed below to gain Planning Board approval to alter a wetland.** The Planning Board will not approve a wetlands alteration unless the applicant provides clear and convincing evidence of compliance with the Code.

Findings: The intent of the driveway is to access a single-family dwelling, which is a permitted use in the R-RL and OZ-SL-250 zones. Driveways are a permitted activity within regulated wetlands.

Conclusion: This requirement appears to be met.

Vote of \_\_\_ in favor \_\_\_ against \_\_\_ abstaining

**C. In evaluating the proposed activity, the Planning Board may need to acquire expert advisory opinions.** The applicant must be notified in writing, by the Town Planner at the Planning Board's request, that the applicant will bear the expenses incurred for the expert persons or agencies. The Planning Board will consider the advisory opinion, including any recommendations and conditions, provided by the Conservation Commission.

Findings: The proposed development has a total wetland impact of 2,631-sf., requiring a wetland mitigation and functional analysis report to be submitted for review. Accordingly, the report and expert opinion appear to conclude that no adverse impacts are anticipated to be experienced based on the type and current state of the wetland and the mitigation measures to be deployed.

Conclusion: This requirement appears to be met.

Vote of \_\_\_ in favor \_\_\_ against \_\_\_ abstaining

**D. When the Planning Board finds the demonstrated public benefits of the project as proposed, or modified, clearly outweigh the detrimental environmental impacts, the Planning Board may approve such development, but not prior to granting approval of a reasonable and practicable**

**mitigation plan**, (see Section 16.9.3.9) and not prior to the completion of all performance guaranties for the project, (see Section 16.10.8.2.2).

Findings: The alteration plan depicts the preservation of an undisturbed upland buffer zone (4,450-sf) adjacent to the wetland boundary greater in size to the wetland alteration (2,631-sf). A wetland mitigation fee is also required, which amounts to \$10,524.00. This amount is subject to change if the plan is amended and shall be confirmed prior to the issuance of a building permit.

Conclusion: This requirement appears to be met.

**Vote of \_\_\_ in favor \_\_\_ against \_\_\_ abstaining**

**E. The applicant must submit applicable documentation that demonstrates there is no practicable alternative to the proposed alteration of the wetland.** In determining if no practicable alternative exists, the Board will consider the following:

The proposed use:

1. Uses, manages or expands one or more other areas of the site that will avoid or reduce the wetland impact;
2. Reduces the size, scope, configuration or density of the project as proposed, thereby avoiding or reducing the wetland impact;
3. Provides alternative project designs, such as cluster development, roof gardens, bridges, etc., that avoid or lessen the wetland impact; and
4. Demonstrates that the proposed development meets or exceeds best management practices for stormwater management in the wetland areas.

Finding: The proposed development crosses at the wetland's narrowest point so as to minimize the impact, to the greatest possible extent. Moreover, there appears to be no reasonable alternative access points from the road to the buildable portions of the lot. Further, the alteration plan appears to adhere to best management practices.

Conclusion: This requirement appears to be met.

**Vote of \_\_\_ in favor \_\_\_ against \_\_\_ abstaining**

**F. In determining if the proposed development plan affects no more wetland than is necessary the Planning Board will consider if the alternatives discussed above in subsection A of this section accomplish the following project objectives {described in 16.9.3.7.F}:**

The proposed use will not:

1. Unreasonably impair or diminish the wetland's existing capacity to absorb, store, and slowly release stormwater and surface water runoff;
2. Unreasonably increase the flow of surface waters through the wetland;
3. Result in a measurable increase in the discharge of surface waters from the wetland;
4. Unreasonably impair or diminish the wetland's capacity for retention and absorption of silt, organic matter, and nutrients;
5. Result in an unreasonable loss of important feeding, nesting, breeding or wintering habitat for wildlife or aquatic life; all crossings must be designed to provide a moist soil bed in culvert inverts and to not significantly impede the natural migration of wildlife across the filled area;
6. Result in a measurable increase of the existing seasonal temperature of surface waters in the wetland or surface waters discharged from the wetlands.
7. Result in a measurable alteration or destruction of a vernal pool.

Findings: The 2,631-sf wetland impact does not appear to have an adverse impact on the remaining wetlands. Expert testimony given by Michael Cuomo, Maine Soil Scientist, stated that the functionality of the wetland would most likely not be altered to a point that would result in the

wetland failing to performing its natural purpose. Moreover, the applicant has provided infrastructure and preservation techniques that intend to mitigate the adverse impacts of the alteration and on wildlife.

Conclusion: This requirement appears to be met.

Vote of \_\_\_ in favor \_\_\_ against \_\_\_ abstaining

**NOW THEREFORE** the Kittery Planning Board adopts each of the foregoing Findings of Fact and based on these Findings determines the proposed Development will have no significant detrimental impact, and the Kittery Planning Board hereby grants final approval for the Development at the above referenced property, including any waivers granted or conditions as noted.

**Waivers:** None

**Conditions of Approval** (to be depicted on final plan to be recorded):

1. No changes, erasures, modifications or revisions may be made to any Planning Board approved final plan. (Title 16.10.9.1.2)
2. Applicant/contractor will follow Maine DEP *Best Management Practices* for all work associated with site and building construction to ensure adequate erosion control and slope stabilization.
3. Prior to the issuance of a building permit, the applicant shall submit an updated deed of the property to the Code Enforcement Officer describing therein a restriction prohibiting the impairment or removal of the 'no-cut' wetland mitigation buffer. The deed restriction shall reference the approved Planning Board plan, dated July 1, 2021, provided by Attar Engineering Inc. Further, the applicant shall record the approve plan referenced herein at the York County Registry of Deeds.
4. Prior to the commencement of grading and/or construction of the driveway and dwelling unit, as shown on the Plan, the owner and/or developer must stake the location thereof. These markers must remain in place until the Code Enforcement Officer determines construction is completed and there is no danger of damage to areas that are, per Planning Board approval, to remain undisturbed.
5. No trees are to be removed without prior approval by the Code Enforcement Officer.
6. Prior to the issuance of a building permit for the dwelling unit, the applicant shall submit to Code Enforcement a bill of lading of all imported materials used for filling the wetlands to create the driveway, which will contain at a minimum the following information:
  - a. The type and point of origin of the materials and the receiving location for the material.
7. All fill materials delivered may include only clean sand, gravel, clay, stone, quarried rock or other subsurface products free from solid waste, with an aggregate size of six inches or less, and have no solid waste, refuse, junk, industrial waste, or volatile, explosive or flammable materials. The fill material shall have no concentration of oil or hazardous material, toxic substance, or infectious biological material greater that federal, state or local reportable or action criteria or materially greater than pre-fill conditions prevailing in the

area to be filled. The fill material shall also be free from organic material such as trees, stumps, garbage, building materials, and construction and demolition debris.

8. All Notices to Applicant contained herein (Findings of Fact dated 7/22/2021).

The Planning Board authorizes the Planning Board Chair to sign the Final Plan and the Findings of Fact upon confirmation of required plan changes.

Vote of \_\_\_ in favor \_\_\_ against \_\_\_ abstaining

APPROVED BY THE KITTERY PLANNING BOARD ON \_\_\_\_\_

\_\_\_\_\_  
Dutch Dunkelberger, Planning Board Chair

### **Notices to Applicant:**

1. Incorporate any plan revisions on the final plan as recommended by Staff, Planning Board or Peer Review Engineer, and submit for Staff review prior to presentation of final mylar.
2. Prior to the release of the signed plans, the applicant must pay all outstanding fees associated with the permitting, including, but not limited to, Town Attorney fees, peer review, newspaper advertisements and abutter notification.
3. One (1) paper copy of the final plan and any and all related state/federal permits or legal documents that may be required, must be submitted to the Town Planning Department for signing. Date of Planning Board approval shall be included on the final plan in the Signature Block. After the signed plan is recorded with the York County Registry of Deeds, three (3) copies thereof must be submitted to the Town Planning Department.
4. This approval by the Town Planning Board constitutes an agreement between the Town and the Developer, incorporating as elements the Development Plan and supporting documentation, the Findings of Fact, and any Conditions of Approval.

### **Appeal of Decision**

1. Per Title 16.6.2.A - An aggrieved party with legal standing may appeal a final decision of the Planning Board to the York County Superior Court in accordance with Maine Rules of Civil Procedures Section 80B, within forty-five (45) days from the date the decision by the Planning Board was rendered.