

**Town of Kittery  
 Planning Board Meeting  
 March 25, 2021**

**164 Rogers Road – Right of Way Plan Review**

Action: Accept or deny application; respectively schedule site walk or public hearing; approve or deny plan. Pursuant to §16.10.7.2.S *Right-of-way plan* of the Town of Kittery Land Use and Development Code, owner Melinda Birse and applicant Ryan Birse propose a new Right-Of-Way extending from Rogers Road to access a new lot not created by a subdivision located on real property with the address of 164 Rogers Road (Tax Map 22 Lot 23) in the Residential-Urban (R-U) Zone.

**PROJECT TRACKING**

REQ'D	ACTION	COMMENTS	STATUS
NO	Site Visit	At the Board's discretion	TBD
YES	Determination of Completeness/Acceptance	Pending	Scheduled for 3/25/2021
NO	Public Hearing	At the Board's discretion	TBD
YES	Preliminary/Final Plan Review and Approval	Pending	Feasible for 3/25/2021
<p>Applicant: Prior to the signing of the approved Plan any <b>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.</b> <u>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.</u></p>			

**Project Introduction**

164 Rogers Road ("Development") is located in close proximity of the 236 traffic circle in the Residential-Urban (R-U) zoning district. The lot currently possesses a single-family dwelling unit with a few accessory structures such as a garage, storage sheds and a chicken coop. The lot is approximately 1.77 acres in size and has three individual curb cuts onto Rogers Road. The existing dwelling unit and garage are legally nonconforming considering they violate the front yard setbacks and existed prior to adoption of zoning by the Town in 1977. To the west of the subject property is an ancient cemetery that carries a 25-ft no-disturbance setback pursuant to M.R.S., Title 13, §1371-A *Limitations on construction and excavation near burial sites*. Regarding natural features, there appears to be located on the northern section of the lot is a large wetland presence (>ac), which carries a required 100-ft setback for structures, pursuant to Table 16.9 *Minimum Setbacks from Wetlands and Water Bodies*. Moreover, there is a sewer easement located within the property that runs west to east benefiting the Town of Kittery.

The purpose of the Right-of-Way application is to provide access and road frontage for a future lot intended to host a single-family dwelling unit. Pursuant to M.R.S Title 30-A, c.187, §4401, the proposed division of land is not considered a subdivision as the subject parcel is not creating 3 or more lots and the owner of the principal lot is retaining ownership and maintaining the dwelling unit thereon as their primary residence. It appears, after factoring out the area of the proposed 40-ft ROW, wetlands and easement (to be confirmed), there is enough minimal land for the both lots to host a dwelling unit as the minimal lot size for the RU zone is 20,000-sf. Moreover, the creation of a new lot and right-of-way will not unintentionally make the original parcel nonconforming, albeit some of the structures thereon do become more nonconforming as elaborated herein.

Pursuant to §16.10.7.2.S *Right-of-Way Plan*, the Planning Board has jurisdictional oversight on this land use application. Unlike a site plan or subdivision plan, this application does not require sketch plan review, a site walk or public hearing; albeit a site walk or public hearing could be scheduled by the Planning Board if desired. The applicant is requesting a number of waivers in accordance with §16.7.4.1 *Waiver authorization* as a result of the scale and objectives of the project, topographic challenges and other site constrains. The Planning Board is task to determined if the waiver requests are justified, and whether or the proposed ROW and corresponding waivers satisfy the objective of this Title.

**Staff Review**

The purpose of this application is to create road frontage for a future lot to build a residential dwelling unit. Pursuant to §16.8 *Attachment 1: Design Standards for Streets and Pedestrianways* a 40-ft right-of-way is the minimal width permissible to service the proposed development. The application before the Board depicts such a right-of-way,

however, there are many standards found within 16.8 *Attachment 1: Design Standards for Streets and Pedestrianways* that are absent from the plan as the applicant is requesting waivers to deviate therefrom due to existing circumstances. The justification for the waivers boils down to three concepts: (1) scale of the development the road will service, (2) topography of the land, and (3) proximity to an ancient cemetery.

### *Scale of Development*

The proposed ROW intends to service only one (1) future dwelling unit. Looking at the current zoning standards for the Residential-Urban (R-U) zone, it appears only one (1) dwelling unit is permitted to be built due to the amount of land the proposed lot ("Parcel A") will have after factoring out the wetland, easement and right-of-way acreage under the 'minimal land area per dwelling unit' definition, pursuant to 16.2.2 *Definitions*. The applicant contends that the typical standards of a Class 1 Private Way, pursuant to 16.8 *Attachment 1: Design Standards for Streets and Pedestrianways* should not be considered in this application as only one (1) dwelling unit will be serviced. Moreover, adhering to the traditional standards found under 16.8 *Attachment 1* would be financially burdensome, over-engineered and out of scale for the property. As an alternative, the applicant is proposing to extend the driveway within the right-of-way and potentially adding stormwater BMPs to help capture any stormwater run-off therefrom. The applicant will need to provide more information on the type of BMPs proposed to mitigate additional stormwater run-off.

### *Topography*

Looking at the Town's contour data, considering the applicant applied for a waiver not to include it on the plan, there appears to be a significant drop in grade from Rogers Road to the wetlands aft of the proposed dwelling unit on 'Parcel A'. The amount of re-grading to make the right-of-way conform to the design standards would be significant and may consequently disturb more vegetation and soils outside of the right-of-way, thereby causing more harm to the surrounding environment. For that reason, the applicant believes a waiver is warranted not to construct the road within the right-of-way to the applicable standards of a Class I Private Street.

### *Ancient Cemetery*

The primary constraint the proposed application has is the setback requirement from the ancient cemetery located on the adjacent lot (Map 22, Lot 21). State law requires a 25-ft non-disturbance buffer around cemeteries. If a new road were required to be constructed, the project would violate state law and could not proceed as proposed.

### *Other Facts and Considerations*

Factoring in the waiver requests, if the Planning Board were to entertain granting them, it appears the right-of-way site plan largely conforms with the standards found under 16.10.7.2.S and possesses enough applicable information for the Planning Board to accept the plan / application as complete.

The proposed right-of-way would make some of the accessory structures on both parcels nonconforming and would have to be relocated or removed from the property in order to meet the side yard setback requirements found under 16.3.2.4 *Residential—Urban R-U*. The Planning Board should inquire how the applicant plans to resolve this issue.

The existing lot has three curb cuts along Rogers Road. If this plan were to be approved, it is recommended by the Department of Public Works to remove the curb cut at the location where the existing garage is situated, as the removal would improve public safety by eliminating the opportunity for vehicles to collide with one another and improve site distance.

From a planning staff perspective, given the circumstances and site considerations, the proposed plan is acceptable with the caveat that a few minor additions are to be added to the final plan. Planning staff has reached out to the Department of Public Works, Fire Department, Sewer Department and Water Department for comment, all of whom had no major concerns and offered a few recommendations to improve the plan. Please see their letters for reference.

## **Recommendations**

---

In the instance the Planning Board were to waive the requested standards and motion to approve the application, Planning Staff has the following recommendations for conditions of approval:

1. Update the plan with the following revisions.
  - a. Depict all structures conforming to dimensional standards.
  - b. Depict all locations for stormwater BMPs
  - c. Demonstrate that the easement is included in the minimal area per dwelling unit calculation.
  - d. Incorporate professional land surveyor / engineer stamp.

2. Submit a Street Naming Application to Town
3. Confirm that the future lots will conform to code standards including lot size, street frontage and minimum land area per dwelling unit.
4. Submit a Road Opening Permit with DPW
5. The approved right-of-way will never be accepted by the Town.

With the plan revisions and additional information listed above, the application meets the submittal criteria for a completed Right-of-Way application, as outlined in §16.10.7.2.S. Planning staff recommends the Board consider accepting the application as complete, determine the need for a public hearing or site walk, and if not, render a decision on the application

## **Recommended Motions**

---

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

### *Waivers:*

Move to grant the following waivers as their absence from the proposed right-of-way plan will not adversely impact the proposed site and surrounding neighborhood:

1. 16.8.4.4—Street Design Standards with the exception of “Street Width Design—a. Right-of-Way.
2. 16.8.4.6—Centerline
3. 16.8.4.11—Street Construction
4. 16.10.5.2(B)(4)—Standard Boundary Survey
5. 16.10.5.2(B)(10)(G)—Road Profile and Section Plan
6. 16.10.5.2(B)(10)(K)—Existing and Proposed Contours
7. 16.10.5.2(C)(6), (7),(8),(9)—Erosion and Sedimentation Control Plan, Stormwater Management Plan, Soil Survey, Vehicular Traffic Report.

### *Motion to continue application*

Move to continue the right-of-way plan application to the April 8, 2021 Planning Board meeting from owner Melinda Birse and applicant Ryan Birse requesting approval to create a new right-of-way from Rogers Road to access a new lot not created by a subdivision on real property with an address of 164 Rogers Road, Tax Map 22, Lot 23, in the Residential-Urban(R-U) zone.

### *Motion to set public hearing*

Move to schedule a public hearing for the right-of-way plan application to the April 22, 2021 Planning Board meeting from owner Melinda Birse and applicant Ryan Birse requesting approval to create a new right-of-way from Rogers Road to access a new lot not created by a subdivision on real property with an address of 164 Rogers Road, Tax Map 22, Lot 23, in the Residential-Urban(R-U) zone.

### *Motion to approve with conditions*

Move to approve the right-of-way plan application from owner Melinda Birse and applicant Ryan Birse requesting approval to create a new right-of-way from Rogers Road to access a new lot not created by a subdivision on real property with an address of 164 Rogers Road, Tax Map 22, Lot 23, in the Residential-Urban(R-U) zone with the following conditions:

1. Update the plan with the following revisions.
  - a. Depict all structures conforming to dimensional standards.
  - b. Depict all locations for stormwater BMPs.
  - c. Demonstrate that the easement is included in the minimal area per dwelling unit calculation.
  - d. Incorporate professional land surveyor / engineer stamp.
  - e. Add approved street name to final plan.
  - f. Add approved waivers to final plan.
2. Submit a Street Naming Application to Town
3. Confirm that the future lots will conform to code standards including lot size, street frontage and minimum land area per dwelling unit.

# ITEM 2

4. Prior to the issuance of a building permit to construct a dwelling unit on Parcel A, applicant shall submit a Road Opening Permit with DPW to remove the curb cut servicing the existing garage.
5. The approved right-of-way shall never be accepted by the Town as a public right-of-way.

**KITTERY PLANNING BOARD  
FINDINGS OF FACT -  
for  
164 Rogers Road  
Right-of-Way Plan**

**UNAPPROVED**

Note: This approval by the Planning Board constitutes an agreement between the Town and the Developer incorporating the Development plan and supporting documentation, the Findings of Fact, and all waivers and/or conditions approved and required by the Planning Board.

**WHEREAS:** owner Melinda Birse and applicant Ryan Birse proposing a new right-of-way extending from Rogers Road to access a new lot not created by a subdivision located on real property with the address of 164 Rogers Road (Tax Map 22 Lot 23) in the Residential-Urban (R-U) Zone.

Hereinafter the "Development".

Pursuant to the Plan Review meetings conducted by the Planning Board as duly noted in the Plan Review Notes dated 3/25/2021;

Determination of Completeness/Acceptance	Held	3/25/2021
Preliminary/Final Plan Review and Approval	Held	3/25/2021

and pursuant to the Project Application and Plan and other documents considered to be a part of the approval by the Planning Board in this finding consist of the following and as noted in the Plan Review Notes dated 3/25/2021 (Hereinafter the "Plan").

1. Application: Right-of-Way Plan Review, received March 3, 2021
2. Proposed Right-of-Way Plan, Anderson Livingston Engineers, Inc, dated March 3, 2021

**NOW THEREFORE,** based on the entire record before the Planning Board as and pursuant to the applicable standards in the Land Use and Development Code, the Planning Board makes the following factual findings as required by Section 16.10.8.3.D and as recorded below:

**FINDINGS OF FACT**

Action by the board shall be based upon findings of fact which certify or waive compliance with all the required standards of this title, and which certify that the development satisfies the following requirements:

**A. Development Conforms to Local Ordinances.**

*The proposed development conforms to a duly adopted comprehensive plan as per adopted provisions in the Town Code, zoning ordinance, subdivision regulation or ordinance, development plan or land use plan, if any. In making this determination, the municipal reviewing authority may interpret these ordinances and plans.*

Finding: The proposed right-of-way appears to conform to applicable Title 16 standards with the waivers and conditions of approval included herein.

Conclusion: This standard appears to be met.

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

**B. Freshwater Wetlands Identified.**

# ITEM 2

<p><i>All freshwater wetlands within the project area have been identified on any maps submitted as part of the application, regardless of the size of these wetlands.</i></p>
<p>Finding: All wetlands have been identified and no impacts are proposed.</p>
<p>Conclusion: This standard appears to be met.</p>
<p style="text-align: right;">Vote of __ in favor__ against __ abstaining</p>
<p><b>C. River, Stream or Brook Identified.</b></p>
<p><i>Any river, stream or brook within or abutting the proposed project area has been identified on any maps submitted as part of the application. For purposes of this section, “river, stream or brook” has the same meaning as in 38 M.R.S. §480-B, Subsection 9.</i></p>
<p>Finding: No rivers, streams, or brooks have been identified on site.</p>
<p>Conclusion: This standard is not applicable.</p>
<p style="text-align: right;">Vote of __ in favor__ against __ abstaining</p>
<p><b>D. Water Supply Sufficient. {and}</b></p>
<p><i>The proposed development has sufficient water available for the reasonably foreseeable needs of the development.</i></p>
<p><b>E. Municipal Water Supply Available.</b></p>
<p><i>The proposed development will not cause an unreasonable burden on an existing water supply, if one is to be used.</i></p>
<p>Finding: Currently, water is provided for the existing dwelling unit and likewise for the new dwelling unit on Parcel A when it is constructed. These residential lots appear not to adversely impact the water system as indicated by the Kittery Water District.</p>
<p>Conclusion: This standard appears to be met.</p>
<p style="text-align: right;">Vote of __ in favor__ against __ abstaining</p>
<p><b>F. Sewage Disposal Adequate.</b></p>
<p><i>The proposed development will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are utilized.</i></p>
<p>Finding: Municipal services are currently use by the existing dwelling unit and the future dwelling unit shall connect into the sewer system.</p>
<p>Conclusion: This standard appears to be met.</p>
<p style="text-align: right;">Vote of __ in favor__ against __ abstaining</p>
<p><b>G. Municipal Solid Waste Disposal Available.</b></p>
<p><i>The proposed development will not cause an unreasonable burden on the municipality’s ability to dispose of solid waste, if municipal services are to be used.</i></p>
<p>Finding: The proposed Street ROW and future residential lot pose no significant burden on solid waste use.</p>

# ITEM 2

Conclusion: This standard appears to be met.
Vote of __ in favor__ against __ abstaining
<b>H. Water Body Quality and Shoreline Protected.</b>
<i>Whenever situated entirely or partially within two hundred fifty (250) feet of any wetland, the proposed development will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.</i>
Finding: There is no development proposed within a setback of the wetland. The right-of-way is not located in the shoreland overlay zone.
Conclusion: This standard is not applicable.
Vote of __ in favor__ against __ abstaining
<b>I. Groundwater Protected.</b>
<i>The proposed development will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater.</i>
Finding: Sewer treatment currently exists and is proposed for the future residential lot, demonstrating that the groundwater quality and quantity will not be impaired.
Conclusion: This standard appears to be met.
Vote of __ in favor__ against __ abstaining
<b>J. Flood Areas Identified and Development Conditioned.</b>
<i>All flood-prone areas within the project area have been identified on maps submitted as part of the application based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant. If the proposed development, or any part of it, is in such an area, the applicant must determine the one hundred (100) year flood elevation and flood hazard boundaries within the project area. The proposed plan must include a condition of plan approval requiring that principal structures in the development will be constructed with their lowest floor, including the basement, at least one foot above the one hundred (100) year flood elevation.</i>
Finding: There is no proposed construction located within a flood prone area.
Conclusion: This standard is not applicable.
Vote of __ in favor__ against __ abstaining
<b>K. Stormwater Managed.</b>
<i>Stormwater Managed. The proposed development will provide for adequate stormwater management</i>
Finding: The proposed right-of-way construction is simple with marginal stormwater produced. The proposed stormwater BMPs appear to mitigate any run-off from the approved right-of-way
Conclusion: This standard appears to be met.
Vote of __ in favor__ against __ abstaining
<b>L. Erosion Controlled.</b>

# ITEM 2

*The proposed development will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results.*

**Finding:** The proposed right-of-way construction is simple with marginal stormwater produced. The erosion control plan is simple and effective.

**Conclusion:** This standard appears to be met.

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

## **M. Traffic Managed.**

*The proposed development will:*

- 1. Not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed; and*
- 2. Provide adequate traffic circulation, both on-site and off-site.*

**Finding:** The proposed right-of-way does not meet the threshold for a full traffic study, as the paved way shall consist of a small driveway to access the new residential lot that plans to host one (1) dwelling unit. Moreover, an existing curb cut will be removed from 164 Rogers Road so as to improve public safety.

**Conclusion:** This standard appears to be met.

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

## **N. Water and Air Pollution Minimized.**

*The proposed development will not result in undue water or air pollution. In making this determination, the following must be considered:*

- 1. Elevation of the land above sea level and its relation to the floodplains;*
- 2. Nature of soils and sub-soils and their ability to adequately support waste disposal;*
- 3. Slope of the land and its effect on effluents;*
- 4. Availability of streams for disposal of effluents;*
- 5. Applicable state and local health and water resource rules and regulations; and*
- 6. Safe transportation, disposal and storage of hazardous materials.*

1. All proposed development is located outside of a Flood Hazard Area.
2. No sewage disposal is proposed at this time. Septic disposal in the future will require a licensed professional engineer.
- 3 thru 6. Not applicable to the proposed development.

**Finding:** It does not appear the proposed development will result in undue water or air pollution

**Conclusion:** This standard appears to be met.

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

## **O. Aesthetic, Cultural and Natural Values Protected.**

*The proposed development will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the department of inland fisheries and wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.*

**Finding:** The property does not include any significant aesthetic, cultural or natural values that require protection, however, an ancient cemetery does exist on the abutting lot, which carries a 25-ft no-disturbance setback. The ground disturbance aspects of the proposed right-of-way plan does not encroach onto this 25-ft setback.

**Conclusion:** This standard appears to be met.



# ITEM 2

<b>Vote of __ in favor__ against __ abstaining</b>
<b>P. Developer Financially and Technically Capable.</b>
<i>Developer is financially and technically capable to meet the standards of this section.</i>
Finding: Considering the scale of the road is in its nature a driveway, it has been determine a performance guarantee is not required.
Conclusion: This standard is not applicable.
<b>Vote of __ in favor__ against __ abstaining</b>
<b>S. For a Right of Way.</b>
<i>The proposed ROW:</i> <i>1. Does not create any nonconforming lots or buildings; and</i> <i>2. Could reasonably permit the right of passage for an automobile.</i>
Finding: The proposed development does not create any nonconforming lots and appears to provide adequate passage for an automobile. The plan does create nonconforming structures for which the applicant has agreed to relocate or demolish, or take any other action relative to coming into compliance with this standard.
Conclusion: This standard appears to be met.
<b>Vote of __ in favor__ against __ abstaining</b>

**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:**

1. 16.8.4.4—Street Design Standards with the exception of “Street Width Design—a. Right-of-Way.
2. 16.8.4.6—Centerline
3. 16.8.4.11—Street Construction
4. 16.10.5.2(B)(4)—Standard Boundary Survey
5. 16.10.5.2(B)(10)(G)—Road Profile and Section Plan
6. 16.10.5.2(B)(10)(K)—Existing and Proposed Contours
7. 16.10.5.2(C)(6), (7), (8), (9)—Erosion and Sedimentation Control Plan, Stormwater Management Plan, Soil Survey, Vehicular Traffic Report.

**Conditions of Approval** (to be included on the final plan):

1. No changes, erasures, modifications or revisions may be made to any Planning Board approved final plan in accordance with 16.10.9.1, 16.10.9.1.2. & 16.10.9.1.3.
2. Applicant/contractor will follow Maine DEP Best Management Practices for all work associated with right-of-way construction to ensure adequate erosion control and slope stabilization.
3. The approved right-of-way shall never be accepted by the Town as a public right-of-way.
4. All Notices to Applicant contained in the Findings of Fact (dated: 3/25/2021).

**Conditions of Approval** (Not to be included on the final plan):

**Update the plan with the following revisions:**

- a. Depict all structures conforming to dimensional standards.
  - b. Depict all locations for stormwater BMPs
  - c. Demonstrate that the easement is included in the minimal area per dwelling unit calculation.
  - d. Incorporate professional land surveyor / engineer stamp.
  - e. Add approved street name to final plan
  - f. Add approved waivers to final plan
5. Submit a Street Naming Application to Town
  6. Confirm that the future lots will conform to code standards including lot size, street frontage and minimum land area per dwelling unit.
  7. Prior to the issuance of a building permit to construct a dwelling unit on Parcel A, applicant shall submit a Road Opening Permit with DPW to remove the curb cut servicing the existing garage.

**Notices to Applicant:** (not to be included on the final plan)

1. Prior to the release of the signed plans, the applicant must pay all outstanding fees associated with review, including, but not limited to, Town Attorney fees, peer review, newspaper advertisements and abutter notification.
2. State law requires all subdivision and shoreland development plans, and any plans receiving waivers or variances, be recorded at the York County Registry of Deeds within 90 days of the final approval.
3. Three (3) paper copies of the final plan (recorded plan if applicable) and any and all related state/federal permits or legal documents that may be required, must be submitted to the Town Planning Department. Date of Planning Board approval shall be included on the final plan in the Signature Block.
4. This approval by the Town Planning Board constitutes an agreement between the Town and the Developer, incorporating the Plan and supporting documentation, the Findings of Fact, and any Conditions of Approval.

The Planning Board authorizes the Planning Board Chair to sign the Final Plan and the Findings of Fact upon confirmation of compliance with any conditions of approval.

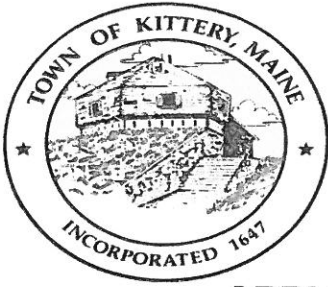
Vote of \_\_ in favor\_\_ against \_\_ abstaining

APPROVED BY THE KITTERY PLANNING BOARD ON March 25, 2021

---

Dutch Dunkelberger, Planning Board Chair

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.



# TOWN OF KITTEERY MAINE

## TOWN PLANNING DEPARTMENT

200 Rogers Road, Kittery, Maine 03904  
 PHONE: (207) 475-1323  
 Fax: (207) 439-6806  
[www.kittery.org](http://www.kittery.org)

### APPLICATION: RIGHT-OF WAY PLAN REVIEW (APPLICABLE FOR A SINGLE LOT)

<b>FEE FOR REVIEW</b>	<input type="checkbox"/> \$300.00	Amount Paid: \$ _____	Date: _____		
<b>PROPERTY DESCRIPTION</b>	Parcel ID	Map <u>22</u>	Lot <u>23</u>	Zone(S): Base <u>R-U</u> Overlay _____ MS4 _____	Total Land Area <u>77,108</u>
	Physical Address				
<b>PROPERTY OWNER'S INFORMATION</b>	Name	<u>Melinda Birse</u>		Mailing Address <u>164 Rogers Rd. Kittery, ME 03904</u>	
	Phone	<u>603-502-9474</u>			
	Fax				
	Email	<u>lindy.birse@gmail.com</u>			
<b>APPLICANT'S AGENT INFORMATION</b>	Name	<u>Ryan Birse</u>		Mailing Address <u>164 Rogers Rd. Kittery, ME 03904</u>	
	Phone	<u>603-502-9475</u>			
	Fax				
	Email	<u>rlbirse@gmail.com</u>			
<b>DESCRIPTION</b>	Existing Conditions: <u>Single lot with 3 curb cuts containing 1 single family residence.</u>				
	Proposed legal and physical changes: (Documents for dedication of the ROW, maintenance agreements, riders to deeds, grading, drainage and pavement, etc.)				
	<u>We would like to subdivide the lot and build a house for my wife and I. In order to get the frontage and access we need to create a ROW. The new ROW would function as a driveway because it would only serve the new house.</u>				
	I certify that, to the best of my knowledge, the information provided in this application is true and correct and will not deviate from the Plan submitted without notifying the Kittery Town Planning Department of any changes.				
	Applicant's Signature: Date:	<u>[Signature]</u> <u>3-3-21</u>		Owner's Signature: Date:	<u>[Signature]</u> <u>3-3-21</u>

## Minimum Submission Requirements

15 COPIES OF THE RIGHT OF PLAN – 5 OF WHICH MUST BE 24"X 36"

**PRIOR TO COMMENCEMENT OF THE REVIEW PROCESS, THE PLANNING BOARD WILL DECIDE WHETHER SUFFICIENT INFORMATION HAS BEEN PROVIDED AND WILL VOTE TO DETERMINE COMPLETENESS/ACCEPTANCE. See Section 16.10.5.2**

**THE APPLICATN IS RESPONSIBLE TO CLEARLY DESCRIBE THE PROJECT.**

- |  |   |
|--|---|
| <p>A) Paper size:<br/> <input type="checkbox"/> No less than 11" X 17" (reduced) or greater than 24" X 36" (full).</p> <p>B) Scale size:<br/> <input type="checkbox"/> Under 10 acres: no greater than 1" = 30'<br/> <input type="checkbox"/> 10 + acres: 1" = 50'</p> <p>C) Title block:<br/> <input type="checkbox"/> Applicant's name and address<br/> <input type="checkbox"/> Name of preparer of plans with professional information and professional seal<br/> <input type="checkbox"/> Parcel's tax map identification (map – lot)<br/> <input type="checkbox"/> Date of plan preparation</p> <p>D) Survey performed and sealed by licensed surveyor:<br/> <input type="checkbox"/> Identify all existing property/R.O.W. markers<br/> <input type="checkbox"/> Show all proposed boundary monuments (per ordinance)</p> <p>E) Provide orientation:<br/> <input type="checkbox"/> Arrow showing true north and magnetic declination<br/> <input type="checkbox"/> Graphic scale           <input type="checkbox"/> Signature block</p> <p>F) The right of way plans must include:<br/> <input type="checkbox"/> Size of the parcel minus the area in the R.O.W.<br/> <input type="checkbox"/> Area of R.O.W.           <input type="checkbox"/> Length of lot frontage;<br/> <input type="checkbox"/> Zoning and zone boundaries   <input type="checkbox"/> Front yard setbacks<br/> <input type="checkbox"/> Deed docket and page numbers   <input type="checkbox"/> Intersecting lot lines<br/> <input type="checkbox"/> Existing topography           <input type="checkbox"/> Horizontal alignment<br/> <input type="checkbox"/> Vertical profile (existing ground and proposed grades)<br/> <input type="checkbox"/> Sidewalks   <input type="checkbox"/> Watercourses   <input type="checkbox"/> forest cover<br/> <input type="checkbox"/> Ledge outcroppings   <input type="checkbox"/> Proposed areas of blasting<br/> <input type="checkbox"/> Utilities (above and below ground)<br/> <input type="checkbox"/> Above ground utilities (poles) that may be relocated<br/> <input type="checkbox"/> Storm drainage systems and structures<br/> <input type="checkbox"/> Parks   <input type="checkbox"/> Open space   <input type="checkbox"/> Conservation easements<br/> <input type="checkbox"/> The location of all natural features or site elements to be preserved.</p> <p>G) Show and locate on the plans the names and addresses of all owners of record of contiguous property, including those across the street. <u>WITH THE FIRST SUBMITTAL, PROVIDE 2 SETS OF MAILING LABELS.</u></p> <p>H) Provide sufficient information to identify and locate each interior lot line, right of way lines, and street alignments.<br/> <input type="checkbox"/> curve geometry   <input type="checkbox"/> bearings and distances   <input type="checkbox"/> widths</p> | <p>I) Show the location and description of all structures, including:<br/> <input type="checkbox"/> existing and proposed signage<br/> <input type="checkbox"/> details of all structures and accesses located within one hundred (100) feet of the property line.</p> <p>J) The detail sheet must show:<br/> <input type="checkbox"/> Structural pavement sections   <input type="checkbox"/> Erosion control detail<br/> <input type="checkbox"/> Roadway cross sections           <input type="checkbox"/> Trenching details<br/> <input type="checkbox"/> Sufficient detail(s) to clarify construction</p> <p>K) The completed application requires the following legal documents:<br/> <input type="checkbox"/> Revised deeds for the parcel and the R.O.W.<br/> <input type="checkbox"/> A maintenance agreement for R.O.W. as a rider to the deed.<br/> <input type="checkbox"/> Letters of approval from utility companies and town staff</p> <p>L) The following supporting documentation:<br/> <input type="checkbox"/> Copy of documents showing owner's legal interest<br/> <input type="checkbox"/> Copy of any existing or proposed property encumbrances<br/> <input type="checkbox"/> Erosion control plan and sedimentation endorsed by York County Soil and Water District<br/> <input type="checkbox"/> A plan for stormwater management prepared by a registered professional engineer<br/> <input type="checkbox"/> A copy of the soil survey (specific to this project area) for York County Where the soil survey shows soils with severe restrictions for development, a high intensity Class A soil survey must be submitted</p> <p>M) An estimate of the amount and type of vehicular traffic on a daily basis and during peak hours. Where it is anticipated that four hundred (400) vehicle trips per day or more, a traffic impact analysis must be conducted in accordance with section 16.10.5.2.D.1.</p> <p>N) <u>Additional Requirements.</u> In its consideration of an application/plan, the Board may at any point in during the review, require the applicant to submit additional materials, studies, analyses, and agreement proposals as it may deem necessary for complete understanding of the application. Such materials may include those listed below.<br/> <input type="checkbox"/> Fiscal Impact Analysis. An analysis of the relationship of the revenues to the town from the development and the costs of additional publicly funded resources;<br/> <input type="checkbox"/> Traffic Impact Study (see Section 16.10.5.2.D.1)</p> <p><b>NOTE TO APPLICANT: THE PLANNING BOARD MAY CHOOSE TO CONDUCT A SITE WALK. PRIOR TO THE SITE WALK, TEMPORARY MARKERS MUST BE ADEQUATELY PLACED THAT ENABLE THE PLANNING BOARD TO READILY LOCATE AND APPRAISE THE LAYOUT OF DEVELOPMENT.</b></p> |
|--|---|

**SUBMITTALS THE TOWN PLANNER DEEMS SUFFICIENTLY LACKING IN CONTENT WILL NOT BE SCHEDULED FOR PLANNING BOARD REVIEW.**



# TOWN OF KITTERY ~ MAINE PLANNING OFFICE

200 Rogers Road, Kittery, Maine 03904  
 PHONE: (207) 475-1323  
 Fax: (207) 439-6806  
[www.kittery.org](http://www.kittery.org)

## APPLICATION: REQUEST FOR WAIVER

THIS REVIEW PROCESS REQUIRES APPROVAL FROM BOTH THE TOWN PLANNER AND THE CODE ENFORCEMENT OFFICER

<b>PROPERTY DESCRIPTION</b>	Parcel ID	Map	22	lot	23	Zone Base Overlay	R-U	Total Land Area	77,108
	Physical Address								
<b>PROPERTY OWNER'S INFORMATION</b>	Name	Melinda Birse				Mailing Address	164 Rogers Rd. Kittery, ME 03904		
	Phone	603-502-9474							
	Fax								
	Email	lindy.birse@kittery.com							
<b>APPLICANT'S AGENT INFORMATION</b>	Name	Ryan Birse				Name of Business			
	Phone	603-502-9475				Mailing Address	164 Rogers Rd. Kittery, ME 03904		
	Fax								
	Email	rlbirse@gmail.com							

<b>DESCRIPTION</b>	<b>Ordinance Section</b>	<b>Describe why this request is being made.</b>
	***EXAMPLE*** 16.32.560 (B)- OFFSTREET PARKING.	***EXAMPLE*** Requesting a waiver of this ordinance since the proposed professional offices have a written agreement with the abutting Church owned property to share parking.

I certify that, to the best of my knowledge, the information provided in this application is true and correct and will not deviate from the plans submitted without notifying the Kittery Planning Department of any changes.

<b>Applicant's Signature:</b>	<u><i>DLB li</i></u>	<b>Owner's Signature:</b>	<u><i>Melinda Birse</i></u>
<b>Date:</b>	<u>3-4-21</u>	<b>Date:</b>	<u>3-3-21</u>

**ARTICLE IV. WAIVERS**

16.28.180 Waiver authorized.

Where the planning board finds that, due to special circumstances of a particular plan, the provision of certain required improvements is not requisite in the interest of public health, safety and general welfare, or is inappropriate because of inadequacy or lack of connecting facilities adjacent or in proximity to the proposed development, upon written request, it may waive or modify such requirements, subject to appropriate conditions. (Land use and dev. code § 7.4.1, 1994)

16.28.190 Objectives secured.

In granting modifications or waivers, the planning board must require such conditions as will, in its judgment, secure substantially the objectives of the requirements so waived or modified. (Land use and dev. code § 7.4.2, 1994)

Maine Statute Form 1220 S  
REV. 7/76

TUTBLANKX REGISTERED U. S. PAT. OFFICE  
TUTTLE LAW PRINT, PUBLISHERS, WINDLAND, VT 05720

# Warranty Deed

## JOINT TENANCY

From

BERNICE C. JALBERT  
and  
GORDON L. SLOCUM, JR.

To

MELINDA LOWELL  
and  
MATTHEW G. BIRSE

Dated \_\_\_\_\_ 1985

State of Maine YORK ss. Registry of Deeds.

Received JUL 12 1985 19

at 3 H., 33 M., 1 M., and

recorded in Book 3573 Page 261

Attest: Ann M. Penzette Register.

FROM THE OFFICE OF:

Bruce A. Whitney, Esquire  
72 Portland Street  
South Berwick, Maine 03908

HOLMES & ELLS  
47 WINNACUNNET RD.  
HAMPTON, NH 03842  
603 926-6162





~~XXXXXX granted and releases all rights by descent and XXXXXXXX~~

~~XXXXXX said grantor,~~

Witness our hand and seals this

12th day of July 1985

*Stephen L. Ells*

*Bernice C. Jalbert*  
Bernice C. Jalbert

*Stephen L. Ells*

*Gordon L. Slocum, Jr.*  
Gordon L. Slocum, Jr.

The State of ~~Mass~~ NEW HAMPSHIRE

ROCKINGHAM  
~~YORK~~

ss. July 12th 1985

Then personally appeared the above named Bernice C. Jalbert and Gordon L. Slocum, Jr.

and acknowledged the foregoing instrument to be their free act and deed,

Before me,

*Stephen L. Ells*

Justice of the Peace - Attorney at Law - Notary Public  
STEPHEN ELLS

RECORDED REGISTERED DEEDS  
1985 JUL 12 PM 3:33  
NEW, SS.



Ryan Birse

164 Rogers Rd.  
Kittery, ME 03904  
603-502-9475  
rlbirse@gmail.com

February 28, 2021

Kittery Planning Board  
200 Rogers Rd.  
Kittery, ME 03904

Dear Planning Board,

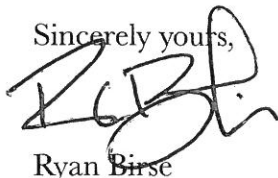
The purpose of this letter is to clearly state our need to receive a waiver on the design and performance standards of a street as outlined in article 16.8.4 of the town code. My wife and I are looking to sub-divide my parents property at 164 Rogers Rd. Kittery, ME 03904 (Tax Map 22 Lot 23). This is the property where I grew up and it seems to be the most feasible way for us to attain property in Kittery, build a house, and raise our family here.

When the lot, 164 Rogers Rd., is sub-divided in accordance with town codes, it creates a new landlocked property. There is not enough frontage on Rogers. Rd to be in compliance with the mandatory 100' of frontage that both properties would need. Therefore, we must create a ROW to have access and frontage on the newly created lot.

There is enough space to put a ROW through both lots to give access and create frontage. However, this new "street" would not need to be a street. It would only function as a driveway. In fact, there is already an existing driveway and curb cut in the exact location of the proposed new driveway. This driveway is currently in use by my wife and I, so, there would not be any further impact on traffic. The driveway would only serve 1 single-family residence so it would not create the amount of trips/day to qualify as a Class 1 road. Also, there will never be any more future development off of this newly created street. Wetlands exist on this property and abutting properties which completely eliminates any potential future development.

As you can see, we are asking that we not be required to construct a street. Instead, we are asking to construct a driveway through the ROW to access a new single-family residence. Site survey information will show how future development is impossible and how building a street would be unnecessary, given the fact that it only serves 1 residence. Having grown up in Kittery, I am committed to keeping and enhancing the character of the town and I feel that a driveway is the best solution for all parties.

Sincerely yours,



Ryan Birse

Caroline D. Rose, President  
James E. Golter, Treasurer

Julia H. O'Connell, Secretary  
Michael S. Rogers, Superintendent

OFFICE OF  
**KITTERY WATER DISTRICT**  
17 State Road  
Kittery, ME 03904-1565  
TEL: 207-439-1128  
FAX: 207-439-8549  
E-Mail: [kitterywater@comcast.net](mailto:kitterywater@comcast.net)

Kittery Planning Board  
200 Rogers Road  
Kittery, ME 03904

March 4, 2021

Re: Proposed Subdivision – 164 Rogers Road, Kittery

Dear Planning Board Members,

Please accept this letter as verification that the Kittery Water District does have the capacity to supply municipal water service to the proposed subdivision at 164 Rogers Road, Kittery.

Sincerely,



Michael S. Rogers  
Superintendent

cc: Ryan Birse, Applicant

North  
W  EASTERLY  
SURVEYING, Inc.

---

191 State Road, Suite #1 • Kittery, Maine 03904 • (207) 439-6333 • Fax (207) 439-1354

March 4, 2021

**Kittery Maine Planning Board  
200 Rogers Road  
Kittery, ME 03904**

**Subject: Waiver Request – Private Right-of-Way, 164 Rogers Road, Kittery, ME 03904**

Dear Planning Board,

Pursuant to 16.7.4.1 please find below attached the requested waivers for the Private Right-of-Way proposal for Ryan Birse at 164 Rogers Road. The proposal before you is for a Private Right-of-Way to facilitate the division of a single lot. An existing curb cut and paved driveway exist in the location of the proposed right-of-way. The right-of-way is proposed to serve one single family home with less than 12 vehicle trips per day, which is less than the threshold for a Class I private street.

We have considered the existing driveway adequate for a single family home. The access way is proposed to be extended to serve the back parcel. This is shown on the Private Right-of-Way Plan submitted. Strict adherence to the road standards are not feasible and are not in the best interest of the applicant or the community and we kindly ask that you approve these waivers.

These waivers would allow the use of the existing driveway in its current form. This dramatically reduces soil disturbance, stormwater runoff and environmental impact.

Sincerely,

North Easterly Surveying, Inc.



Adam Pray, P.L.S.  
Senior Project Manager

## **Requested Waivers**

### **1) 16.8.4.4 Street Design Standards**

Requested waiver from Table 1 Design and Construction Standards. The access way is for a single family home with less than 12 vehicle trips per day and does not meet the threshold of a Class I private street. Due to land area and site constraints no additional dwelling units will utilize the proposed right-of-way. This waiver reduces soil disturbance, stormwater runoff and environmental impact that would otherwise occur if a Class I road is constructed.

### **2) 16.8.4.6 Centerline**

Site constraints and cemetery make construction of the centerline of the roadway at the centerline of the right-of-way impractical.

### **3) 16.8.4.11 Street Construction Standards**

The access way is for a single family home with less than 12 vehicle trips per day and does not meet the threshold of a Class I private street. Due to land area and site constraints no additional dwelling units will utilize the proposed right-of-way.

### **4) 16.10.5.2 (B)(4) Standard Boundary Survey**

The elements of a Standard Boundary Survey are contained within the Private Right-of-Way Plan and will be sealed by a licensed Land Surveyor. A separate plan would be a duplicate effort to what is submitted.

### **5) 16.10.5.2 (B)(10)(G) – Road Profile and Section Plan**

Requested waiver from Table 1 Design and Construction Standards. The access way is for a single family home with less than 12 vehicle trips per day and does not meet the threshold of a Class I private street. Plan and profile sheets are unnecessary for this proposal. Access way is to be built as a driveway.

### **6) 16.10.5.2 (B)(10)(K) – Existing and Proposed Contours**

No construction plans are proposed which would require contouring.

### **7) 16.10.5.2 (C)(6) – Erosion and Sedimentation Control Plan**

No construction plans are proposed which would require contouring. Construction is to be for a driveway. Best management and construction practices are to be implemented.

### **8) 16.10.5.2 (C)(6), (7), (8), (9) – Erosion and Sedimentation Control Plan, Stormwater Management Plan, Soil Survey, Vehicular Traffic Report**

Requested waiver from Table 1 Design and Construction Standards. The access way is for a single family home with less than 12 vehicle trips per day and does not meet the threshold of a Class I private street. Erosion control and stormwater management to be addressed with best management and construction practices typical to driveway construction.



## TOWN OF KITTERY, MAINE

### SEWER DEPARTMENT

200 Rogers Road, Kittery, ME 03904

Telephone: (207) 439-4646 Fax: (207) 439-2799

Ryan Birse  
164 Rogers Road.  
Kittery, ME 03904

March 3, 2021

RE: Sewer Availability

This letter is to confirm that there is sanitary sewer service available for this project located at 164 Rogers Road. The sewer system (piping and pumping stations) and the treatment facility has the capacity and ability to handle the increased flow. The sewer department will also allow the installation of a driveway to access the property that crosses the current sewer easement. The current sewer easement will remain as written.

If you have further questions or concerns please contact me.

Sincerely Yours

**Timothy Babkirk**

Timothy Babkirk  
Superintendent of Sewer Services  
Town of Kittery  
200 Rogers Rd  
Kittery ME 03904  
1-207-439-4646  
tbabkirk@kitteryme.org



March 1, 2021

To Whom It May Concern:

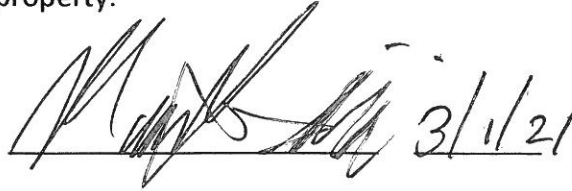
As property owners of 164 Rogers Road, Kittery, Maine, we, Matthew G. Birse and Melinda L. Birse, give our son, Ryan L. Birse, permission to speak on our behalf as it relates to the proposed Right of Way (ROW) on the abovementioned property.



Melinda L. Birse

3-1-21

Date



Matthew G. Birse

3/1/21

Date



**TOWN OF KITTERY**  
Department of Public Works  
200 Rogers Road, Kittery, ME 03904  
Telephone: 207-439-0333 Fax: 207-439-6816

---

**MEMORANDUM**

---

To: Bart McDonough, Town Planner  
From: David Rich, Public Works Commissioner  
Jessa Kellogg, Public Works Inspector  
Subject: 164 Rogers Road ROW Planning Board review  
Date: March 17, 2021

---

Upon review of the Private Right of Way (ROW) for 164 Rogers Road the Public Works staff have the following comments.

Staff finds the proposed location of the ROW acceptable as it uses an existing driveway and does not create any new curb cuts on Rogers Road. Public Works would like to see the existing center driveway removed if it is no longer necessary and the curb cut opening restored with curbing and pavement to match existing on either side. The applicant should be made aware that a Road Excavation Permit will be required to complete this work.

Due to the grade of the proposed ROW we would encourage the applicant to install a vegetative buffer to mitigate any increase in stormwater flow toward the street.

## Bart McDonough

---

**From:** David O'Brien  
**Sent:** Tuesday, March 16, 2021 5:35 PM  
**To:** Bart McDonough  
**Cc:** Craig Alfis  
**Subject:** RE: 164 Rogers Road Right-of-Way Plan

Bart:

This in effect is a driveway that needs right of way footage to make it legal. I don't see this 2 acre plot of land ever going to move into a subdivision so with that in mind the FD has no problems with it. Should be approved

**From:** Bart McDonough <BMcDonough@kitteryme.org>  
**Sent:** Tuesday, March 16, 2021 4:25 PM  
**To:** David O'Brien <DO'Brien@kitteryme.org>  
**Cc:** Craig Alfis <CEO@kitteryme.org>  
**Subject:** 164 Rogers Road Right-of-Way Plan

Good afternoon Chief,

I want to follow up with you to see when you can meet this week or next week to go over the plans for 164 Rogers Road (Right-of-Way Plan—see attached). I believe you have seen the plans but I wanted to confirm with you that you had no issues with it. Let me know if you think a meeting is warranted and, if so, shoot me some dates/times that work for you to meet so that we can discuss.

Craig, Dave Evens and I are meeting with DPW tomorrow in Conference Room A at 11 am to review the plan as it relates to road design and stormwater. Please swing on by and join us if your schedule permits.

Thanks,

Bart McDonough  
Town Planner

Town of Kittery  
200 Rogers Road  
Kittery, ME 03904  
Phone: 207.475.1323  
Email:

