

**ITEM 4**

**Town of Kittery  
Planning Board Meeting  
November 17, 2022**

**ITEM 4 - 21 Happy Avenue and 12 Roseberry Road Right-of-Way (ROW) Review**

Action: Accept or deny application. Approve or deny plan. Owners and applicants, William and Cathy Cullen and Caroline Hall request consideration of a right-of-way plan for a 4.78 acre +/- acre parcel (Tax Map 11, Lot 29) proposing a ROW located on Happy Avenue (Tax Map 11 Lot 29-5) in the Residential Suburban Zone (R-S). Agent is Nathan Amsden, PLS., Amsden Field Survey.

**PROJECT TRACKING**

REQ'D	ACTION	COMMENTS	STATUS
Yes	Sketch Plan Review Completeness / Approval	Last Meeting September 22, 2022	PENDING
No	Site Visit	Optional	Optional
No	Public Hearing	Optional	Optional
Yes	Final Plan Review	TBD	TBD

**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. 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 has been duly recorded in the York County registry of deeds, when applicable.**

**Background:**

The existing 4.78-acre parcel contains two single family homes. An existing 12-foot travel way that begins after a bend in Happy Avenue continues to the current condominium which consists of the two aforementioned single-family residences. The applicants wish to divide the lot they share into two lots with a residence on each. Additional land north of the proposed boundary for Lot A on both sides of the pond up to Martin Road is proposed to be deeded to Southern Maine Fish and Game Inc. This does not require consideration by the Planning Board as a subdivision but does require ROW approval by the Board to provide frontage to both lots. The conceptual plan proposes the ROW for the Board's review.

**The Board heard this application on September 22, 2022 but the applicant's agent did not appear.**

There are several other aspects to this project to note.

- The first item to note is that the condominium's legal frontage is currently derived from Martin Road. This wouldn't make sense long term because the pond (owned by Southern Maine Fish and Game Inc.) cuts off access to the larger portion of the condominium's lot. As stated above, the piece of the condominium's lot which abuts the pond to the south and Martin Road to the north will be deeded to Southern Maine Fish and Game, Inc.
- The second item of interest is that the residence on proposed Lot B is accessed via Roseberry Lane through a legal easement per the applicant and has the address of 12 Roseberry Lane currently. Lot B will be deriving frontage from the creation of the ROW but will not be using it for access. Lot A will similarly derive frontage from the ROW and will continue to use it for access. Lot A's residence has the address of **21 Happy Avenue.**

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- 35       • The third is that staff requested CMA to inspect and review the existing Happy Avenue travel  
36 wetland crossing application) that was permitted in 1998 as it exists today and compare it  
37 to the plans that were submitted for this proposed ROW. CMA's letter is included for the Board  
38 to review. To summarize, the road was built according to the plan with one exception that did  
39 not appear to have impacted additional wetlands.  
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### 41 **Sketch Plan:**

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- 43 1. The proposed ROW is 30 feet wide (already constructed as such) which does not meet Class 1  
44 Private Road requirements. The **applicant must request a waiver**. *Applicant has submitted waiver*  
45 *request*
  - 46 2. The proposed ROW exceeds the 400 feet allowed for a Class 1 Private Road. **The applicant must**  
47 **request a waiver**. The length of the ROW should be noted on the plans. *Applicant has submitted*  
48 *waiver request*
  - 49 3. The existing travel way was permitted and constructed as a 12-foot gravel travel way instead of the  
50 18 feet that is required for a Class 1 Private Street. There is no impact to the neighborhood in terms  
51 of either views or traffic because the two houses already exist. **The applicant must request a**  
52 **waiver**. *Applicant has submitted waiver request* The Board will want the Fire Department's approval  
53 of the proposed travel way. The total impervious surface area will not change; the gate has been  
54 moved to incorporate the existing hammerhead turnaround. No further paving improvements or  
55 additional gravel is proposed or permitted as part of this approval. The turnaround already has  
56 gravel.
  - 57 4. Sidewalks (5-foot wide) are part of the standards for a Class 1 Private Street in Table 1, Section 16.8.  
58 **The applicant must want to request a waiver**. *Applicant has submitted waiver request*
  - 59 5. The applicant is making a case that a stormwater management plan is not needed because of the  
60 topographic realities (spot elevations) and the fact that the road has not flooded since it was built.  
61 Note see the document submitted by the applicant with the waivers. *Applicant has submitted*  
62 *waiver request*
  - 63 6. Both proposed lots exceed the 40,000-square foot minimum lot size.
  - 64 7. Both proposed lots exceed the required 150-foot frontage on the proposed ROW.
  - 65 8. The recorded easement allowing Lot B's access from Roseberry Lane is noted on the plans with book  
66 and page from the registry.
  - 67 9. The Deeds will reflect the easement shown on the plan to be over Lot B (Cullen) and provide for an  
68 easement for the underground utilities under the driveway specifying the use of Lot B driveway for  
69 Lot A to Roseberry Lane for access & egress in case of emergency. *Applicant has submitted waiver*  
70 *request*

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### 72 **Staff Recommendations:**

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73 The plan appears to meet the requirements for acceptance, the board may approve with conditions to  
74 provide a stormwater plan or to provide stormwater maintenance to the culverts under the new ROW  
75 to be shared by the residents of Lot A and Lot B

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- 76 **Recommend Motions:**  
77 \_\_\_\_\_  
78 *Move to Accept* the ROW plan application dated 10-19-21 by Caroline Hall and William and Cathy  
79 Cullen for consideration of a right-of-way for a 4.78-acre parcel located on Happy Avenue (Tax Map 11,  
80 Lot 29) in the Residential Suburban zone (R-S).  
81  
82 *Move to continue* the ROW plan application dated 10-19-21 by Caroline Hall and William and Cathy  
83 Cullen for consideration of a right-of-way for a 4.78-acre parcel located on Happy Avenue (Tax Map 11,  
84 Lot 29) in the Residential Suburban zone (R-S).  
85  
86 *Move to deny* the ROW plan application dated 10-19-21 by Caroline Hall and William and Cathy Cullen  
87 for consideration of a right-of-way for a 4.78-acre parcel located on Happy Avenue (Tax Map 11, Lot 29)  
88 in the Residential Suburban zone (R-S).  
89  
90 *Move to hold a Public Hearing* the ROW plan application dated 10-19-21 by Caroline Hall and William  
91 and Cathy Cullen for consideration of a right-of-way for a 4.78-acre parcel located on Happy Avenue  
92 (Tax Map 11, Lot 29) in the Residential Suburban zone (R-S).  
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94 *Move to schedule a Site Walk* \_\_\_\_\_ the ROW plan application dated 10-19-21 by Caroline  
95 Hall and William and Cathy Cullen for consideration of a right-of-way for a 4.78-acre parcel located on  
96 Happy Avenue (Tax Map 11, Lot 29) in the Residential Suburban zone (R-S).  
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