

ITEM 1

**Town of Kittery
Planning Board Meeting
December 8, 2022**

ITEM 1 - 21 Happy Avenue and 12 Roseberry Road Right-of-Way (ROW) Review – Public Hearing
Action: Application has been Accepted 11/17/22 – Hold Public Hearing: 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 November 17, 2022	Held Application Accepted
No	Site Visit	November 28, 2022 9:00AM	Held
No	Public Hearing	December 8, 2022 6:00PM	Pending
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 and 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 originally heard this application on September 22, 2022

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, (at the very end of the travel way the road
40 jogs slightly inward toward Lot A, rather than straight).

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42 **Waivers:**

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44 1. **Waiver Request: ROW width; From 40' to 30' as shown on plan dated 3/9/1999**

45 The proposed ROW is 30 feet wide (already constructed as such) which does not meet Class 1
46 Private Road requirements. The **applicant must request a waiver**. *Applicant has submitted waiver*
47 *request*

48 2. **Waiver Request: Roadway length; Exceeds current road length (400') by 305'**

49 The proposed ROW exceeds the 400 feet allowed for a Class 1 Private Road. **The applicant must**
50 **request a waiver**. The length of the ROW should be noted on the plans. *Applicant has submitted*
51 *waiver request*

52 3. **Waiver Request: Travel way width; from required 18' to existing 12'**

53 The existing travel way was permitted and constructed as a 12-foot gravel travel way instead of the
54 18 feet that is required for a Class 1 Private Street. There is no impact to the neighborhood in terms
55 of either views or traffic because the two houses already exist. **The applicant must request a**
56 **waiver**. *Applicant has submitted waiver request* The Board will want the Fire Department's approval
57 of the proposed travel way. The total impervious surface area will not change; the gate has been
58 moved to incorporate the existing hammerhead turnaround. No further paving improvements or
59 additional gravel is proposed or permitted as part of this approval. The turnaround already has
60 gravel.

61 4. **Waiver Request: Sidewalk - No paved improvements** Sidewalks (5-foot wide) are part of the
62 standards for a Class 1 Private Street in Table 1, Section 16.8. **The applicant must want to request a**
63 **waiver**. *Applicant has submitted waiver request*

64 5. **Stormwater Management; Built according to plan in 2000 and was**
65 **currently reviewed by CMA for compliance with the approved plan.**

66 The applicant is making a case that a stormwater management plan is not needed because of the
67 topographic realities (spot elevations) and the fact that the road has not flooded since it was built.
68 Note see the document submitted by the applicant with the waivers. *Applicant has submitted*
69 *waiver request*

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71 Both proposed lots exceed the 40,000-square foot minimum lot size.

72 Both proposed lots exceed the required 150-foot frontage on the proposed ROW.

73 The recorded easement allowing Lot B's access from Roseberry Lane is noted on the plans with book
74 and page from the registry.

75 The Deeds will reflect the easement shown on the plan to be over Lot B (Cullen) and provide for an
76 easement for the underground utilities under the driveway specifying the use of Lot B driveway for
77 Lot A to Roseberry Lane for access & egress in case of emergency.

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79 **Staff Recommendations:**

80 The plan appears to meet the requirements for acceptance; however, the board may approve with
81 conditions to be provided in the Final Plan and the Board should address the waivers in a discussion at
82 this time to be prepared for the Final Plan Vote.

83 **Recommend Motions:**

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85 *Close Public Hearing for the ROW plan application dated 10-19-21 by Caroline Hall and William and*
86 *Cathy Cullen for consideration of a right-of-way for a 4.78-acre parcel located on Happy Avenue (Tax*
87 *Map 11, Lot 29) in the Residential Suburban zone (R-S).*

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89 *Move to continue to Final Plan (with conditions) the ROW plan application dated 10-19-21 by Caroline*
90 *Hall and William and Cathy Cullen for consideration of a right-of-way for a 4.78-acre parcel located on*
91 *Happy Avenue (Tax Map 11, Lot 29) in the Residential Suburban zone (R-S).*

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