

**Town of Kittery  
 Planning Board Meeting  
 October 26, 2017**

**117 Haley Road – Right of Way Plan Review.**

Action: Approve or deny plan. Owner and applicant, Pauline Grover request consideration of a new right-of-way a 3.92 +/- acre parcel located off Haley Road (Tax Map 48 Lot 8B) in the Residential Rural (R-RL). Agent is Chris Mende, PLS., Civil Consultants.

**PROJECT TRACKING**

REQ'D	ACTION	COMMENTS	STATUS
Yes	Sketch Plan Review / Concept Approval	Scheduled for 9/14/2017	GRANTED
No	Site Visit	Determined by the Board not warranted	
Yes	Preliminary Plan Review Completeness/Acceptance	Scheduled for October 12, 2017	GRANTED
Yes	Public Hearing	Determined by the Board not warranted	
Yes	Preliminary and Final Plan Approval	Scheduled for October 26, 2017	PENDING

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.

**PLEASE BRING MTG MATERIAL FROM LAST MEETING**

**Background**

The existing 3.92 parcel contains one single family home. An old family cemetery is part of the current lot and is proposed to be conveyed to the Town. The applicant wishes to divide their property into three lots and has provided the necessary plans based on the concept from the right-of-way sketch plan the Board approved on 9/14/17. The existing driveway will be relocated onto the new right-of-way.

As the applicant described during sketch plan review, the proposed lot division is not subject to subdivision per MRSA 30-A §4401.4.A(1), known as the homestead exemption, where the two divisions are accomplished by a subdivider who has retained one of the lots for their own principal residence for at least 5 years immediately preceding the second division

**UPDATE:** The Board found the plan application to be complete at their 10/12 meeting where they determined no site visit or public hearing will be required and continued the plan to the next meeting for review of Findings of Fact.

**Staff Review**

1. The application appears to be complete. See applicant’s agent’s summary of submittal requirements under 16.10.5.2
2. As Staff reported at the sketch plan review the Public Works Commissioner does not support the town acceptance of the cemetery. In addition, the Commissioner noted that a five-year street opening moratorium will be in effect the beginning of this month and questioned if that might complicate access to public water.
3. Per 16.8.4.8.D., sight distance on Haley Road (posted at 25 mph) is required to be 250 feet. To the south, there is a blind spot from a vertical curve that reduces the sight distance to 175 feet.

The applicant is proposing to regrade in front of the existing house, within the Town right-of-way for Haley Road to meet the 250-foot minimum sight distance.

4. All proposed lots appear to meet the standards of 16.8.16.2. for lots.
5. A note on the ROW plan that references the other drawings should be provided.
6. If the Board does not want to review the draft road maintenance agreement, a condition of approval that such draft id provided to the town for their review and to ensure it is clear in the agreement the expectation of snow removal.
7. CMA has reviewed the application and plans and have no comments.
8. Table 1 in Chapter 16.9, Article IV, under Street Width Design: 5' sidewalk/pedestrian way is required. The applicant has provide a 2' gravel shoulder on each side of the roadway, which is not required. This provides some additional width, which could be considered in lieu of the pedestrian way requirement. The applicant should apply for a waiver.

### **Recommendation**

The right-of-way plan submittal is complete and the plans appear to be in compliance with the standards of Title 16.

### **Action**

If the Board concurs with staff's recommendation they may...

***Move to approve with conditions for the right-of-way plan application dated August 15, 2017 From Pauline Grover, and applicant, Christopher Mende, for a right-of-way on Haley Road (Tax Map 48 Lot 8B) in the Residential Rural Zone upon the review and voting, in the affirmative on the Findings of Fact.***

**M 48 L 8B**

**KITTERY PLANNING BOARD  
FINDINGS OF FACT -  
for  
117 Haley Road  
Private 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, Pauline Grover, and applicant, Civil Consultants request consideration of a private right-of-way plan for a 3.92 +/- acre parcel located on Haley Road (Tax Map 48, Lot 8B) in the Residential Rural (R-RL) zone. Agent is Chris Mende, PLS, Civil Consultants.

Hereinafter the "Development".

Pursuant to the Plan Review meetings conducted by the Planning Board as duly noted in the Plan Review Notes dated 10/26/2017;

Sketch Plan Review	Held	3/23/2017
Site Visit	Held	6/5/2017
Preliminary Plan Completeness Review	Held, accepted	5/11/2017
Public Hearing	Held	6/8/2017
Preliminary Plan Approval	Granted	6/11/2017
Final Plan Approval	Granted (conditional)	10/12/2017

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 10/26/2017 (Hereinafter the "Plan").

1. Existing Conditions Plan, Sheet ROW, by Civil Consultants, dated September 18, 2017.
2. Site Plan, Sheet C1, by Civil Consultants, dated September 21, 2017.
3. Erosion Control Notes and Details, Sheet C2, by Civil Consultants, dated September 21, 2017.
4. Roadway Plan and Profile, Sheet R1, by Civil Consultants, dated September 21, 2017.
5. Existing Conditions and Lot Plan, Sheet LOT-PLAN, by Civil Consultants, dated September 18, 2017.

**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 **16.10.8.3.4**. 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.*

<p>Finding: The proposed right-of-way appears to conform to applicable Title 16 standards with the conditions of approval included herein.</p>
<p>Conclusion: This standard appears to be met.</p>
<p style="text-align: right;"><b>Vote of __ in favor __ against __ abstaining</b></p>
<p><b>B. Freshwater Wetlands Identified.</b></p>
<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;"><b>Vote of __ in favor __ against __ abstaining</b></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;"><b>Vote of __ in favor __ against __ abstaining</b></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: There is no proposed water use at this time. Presumably KWD service will be used in the future. These residential lots pose no significant water use. The applicant has stated that wells can be considered if connection to public water cannot happen.</p>
<p>Conclusion: This standard appears to be met.</p>
<p style="text-align: right;"><b>Vote of __ in favor __ against __ abstaining</b></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: There is no proposed sewer treatment at this time. Municipal services will not be used.</p>

Conclusion: This standard appears to be met.
Vote of __ in favor__ against __ abstaining
<b>G. Municipal Solid Waste Disposal Available.</b>
<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>
Finding: The proposed Street ROW and future residential lots pose no significant burden on solid waste use.
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: There is no proposed sewer treatment at this time. In the future, the proposed residential lots will use individual septic systems designed by a Licensed Professional as required by state and local regulations and the proposed street does not detrimental to the groundwater.
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.
<b>Vote of __ in favor __ against __ abstaining</b>
<b>K. Stormwater Managed.</b>
<i>Stormwater Managed. The proposed development will provide for adequate stormwater management</i>
<b>Finding:</b> The proposed right-of-way construction is simple with marginal stormwater produced. The stormwater plan is simple and effective.
Conclusion: This standard appears to be met.
<b>Vote of __ in favor __ against __ abstaining</b>
<b>L. Erosion Controlled.</b>
<i>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.</i>
<b>Finding:</b> 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.
<b>Vote of __ in favor __ against __ abstaining</b>
<b>M. Traffic Managed.</b>
<i>The proposed development will:</i> <ol style="list-style-type: none"><li><i>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</i></li><li><i>2. Provide adequate traffic circulation, both on-site and off-site.</i></li></ol>
<b>Finding:</b> The proposed right-of-way does not meet the threshold for a full traffic study. The proposed development includes some regrading of the property on Haley Road to increase site distances.
Conclusion: This standard appears to be met.
<b>Vote of __ in favor __ against __ abstaining</b>
<b>N. Water and Air Pollution Minimized.</b>
<i>The proposed development will not result in undue water or air pollution. In making this determination, the following must be considered:</i> <ol style="list-style-type: none"><li><i>1. Elevation of the land above sea level and its relation to the floodplains;</i></li><li><i>2. Nature of soils and sub-soils and their ability to adequately support waste disposal;</i></li><li><i>3. Slope of the land and its effect on effluents;</i></li><li><i>4. Availability of streams for disposal of effluents;</i></li><li><i>5. Applicable state and local health and water resource rules and regulations; and</i></li><li><i>6. Safe transportation, disposal and storage of hazardous materials.</i></li></ol>
<ol style="list-style-type: none"><li>1. All proposed development is located outside of a Flood Hazard Area.</li><li>2. No sewage disposal is proposed at this time. Septic disposal in the future will require a licensed professional engineer.</li></ol>

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.
<b>Vote of __ in favor__ against __ abstaining</b>
<b>O. Aesthetic, Cultural and Natural Values Protected.</b>
<i>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.</i>
Finding: The property does not include any significant aesthetic, cultural or natural values that require protection.
Conclusion: This standard appears to be met.
<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: The developer will provide a performance guarantee and an inspection escrow in an amount suitable to cover the costs of required infrastructure including on-site inspection by the Peer Review Engineer to ensure the proposed development is constructed according to the approved plan.
Conclusion: This standard appears to be met.
<b>Vote of __ in favor__ against __ abstaining</b>
<b>S. For a Right of Way.</b>
<i>The proposed ROW:</i>
<ol style="list-style-type: none"> <li>1. Does not create any nonconforming lots or buildings; and</li> <li>2. Could reasonably permit the right of passage for an automobile.</li> </ol>
Finding: The proposed development does not create any nonconforming lots or buildings and provides adequate of passage for an automobile.
Conclusion: This standard appears to be met.
<b>Vote of __ in favor__ against __ abstaining</b>

**Article III. Street Signage**

**16.8.3.1 Names.**

*Streets which join or are in alignment with streets of abutting or neighboring properties must bear the same name. Names of new streets may not duplicate, nor bear phonetic resemblance to the names of existing streets within the municipality and are subject to the approval of the Planning Board.*

Finding: The applicant has completed a Street Naming Application that has been reviewed by appropriate town departments, including public safety and find the proposed street name, *Grover Lane* to conform to the ordinance.

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:

Submittal requirement 16.10.5.2.B.2, plan scale  
Sidewalk/Pedestrian Way 16.8.4, (c) on Table 1 street standards

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. (Title 16.10.9.1.2)
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. All Notices to Applicant contained in the Findings of Fact (dated: 10/26/2017).

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

4. A signed waiver request for the sidewalk requirement
5. Approved street name to be added to the final plan.
6. 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.

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. One (1) mylar copy and one (1) paper copy 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. The owner and/or developer, in an amount and form acceptable to the town manager, must file with the municipal treasurer an instrument to cover the cost of all infrastructure and right-of-way improvements and site erosion and stormwater stabilization, including fees for inspection by the Town Peer Review Engineer for same, per 16.10.8.2.2.
5. 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, or Vice 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 KITTELY PLANNING BOARD ON OCTOBER 26, 2017

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Ann Grinnell, 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.