

**Town of Kittery  
Planning Board Meeting  
April 8, 2021**

**21 Litchfield Road—Preliminary Plan Review, Cluster Subdivision**

Action: Accept or deny plan as complete; continue application to a subsequent meeting; set site walk and public hearing dates respectively. Pursuant to Title 30-A M.R.S.A. §4401-4408 *Municipal Subdivision Law* and §16.10, Article V *Preliminary Plan Application Review and Approval Process Phase* of the Town of Kittery Land Use and Development Code, the Planning Board shall consider an application from owner Brenda Haley and applicant Chingburg Development, LLC requesting approval for a preliminary cluster subdivision development proposing eight (8) lots with 9 units (two (2) existing and seven (7) proposed) with appurtenant infrastructure on real property with an address of 21 Litchfield Road (Tax Map 46, Lot 6) located in the Residential-Rural (R-RL) Zone and Shoreland-Stream Protection (OZ-SL-75) Overlay Zone.

**PROJECT TRACKING**

REQ'D	ACTION	COMMENTS	STATUS
YES	Sketch Plan Acceptance/Approval	January 14, 2021	APPROVED
NO	Site Visit	TBD	TBD
NO	Master Site Development Plan	Not pursued	NOT APPLICABLE
YES	Preliminary Plan Review Completeness/Acceptance	Scheduled for April 8, 2021	PENDING
YES	Public Hearing	TBD	TBD
YES	Preliminary Plan Approval	TBD	TBD
YES	Final Plan Review and Decision	TBD	TBD

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.L - 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.

**Project Introduction**

This is the second procedural step in the approval process for a cluster development subdivision. 21 Litchfield Road (“Project”) is located on the northern side of Interstate 95 and abuts a recreational field owned by the Town of Kittery (“Town”), properties with wooded areas and lot with a CMP power station. Across the street from the project is a church and single-family dwelling unit and further up the road heading north, merging onto Picott Road, are single-family dwelling units. The project’s site has a large presence of wetlands and wooded natural features. The project proposes to concentrate the cluster development in an area to avoid disturbing the wetland and wooded vegetation area and to provide access to recreational areas along Litchfield Road. In short, the applicant seeks preliminary plan approval from the Planning Board (“Board”) to permit an eight (8)-lot, nine (9) units cluster subdivision.

**Purpose of Application Phase**

The purpose of this phase of the application process for a cluster subdivision is to determine if the application satisfies the criteria to be considered as a complete application. If it is determined that the application is complete, the Board will then need to schedule respectively a site walk and public hearing date.

**Staff Commentary and Analysis**

Pursuant to §16.10.5.2, the Town Planner is to review the subdivision plan and application to determine if the requisite information and depictions as enumerated in abovementioned code section are included on the plat plan and within the application materials. After review §16.10.5.2, it appears that applicant has provided sufficient information on the site/subdivision plans for the Board to accept as complete and proceed with setting a site walk and public hearing date. Nevertheless, there are elements missing from the

plan and points of clarification needed that the Board should inquire into before moving forward with such a motion.

A component of the cluster subdivision plan that has little to no information on is the landscaping plan. The plan (Sheet-1.0) illustrates areas of the cluster subdivision intended to host new tree plantings, yet it is unclear of the type of species proposed to be planted. The Board may want to consider inquiring with the applicant on their intentions for those areas to be replanted with vegetation. Moreover, the Board may want to have the applicant file an updated plan illustrating more accurately the proposed landscaping and having an accompanying narrative elaborating on the proposed vegetation suitability for those designated areas.

In addition to §16.10.5.2, the Planning Board must consider the provisions under Article IX *Cluster Residential and Cluster Mixed-Use Development* under 16.8 *Design and Performance Standards for the Built Environment*. It appears that the net residential calculation under §16.7.8.2 *Net residential acreage calculation* is accurately computed given the information on the site's characteristics. The Board may want the applicant to elucidate on the lot's soil types to obtain a better understanding of the quality of the soils in order to ensure that all soils requiring removal from the density equation were factored out as instructed by the net residential calculation.

On the topic of open space and site layout, the Board may want to have a discussion on the existing shrubland located in the open space portion of the lot behind the proposed development. This type of habitat hosts and attracts a myriad of animal species. There is a provision within §16.8.11.6.E that allows the Board to add use controls to protect significant open space areas. According to a review letter from Cory R. Stearns of the Maine Department of Inland Fisheries and Wildlife, there is a sizable presence of shrubland located near the proposed development. The Board may want to work with the applicant on how to better protect and improve this critical habitat so that it may continue to provide essential ecological services for the area. Moreover, this might be a good opportunity for the Board and applicant to discuss the feasibility including any passive recreation opportunities near the area as well (e.g., birding observation areas) and other elements to complement the open space areas that create a more beneficial habitat<sup>1</sup>. As regards the site layout, pursuant to §16.8.11.6.I, the Board may want the applicant to explain how the application satisfies these criteria as it is unclear based on the plans submitted how the application successfully meets these standards. Moreover, while not required by the applicant, the Board may want to inquire whether the installation of solar roof-mounted systems are planned for any of the dwelling units.

The Technical Review Committee ("TRC") convened and reviewed the application before the Board. Please see the review letters from DPW and the Kittery Water District for more details on their comments and concerns. A representative from the Kittery Fire Department was present at the TRC meeting and there were no issues identified from a fire safety perspective, as a new fire hydrant proposed and turnaround (hammerhead) met their standards. The only comment from the Police Chief was concerning the absence of sidewalks as described herein.

One of the larger points of discussion was in regard to sidewalks and the proposed footpath into the recreation field. The TRC, while not conceptually opposed to the proposed path or its connection into the Town's lot, had some concerns about the path from a public safety perspective. Specifically, the TRC was of the opinion that the footpath might pose as a greater public safety risk as opposed to sidewalks along the public way (Litchfield Road). The rationale behind this opinion was that sidewalks are out in the open and provides more safety because of its inherent openness. Also, it would be easier for emergency personnel to access any persons requiring assistance. Whereas the footpath is not within the public view and would be harder to access. Furthermore, the path appears to be enclosed by vegetation (trees), theoretically making it more risk prone for misconduct due to the cover the vegetation would provide. From an ADA perspective, while not required for the footpath on a private lot, the sidewalk would be required to be designed as ADA

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<sup>1</sup> An area of land that provides native perennial vegetation and foraging habitat fitting for game birds, song birds, pollinators and other symbiotic species.

compliant. The TRC also looked into additional development opportunities along Litchfield Road and concluded that future growth would be limited in that area. If it were a high growth area, the TRC would emphasize more heavily the importance of this development installing sidewalks into the right-of-way in order to accommodate a larger future population to access the Town's recreational fields and other destinations. Another consideration for the Board is the right-of-way's drainage system along Litchfield Road. If the Board were to require the applicant to install a sidewalk to the recreational field, a completely new drainage design would have to be prepared, as the sidewalk would occupy a majority of the space designated for drainage swales. Ultimately, the Board needs to decide on this issue, to require or not require the sidewalks, as the applicant is requesting a waiver from installing them.

Keeping on the topic of waivers, the applicant has also requested relief from §16.8.5.1.A&B. It is unclear why this request is being made, as the proposed way is to be designate as a private and not to be accepted by the Town of Kittery. The Board should inquire into the intent of the applicant's request, clarify the matter and take any appropriate actions relative thereto.

As of the drafting of the review letter, the Planning Department as yet to receive CMA Engineer Inc. review letter. The absence of their review letter should not hold up this phase of the preliminary review process, as it will be submitted into the recorded at the time of the public hearing.

## **Process**

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In accordance with §16.10.5.3, the Board is task to make and complete respectively the following determinations and actions:

1. Applicant has standing by virtue of vested interest (right, code or interest) in all properties under consideration in the plan.
2. Application is complete in accordance with the requirements of §16.10.5.2 or the Planning Board accepts and approves by formal action any written requests for waiver of submission contents or deferment.
3. If the Planning Board accepts the preliminary plan, it must confirm the review category, determine if any studies/review or analysis is required in accordance with §16.10.5.2D and schedule the date for a public hearing and site walk.

In short, the Board, after determining the applicant has standing, should vote on the requested waivers then take a vote to accept the application as complete. Thereafter, if the Board's motion to accept the application as complete is in the affirmative, the Board needs to schedule a site walk and public hearing date.

## **Recommended Motions**

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Below are recommended motions based on how the Board would like to proceed.

### ***Continuing the preliminary plan application***

*Move to continue the preliminary plan cluster subdivision application to the April 22, 2021, Planning Board meeting from owner Brenda Haley and applicant Chingburg Development, LLC requesting approval for a preliminary cluster subdivision development proposing eight (8) lots with 9 units (two (2) existing and seven (7) proposed) with appurtenant infrastructure on real property with an address of 21 Litchfield Road (Tax Map 46, Lot 6) located in the Residential-Rural (R-RL) Zone and Shoreland-Stream Protection (OZ-SL-75) Overlay Zone.*

### ***Vote to accept preliminary cluster subdivision application as complete***

*Move to accept the preliminary subdivision plan application from owner Brenda Haley and applicant Chingburg Development, LLC requesting approval for a preliminary cluster subdivision development proposing eight (8) lots*

*with 9 units (two (2) existing and seven (7) proposed) with appurtenant infrastructure on real property with an address of 21 Litchfield Road (Tax Map 46, Lot 6) located in the Residential-Rural (R-RL) Zone and Shoreland-Stream Protection (OZ-SL-75) Overlay Zone.*

***Vote to set public hearing***

*Move to set the public hearing date for the May 13, 2021 Planning Board meeting for a preliminary cluster subdivision development application from owner Brenda Haley and applicant Chingburg Development, LLC requesting subdivision approval to create eight (8) lots with 9 units (two (2) existing and seven (7) proposed) with appurtenant infrastructure on real property with an address of 21 Litchfield Road (Tax Map 46, Lot 6) located in the Residential-Rural (R-RL) Zone and Shoreland-Stream Protection (OZ-SL-75) Overlay Zone.*