

**Town of Kittery
Planning Board Meeting
May 13, 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	April 8, 2021	Held
YES	Public Hearing	Schedule for May 13, 2021	PENDING
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.

April 8, 2021 Notes

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 habitat¹. 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

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

it more risk prone for misconduct due to the cover the vegetation would provide. From an ADA prospective, while not required for the footpath on a private lot, the sidewalk would be required to be designed as ADA 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.

May 13, 2021 Notes

Site Walk

On April 20, 2021, the Board conducted a site walk with the applicant, her agents and some members of the public. During the meeting, the Board was shown the road and lot layout; received an explanation on the sheet flow direction of the proposed road and how it is intended to be managed; a verbal description of newly proposed walking path to the recreational field the materials it will be made of; questions relating to the location of the wetlands and how they are envisioned to be protected; an explanation on how the existing rock wall parallel to front yard property line will be reconstructed and preserved its historical character; the responsibilities of the homeowner's association and a description of the common and preserved space amongst other topics. In general, the site walk appeared to be a positive experience and a good opportunity for the Board to become more familiar the application's existing and proposed characteristics and a better understanding of the site's constraints and limitations.

Altus Response Letter and Updated Plans

On April 22, 2021, the applicant submitted a revised plan set and narrative that responded to the Board's, planning staff, and CMA, Engineers, Inc. comments, questions, and suggestions. More specific, the applicant included the following information:

1. Draft Homeowner's Association documents;
2. Draft Example of a Land Stewardship Plan;
3. Stormwater Management Facility Operation and Maintenance Plan;
4. Conceptual Dwelling Unit Footprint Layout;
5. Landscaping Plan and Proposed Plant Schedule;
6. Plan and description of the Net Residential Calculation

CMA Review of April 22, 2021 submission

The proposed revisions were reviewed by CMA Engineers, Inc. and the remaining concerns were in relation to the absence of the final septic system design and the need for additional waiver requests by the applicant for stormwater retention. Moreover, CMA looks for confirmation that the applicant intends to satisfy the post-construction stormwater management certification requirement, pursuant to §16.8.8.2

Other than those items, it appears CMA does not have any major issues with the proposed plan, rather wanted the Board to be aware of the necessary waivers needed for the plan to move forward.

Staff Commentary

The revised plan set, in general, excluding requested waivers, appears to meet the intent of the cluster subdivision and other relevant ordinance. Specifically, the landscaping plan appears to be in compliance with the proposed ordinance as it relates to the frontage along Litchfield Road. The Board should determine if more landscaping is necessary along the new proposed right-of-way and lots or if that decision should be left to the individual lot owner and homeowner's association as those elements will remain in private ownership and not necessary affect the public way of Litchfield Road.

As regards the draft land stewardship plan, staff received on May 10, 2021, an updated plan detailing actions and methods to preserve and manage a portion of the land that was identified of possessing a large presence of various wildlife and supporting habitat. While not a necessity to finalize at this review phase, the Board could defer any action to final plan review or continue the preliminary application to a following meeting in order to be given more time to digest the plan and provide comments to the applicant. Staff is of the opinion that this specific application element can be discussed and finalized at the final plan review phase.

With respect to the requested waivers, the Board should review and discuss their purpose and merits and indicate to the applicant which ones the Board is comfortable waiving. A final vote on the waivers will need to be made during the final plan review phase. The waivers requested that the Board decides not to move forward with should be made a condition of preliminary approval to be added to the final plan. In the current rendition of the plan, the follow waivers are being requested:

1. Requested Waivers

- a. §16.8 Table—Street Design
 - i. Street Width
 - ii. Intersection Design:
- b. §16.8.4.13—Installation of sidewalks
- c. §16.8.5.1.C (1&2)—Road way drawing scale
- d. §16.8.11.6.G—A lot having direct access to a public way.

2. Waivers Needed

- a. §16.8.8.1.D.1—increase in stormwater run-off

In determining waiving the aforementioned standards, the Board needs to inquire with the applicant their intentions of the newly created way, to wit, does the applicant plan to file a petition with the Town to accept road as a public way? If so true, the Board ought to ensure the road is designed to the applicable standards to the greatest practical extent. The reason being is that the Town would be responsible for the right-of-way's maintenance and repair if it were to be accepted as a public way, and having the road designed at variance to the accepted standards may put the Town in disadvantage position. As for the stormwater waiver as identified by CMA, the Board needs to determine if waiving §16.8.8.1.D.1 will have an adverse impact on the development and surrounding area.

During the review of the Homeowner's association ("HOA") documents, in general, it appears that the general language is acceptable with the following items needing clarification and revision.

1. Landscaping—it is unclear within the HOA document and Stormwater O&M plan if the proposed landscaping fronting Litchfield Road and the entrance of the proposed right-of-way into the development is designated as a responsibility to be maintained by the HOA. The Board should consider having the applicant add language to the document directing the HOA to maintain the landscaping as proposed on the plan in perpetuity. Also, the Board should inquire with the applicant if any of the vegetation proposed is designed to be utilized to manage stormwater. If so, the landscaping needs to be referenced as an element to be maintained in the O&M plan as it would be an integral component of the site's stormwater management.
2. Cemeteries—it is the understanding of staff that the Town currently maintains the existing cemeteries but does not own the fee simple to the land. The HOA document directs the association to convey the land to the Town and to grant an access easement to reach the land. While an easement would be prudent and welcomed, the predetermined tone of the land conveyance language needs revisiting. Chiefly, the clauses language should be revised to be subjunctive and less preordained that the Town shall take fee simple ownership of the cemetery.
3. Land Stewardship Plan—if this plan is to be approved by the Board, it will need to be referenced in the final HOA document.
4. Architectural Elevations—the applicant has certain design standards within the HOA document that a future owner must adhere to. See Section 4. *Dwelling Size; Approval by Developer* and Section 5. *Building and Landscaping Requirements* of the HOA Document for more details. The Board should make a determination if this language is acceptable or if more detailed elevation plans or descriptive language within the HOA document are needed.

In general, the Board should condition any approval of the preliminary plan to revise the HOA and/or Stormwater O&M plan accordingly and make any final revision/edits as needed in order for it to be approved by the Planning Board and compliant with state law. Also, the Board should consider whether or not the applicant should provide a proposed maintenance fee schedule in the next rendition of the HOA document.

Concerning the soils composition and the other elements required to be subtracted from the net residential calculation, it appears the proposed plan is in conformance with the ordinances standards. The Board should ask any unanswered questions they may have concerning the net residential calculation and/or the soil composition of the lot.

In general, the proposed preliminary subdivision plan appears to be in conformance with the relevant standards and ordinances. If the Board is comfortable with moving forward with the review process, they should entertain a vote to approve the preliminary plan with the suggested follow conditions:

1. Prior to the filing of an application for final plan review, the applicant shall submit a revised HOA document and Stormwater maintenance plan as directed by the Planning Board at their May 13, 2021 meeting.
2. Prior to the filing of an application for final plan review, the applicant shall demonstrate that they filed their application for state review, or any other permits requiring regulatory approval.

Procedural Steps

The Board should open the public hearing and having the applicant reintroduce the application. Thereafter the Board ought to ask their questions to the applicant and allowing the public to comment after the Board is finished with their questions.

If the Board is comfortable moving forward with the application, it should close the public hearing and consider a vote to approve the application with the recommended conditions. If more time is needed before a final vote on the preliminary plan is cast, a vote to continue the application should be made to the May 27, 2021 meeting. If this is the case, the Board should consider keeping the public hearing open so that the public can still have the opportunity to comment on the project.

Recommended Motions

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

Continuing the preliminary plan application

Move to continue the public hearing for a preliminary plan cluster subdivision application to the May 27, 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 approval preliminary plan application

Move to approve 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 with the following conditions:

- 1. Prior to the filing of an application for final plan review, the applicant shall submit a revised HOA document and Stormwater maintenance plan as directed by the Planning Board at their May 13, 2021 meeting.*
- 2. Prior to the filing of an application for final plan review, the applicant shall demonstrate that they filed their application for state review, or any other permits requiring regulatory approval.*