

**ITEM 1**

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

**ITEM 1 - 28 Wyman Avenue — Sketch Plan Review, Cluster Residential Subdivision**

Action: Hold Public Hearing; continue, approve, or deny plan: Pursuant to Title 30-A M.R.S.A. §4401-4408 *Municipal Subdivision Law* and §16.8.10.H, *Cluster Residential Development* of the Town of Kittery Land Use and Development Code, owner Lusitano, LLC requests approval for a cluster residential development proposing three (3) single-family residences as a condominium on real property with an address of 28 Wyman Avenue (Tax Map 16, Lot 148) located in the Residential-Urban (R-U) Zone.

**PROJECT TRACKING**

REQ'D	ACTION	COMMENTS	STATUS
YES	Sketch Plan Acceptance/Approval	June 9, 2022 September 8, 2022 possible approval	Continued, not yet approved
NO	Site Visit	June 28, 2022	Held
YES	Preliminary Plan Review Completeness/Acceptance	N/A	N/A
YES	Public Hearing	October 13, 2022	Held
YES	Public Hearing	November 17, 2022 (Cont'd due to abutter notices)	Pending
YES	Preliminary Plan Approval	N/A	N/A
YES	Final Plan Review and Decision	TBD	TBD

**Project Introduction:**

The property at 28 Wyman (Map 16, Lot 148) currently has a boarding house and a garage/barn located on it. The lot is 82,839 sf (1.9 acres) in size and is located in the Residential-Urban Zone (R-U). A wetland spreads along the northern portion of the property. The property fronts Wyman Avenue in two places but neither has sufficient frontage (100 continuous feet required) so the lot is legally non-conforming as regards street frontage. A residential neighborhood surrounds the property.

The Board first reviewed this project in January as a preliminary site plan review. The project was reclassified to a minor subdivision (per State statute and Title 16, a subdivision includes anything that creates residential units that do not share a common wall) and the Board reviewed it as a cluster subdivision on June 9<sup>th</sup> and visited the site on June 28<sup>th</sup>. Kittery permits cluster residential development and makes a conventional subdivision a special exception so the applicant is offering the plans as a cluster residential development that also is a condominium – meaning that the three residential units will share the one lot.

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23 At the meeting on June 9<sup>th</sup>, the Board accepted the sketch plan. The applicant has resubmitted with plan  
24 revisions still under sketch plan. This is necessary because there are only two stages to a minor subdivision  
25 review – sketch and final. This means that most important aspects of the plan get worked out during  
26 sketch, rather than preliminary as is the case with major subdivisions of more than four lots.

27

28 Purpose of Application Phase:

29

30 The sketch plan phase allows the Board to: 1) determine if sufficient information has been supplied, and  
31 if not request the information, 2) to ask questions and 3) give direction to the applicant. If the Board finds  
32 the application insufficient or requires additional information, the Board should request that information  
33 be provided for the next meeting. The scheduled Public Hearing will allow the public to comment on the  
34 plan. The Board may continue the plan, approve the plan, or deny the plan.

35

36 Submission Requirements:

37

38 The Subdivision Ordinance in Section 16.8.10. requires the following information for Preliminary Plan  
39 submittal:

40

41 *Covenants*

42 No information on any covenants nor Condominium Association documents were provided with the plan.  
43 **Update:** this stage of the subdivision process does not require COA documents. In this case per State  
44 statute, covenants mean any existing easements or other land use covenants that may exist for the  
45 property. The applicant's engineer informed staff that there are no known easements or covenants on  
46 this property.

47

48 *High-intensity Class "A" soil survey and soil interpretation sheets*

49 The applicant has provided a soil survey.

50

51 *Available community facilities*

52 **Update:** The plan highlights a "Common Area" green space on sheet C-2 with the addition of where the  
53 50-foot wetland buffer markers will be installed. The common area will serve the three residences of the  
54 condominium development.

55

56 *Utilities*

57 The site plan (sheet C-4) shows the plan for utility services. The plan shows using an existing sewer  
58 connection, as well as using an existing water connection. Existing overhead electrical lines will terminate  
59 at a new pole where underground electrical service will extend to each condo unit. A stormwater  
60 management plan has been supplied with drop inlets connected to an outfall at the eastern edge of the  
61 property. This outfall appears to be located in an area labeled "Common Area" on other plan sheets.

62

63 *Number of residential or business lots and/or dwelling units;*

64 Applicant has detailed that three single family dwelling units are proposed. The applicant has provided  
65 the net residential calculations to show a yield of 3 units.

66

67 *Typical lot width and depth*

68 There are no new lots being proposed, as all three dwelling units are proposed on the existing lot.

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70 *Price range*

71 No price range information was given. The applicant has supplied dwelling unit layouts.

72

73 *Business areas*

74 No business areas are proposed.

75 *Playgrounds, park areas and other public areas;*

76 There are no parks, playgrounds or public areas proposed.

77

78 *Street improvements*

79 The plan proposes a 40-foot right-of-way with a 16-foot-wide pavement strip that ends as a shared  
80 common driveway.

81

82 In addition, all the Cluster Residential Development submission requirements under 16.8.10.H.(5) have  
83 been met:

84 [1] *Dimensional modifications/standards, land area identified as net residential acreage, net residential*  
85 *density* – located in plan notes and on the plans (C-2) as applicable, see additional information under  
86 *Development Standards.*

87 [2] *Constraints to development* – shown on C-2

88 [3] *Natural features statement* – information from J. Noel, wetland scientist and letter from DEP (see  
89 paragraph with more details below) in the June 9<sup>th</sup> submission.

90 [4] *Building envelopes shown* – the building footprints are shown.

91

92 The applicant in the June 9<sup>th</sup> submission provided a letter from the Maine Department of Environmental  
93 Protection stating that the vernal pool identified on the site is not significant, noting that the pool provides  
94 some habitat for wood frogs and spotted salamanders but does not meet biological criteria. The vernal  
95 pool was surveyed by Joseph Noel.

96

97 **Development Standards:**

98

99 *Setbacks*

100 The proposed residential structure closest to the wetland is shown to be over 100 feet from the wetland.  
101 The end of the shared driveway (per §16.3, a driveway may service two or less residential units) depicted  
102 on the plan is located approximately 65 feet from the wetland. Per Table 16.5.30 *Minimum Setbacks from*  
103 *Wetlands and Waterbodies*, a traveled way of road or driveway can be located 10 feet from the wetland.  
104 Rear and side setbacks for the R-U zone are 15 feet which is the requirement (see §16.4.13.D)

105

106 *Road/Common Driveway*

107 The plans show a 16-foot-wide private way which extends just past Unit 1. From there, a common  
108 driveway provides access to Unit 2 and 3. Because the street frontage for this property is nonconforming  
109 (less than 100 feet) and the proposed use is intensifying from one residential use/building to three  
110 residential uses/buildings, the private road will serve to provide both access and frontage to the units.  
111 However, it is not required for each unit to have its own 100-foot frontage because it is a condominium –  
112 one lot shared in common by three residential units. As shown on the plans the private way is over 100  
113 feet long, thus providing the frontage required for the condominium. The private way will be named by  
114 the applicant (once the name is approved by the Town's addressing officer) and all three units will derive  
115 their addresses from that road, if the plan is approved.

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116  
117 June 9<sup>th</sup>'s plan did not include a turnaround that didn't require travel on private driveways. During the  
118 Technical Review Committee review, the Fire Chief required that a hammerhead turnaround be located  
119 on the private road. This plan shows the turnaround located across from Unit 1. The turnaround is noted  
120 to be 30 feet long. The Fire Chief will be asked to weigh in again on this plan.

121  
122 There are also Condo Owners Association-related considerations. All three units will need to pay for  
123 upkeep and maintenance of the private road (and stormwater systems) while only two will be involved in  
124 upkeep and maintenance of the private driveway as currently presented.

125  
126 *Open Space*  
127 Per §16.8.10. H.(6).(e), a cluster residential development must provide open space. The requirement is  
128 that 50% of the lot must remain undeveloped (which usually includes all the wetlands, water bodies etc.)  
129 with 30% of that comprised of upland. **Update:** Open space calculations are shown in C-2's plan note #7.  
130 While the calculations shown appear to be accurate, the note states that there is .98 acres of open space  
131 provided but below that it shows .94 acres as Common Open Space but nothing for either of the remaining  
132 two categories of open space. Where is the remaining .4 acres located?

133  
134 Staff noted to the applicant's engineer that the limited common areas around each residential unit are  
135 very limited. **Update:** The Limited Common Areas have been expanded which resulted in less Common  
136 Open Space.

137  
138 **Staff Recommendations:**

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139  
140 Staff recommends that the open space calculations clarify where all .98 acres of open space are and  
141 represent them suitably in the plan notes and on the plans.

142  
143 *Cluster Residential Development*  
144 An important component of a cluster residential development plan is that dimensional requirements are  
145 allowed flexibility in the interests of reducing infrastructure and impact on the land. The plan as shown is  
146 compact, with limited impervious surface, underground utilities as required, public water and sewer, and  
147 infrastructure located beyond required setbacks from the wetlands.

148  
149 *Waivers*  
150 The applicant will want to address the submission requirements of both the cluster residential  
151 development and Kittery's subdivision ordinance. There may be instances where the applicant would like  
152 to request a waiver. Waiver requests are best submitted during sketch plan, rather than final plan.

153  
154 *Additional Reviews*  
155 Staff will send the plans out for peer review to CMA before the applicant submits for Final Plan but after  
156 the Fire Chief reviews the plans. Fire Chief Reviewed the plans letter was sent to the Engineer for the  
157 Project

158  
159 **Applicant has submitted no new plans, please refer to previously submitted plans.**  
160 Applicant to provide reasonable alternative or reason for proximity to wetland area i.e. There is ample  
161 room to the west of Condo Unit #1 to be shifted toward abutting property Map 10 Lot 97 (Niver) and

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162 subsequently shift each of the two remaining properties up and over 10-15'. There is an opportunity to  
163 site the turn-around at the end of the paved common driveway that would allow both firetrucks and plow  
164 trucks to turn around. Staff has provided comments from the Fire Chief on the proposed turn-around at  
165 the end of the right-of-way but before the common driveway. Additionally, this change would allow for  
166 the plow truck to store snow further away from the wetland buffer. This would also more equally divide  
167 the proposed contiguous common area behind each of the 3 proposed condos and allow for more  
168 common area on the easterly portion of the project site.

169  
170 **Recommendation:** \_\_\_\_\_

171  
172 The previous Public Hearing happened on October 13<sup>th</sup> 2022, however the notices to the abutters did not  
173 get it into the mail. There will be a second public hearing on November 17 2022

174  
175 **Recommended Motion:** \_\_\_\_\_

176  
177 *Sketch Plan was continued at the previous hearing.*

178  
179 ***Motion to close Public Hearing*** for the sketch subdivision plan application from owner Lusitano, LLC for  
180 a cluster residential development proposing three (3) single-family residences as a condominium on real  
181 property with an address of 28 Wyman Avenue (Tax Map 16, Lot 148) located in the Residential-Urban (R-  
182 U) Zone

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