

**Town of Kittery
Planning Board Meeting
April 11, 2024**

ITEM 1—181 State Road—Marijuana Business Site Plan — Final Review

Action: Reconsider requested zoning boundary line extension. Approve plan or continue review.
 Mike Sudak, on behalf of owner/applicant IDC5 LLC, is proposing to replace an existing restaurant and single-family dwelling with a 2,000 square foot marijuana retail store and associated parking on the properties of 181-185 State Road, Tax Map 22, Lots 4-1 and 4-2, a parcel split by the Business Local and Old Post Road Commercial (C-3) Zone.

PROCESS SUMMARY

REQ'D	ACTION	COMMENTS	STATUS
NO	Sketch Plan Acceptance/Approval	8/24/23	Continued
YES	Planning board determination of completeness	12/14/23	Accepted
NO	Site Visit	1/8/24	Held
YES	Public Hearing	1/11/24	Held
YES	Preliminary Plan Approval	1/11/24	Approved
YES	Final Plan Review and Decision	Scheduled for 3/28/24 Continued to 4/11/24	Pending

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.**

OTHER PERMITS AND REQUIREMENTS

- MDOT permitting and approval of proposed driveways.
- State Fire Marshal NFPA #13 fire protection system approval.
- DEP construction permitting and site review.
- Council vote to license marijuana business approval

PROJECT INTRODUCTION

This is the final review for a proposed marijuana retail business on the property of 181-185 State Road. The parcel is located along the northern frontage of the Kittery Traffic Circle and currently contains a single-family dwelling and the La Casita restaurant, both of which are part of the same condominium. The lot is split between the C-3 and B-L zones, with the majority of the parcel (and the entirety of the proposed building) located in the C-3 zone.

Both existing buildings would be demolished and replaced by a single-story, 2,000 sq ft. storefront intended for retail sale and storage of marijuana, not to be grown on-site. The new business would be sited in roughly the same location as the existing restaurant, and one curb-cut would be removed. The applicant proposes a one-way entrance off the traffic circle, and a one-way exit onto the spur road between the traffic circle and highway on-ramp. Parking is met in

32 excess of the minimum requirements, and the applicant proposes sidewalks internally and along
33 the frontage of the entire lot. The proposed development would connect to existing Town water,
34 sewer, and electric utilities.

35
36 At a previous sketch review in 2022, the planning board denied the plan, arguing the store's
37 impacts to traffic would constitute a failure to promote public safety and general welfare.
38 However, traffic impact studies are a requirement at the preliminary stage. Applicants are not
39 required to provide a traffic impact study at the sketch review, nor are they expected to fully plan
40 out traffic impact mitigation at that stage. The Town and applicant both obtained legal
41 consultation, who agreed the decision "not to accept" the sketch plan was in violation of Town
42 code procedures. The terms of a legal settlement agreement between the Town and the
43 applicant required the board to continue sketch review of the application or accept it as
44 complete, provided the required submission materials were provided by the applicant. The
45 planning board decided to continue the sketch plan application on 8/24/23, after providing
46 feedback to the applicant regarding what they would like to see in the preliminary site plan
47 application. Sketch review is an optional step for site plan applications, meaning acceptance was
48 not required before moving forward to the preliminary stage.

49
50 The planning board accepted the preliminary site plan application as complete on 12/14/23, then
51 scheduled a site walk for 1/8/24 and a public hearing to be held on 1/11/24. Third-party engineer
52 review by CMA received on 12/18/23 confirmed all identified issues were minor and did not require
53 plan resubmission. After closing the public hearing on 1/11/24, the planning board confirmed they
54 were satisfied by the analysis and proposed mitigation efforts of the traffic impact study, then
55 approved the preliminary site plan on the condition that the traffic study be amended to include
56 peak trip times during 2-3 PM, and a narrative be submitted with the final site plan outlining how
57 the proposed development meets the criteria of a special exception. The applicant has provided
58 both requirements of the conditional approval, and a third-party engineer has confirmed all
59 identified issues in the final plan set are deemed minor enough to be addressed before plan
60 recording.

61
62 During their March 28th, 2024 meeting, the planning board moved to approve the requested
63 modification (described below). With the vote being 3-1-1, the motion failed, because a minimum
64 of 4 votes are required for any vote to pass. The planning board then voted to continue review of
65 the application to a later date when a full board would be present. After reviewing the application
66 materials, including the traffic study addenda, **staff maintain that the project complies with all
67 required standards, and recommend the planning board reconsider their previous motion on
68 the requested modification and grant final approval at this time.**

70 **WAIVERS REQUESTED**

- 71
72 1. The applicant is requesting a zone boundary line extension to allow the parcel to be held to
73 the standards of the C-3 Zone, which is within the jurisdiction of the planning board per
74 **§16.1.8.B.(5)**. The C-3 and B-L Zones have different landscaping requirements, and a
75 boundary line extension would allow the entire development to follow the standard of just
76 the C-3 Zone.
- 77 a. At previous meetings, the planning board said they were amenable to this request, as
78 long as a note be added to the plan requiring plantings be replaced in-perpetuity. The
79 applicant has added this note to the plan set.

80

81 **STAFF COMMENTS**

82 Listed below are additional comments provided by staff in addition to general review of
83 standards:

84

85 1. According to precedent set in the 1994 court case *WLH Management Corporation v. Town*
86 *of Kittery*, when a proposed project complies with all relevant ordinance requirements, a
87 planning board is legally required to approve an application. The findings of fact included in
88 this application describe compliance to standards in more detail.

89 2. The cover letter notes the planning board did not request motion sensors for the proposed
90 business. Per **16.5.32.B.(11)**, this requirement is optional and up to the discretion of the
91 planning board.

92 3. The traffic study accounted for peak "summer hours." Weekday evening and Saturday
93 midday peak flow projected no negligible vehicle queueing. The traffic study accounts for
94 anticipated trips for all 4 hotels currently being proposed on Route 1 and the Route 1 Bypass.

95 4. As requested, the applicant provided an update to the traffic impact study looking at the 2-
96 3 PM time frame that constitutes a peak trip time around the traffic circle due to worker
97 commutes from the Portsmouth Naval Shipyard. The addendum states there are no
98 anticipated changes to the level of service when looking at this trip time.

99 5. Following feedback from the planning board, the landscaping plan has been updated to
100 provide limited height plantings within the front setback which do not impede the sight
101 lines of the building from vehicles in the Kittery Traffic Circle.

102 6. Following a request from the planning board, note #20 of the site plan addresses visual
103 screening during construction. A 6-foot temporary fence will be placed during construction
104 and remain until the evergreen hedges are established to provide sufficient visual
105 screening of the property.

106 7. Staff will require a narrative detailing efforts to mitigate impacts to traffic during installation
107 of any public utility lines along the Kittery Traffic Circle. This will be provided before issuance
108 of a building permit.

109 8. During the first preliminary review, traffic engineer Jeff Dirk stated the applicants planned
110 to share the cost of a traffic safety assessment of the traffic circle with the applicants of the
111 120 US Route 1 site plan. A note has been added to this site plan stating that the completion
112 of the traffic safety assessment is required before occupancy can be issued.

113 a. Planning staff have listed it as a condition of approval in the draft findings of fact. It is
114 up to the planning board whether they would prefer it be a note on the site plan or a
115 condition of approval.

116 9. At the public hearing, the planning board requested the applicant look into a shared
117 driveway with the owner of the property abutting the exit driveway. After consulting the
118 Technical Review Committee, no department heads have strong opinions on this, but
119 consensus landed around seeing no positive impact to either property. Additionally,
120 planning staff discourage a shared exit driveway, as it has the potential to generate
121 unnecessary confusion between two neighboring businesses and their separate
122 customers.

123 10. The plan set now includes a vehicle routing plan to show adequate emergency response
124 vehicle access,

125 11. Following MDOT requirements, the applicant has adjusted the plan to allow an 8-foot-wide
126 pedestrian travel-way. This includes widening the sidewalks abutting the parking lot from
127 4 feet to 5 feet.

128 a. The applicant has also shifted the opening of the entrance driveway further from the
129 Route 236 exit on the traffic circle, as requested by the police chief.

- 130 12. The applicant has provided “do not enter” signs at both driveways to further discourage
 131 two-way traffic.
 132 13. The applicant has provided a narrative in their cover letter outlining the criteria of a special
 133 exception use. Planning staff believe the applicant has satisfied the requirement with the
 134 submitted narrative. The specific criteria are further discussed in the Findings of Fact.

135
 136 **PROJECT ANALYSIS**

137 Staff reviewed the application and provided materials and have provided their determination on
 138 the requirements and standards below. All requirements that have not been met or require
 139 further discussion are highlighted. The standards for both the C-3 and B-L zone are listed.
 140 Because the majority of the parcel and development are in the C-3 zone, those standards are
 141 listed first, with the B-L zone standards listed after. Stricter standards typically apply on a split-
 142 zoned parcel, except when related to a proposed development or structure that is located entirely
 143 within one zone.
 144

Code Ref.	§16.4 Land Use Zone Standards	
	Standard	Determination
§16.4.21.B/C. §16.4.17.B/C.	Permitted/Special Exception Uses	The proposed use is a special exception in the C-3 zone. The proposed use is not permitted in the B-L zone. The entire storefront is located outside of the portion zoned B-L.
§16.4.21.E.(2).(a). §16.4.17.D.(1).(g).	Lot size: 40,000 sq ft. minimum BL zone: no minimum	The property is a legally non-conforming parcel. The development does not increase nonconformance due to lot size. It appears the standard is satisfied.
§16.4.21.E.(2).(b). §16.4.17.D.(1).(h).	Street frontage: no requirements in C-3 Zone BL zone: no minimum	It appears the standard is satisfied.
§16.4.21.E.(2).(c). §16.4.17.D.(1).(i).	Front setback: 15 ft minimum BL zone: 20 ft maximum NOTE: The Planning Board may, at its discretion, allow a greater setback when public amenities such as benches, pocket parks, outdoor dining or seating areas are proposed. Properties in the C-3 Zone with frontage on Old Post Road, including those lots which also have frontage on Route 1 Bypass, are required	It appears the standard is satisfied.

	to have at least a fifteen-foot setback on Old Post Road.	
§16.4.21.E.(2).(d). §16.4.17.D.(1).(j).	Rear and side setbacks: 10 ft minimum. BL zone: 10 ft minimum NOTE: the minimum setback is 15 ft when abutting a residential property	Assessor records state the adjacent property on 187 State Road is an office, not a residential property. It appears the standard is satisfied.
§16.4.21.E.(2).(e). §16.4.17.D.(1).(k).	Building height: 40 ft maximum BL zone: 40 ft maximum	It appears the standard is satisfied.
§16.4.21.E.(2).(f).[3].[a]. §16.4.17.D.(1).(l/m).	Imperious surface: 70% maximum for currently developed lots, and stormwater must be managed on site using low-impact and utilize DEP best management practices BL zone: No maximum. All stormwater must use low-impact development utilize DEP best management practices	The impervious surface maximum standard is met. Third party engineer review has confirmed the proposed stormwater management report is sufficient.
§16.4.21.E.(2).(m).	Underground utilities are required	It appears the standard is satisfied
§16.4.21.E.(3). §16.4.17.D.(2).	C-3 parking standards: <ul style="list-style-type: none"> • parking areas must be visually screened when abutting residential properties. • Spaces must be 19' x 9' in dimension. BL zone: <ul style="list-style-type: none"> • parking must be located to the side or rear of the building. • Screening is required for new or revised parking when it abuts public streets. Such screening can utilize plantings or fencing and does not require a parking lot be completely obscured from view. 	The proposal does not abut any residential properties. It appears the standard is satisfied.
§16.4.21.E.(3). §16.4.17.D.(3).	The proposal must meet Kittery's building design standards. BL zone: a lighting plan must be submitted as part of the preliminary site plan application.	The proposed developments appear to meet the design handbook guidelines.

<p>§16.4.21.E.(3). §16.4.17.D.(4).</p>	<p>C-3 zone Landscaping improvements:</p> <ul style="list-style-type: none"> • minimum 15 ft vegetated landscape planter strips between the lot and adjacent all rights-of-way. • One street tree for every 50 feet of street frontage <p>BL zone landscaping improvements:</p> <ul style="list-style-type: none"> • Minimum 15 ft vegetated planter strip between the lot and adjacent rights-of-way. • One street tree for every 25 feet of street frontage. • Plantings must be replaced within one year, in perpetuity. 	<p>The standards for the C-3 Zone appear to be met for the proposed development. Conformance will be contingent on approval of the zone boundary request listed above.</p>
<p>§16.4.21.E.(3).(d). §16.4.17.D.(2).(d).</p>	<p>Traffic circulation standards: sidewalks are required within the site to internally connect the property to the abutting traffic circle.</p>	<p>The standard appears to be satisfied.</p>
<p>§16.4.21.E.(3).(e). §16.4.21.E.(2).(n).</p>	<p>Open Space standards: 20% minimum (reduced to 10% for lots of 40,000 sq ft. or less) BL zone: 15% minimum.</p>	<p>The plan meets the strictest minimum requirement. It appears the standard is satisfied.</p>
<p>Code Ref.</p>	<p>§16.5 Performance Standards</p>	
	<p>Standard</p>	<p>Determination</p>
<p>§16.5.14.C</p>	<p>Corner Lots</p>	<p>The property is considered a corner lot between State Road and US Route 1. Frontage is considered to be along State Road, the ROW where access to the parcel is provided.</p>
<p>§16.5.10</p>	<p>Essential Services</p>	<p>Wastewater and Water District staff have both confirmed sufficient capacity for the entire proposed development.</p> <p>The applicant will provide a narrative detailing mitigation to traffic impacts along the Traffic Circle during utility installation before issuance of a building permit.</p>

§16.5.23	Signs	Any proposed sign has to submit a permit for approval through Code Enforcement
§16.5.27	Street Standards: sidewalks are required along the entire ROW for the Route 1 Bypass and Wilson Road	The plan proposes sidewalks connecting the lot to the abutting intersection.
§16.7.11.F.(e).	<p>Retail stores require 1 parking space for each 175 sq ft of gross floor area. For 2,000 sq ft, 11 spaces would be required.</p> <p>Warehousing and storage uses require 1 space for each 500 sq ft. For 2,000 sq ft, 4 spaces would be required.</p> <p>Because the retail store use has the stricter minimum standard, 11 spaces are required</p>	<p>The plan exceeds parking minimums.</p> <p>The plan appears to meet ADA space requirements</p>
§16.5.32.	<p>Marijuana business standards:</p> <ul style="list-style-type: none"> • Must not be located within 1,000 feet of a public or private school or public recreation facility. • May not have any odor of marijuana detectable outside of business • Marijuana grown on-site must be located indoors. • Marijuana business must conform to design standards. • Marijuana business must have a building footprint within 400 sq ft and 2,000 sq ft • Proposed business must conform with all relevant parking requirements. • Marijuana business requires fire suppression measures and fire alarms to the satisfaction of the Fire Chief. • Marijuana business requires 24 hour video surveillance covering interior and exterior of facility. • Any proposed wastewater discharge must be signed off by wastewater department. • Exterior lighting is required and must conform with the Design handbook. Motion sensors may be added if required by the planning board. 	<p>All applicable standards for a retail business appear to be met.</p> <p>The Fire Chief has provided written confirmation of his “satisfaction” of the proposed fire management measures.</p>

§13.1.6.5/§13.1.6.6	<p>Sewer impact fees and special sewer entrance fees:</p> <p>Impact fee: \$3,750 Entrance fee: \$2,500 Total cost: \$6,250</p>	This is an estimate provided by planning and development staff. Actual total will be provided by the Wastewater Department during permitting process.
Code Ref.	§16.1.8.B.(5).(a). Criteria for proposed zone boundary line extension	
	Standard	Determination
§16.1.8.B.(5).(a).[1]	Must not prevent the orderly and reasonable use of properties in the adjacent zone	The standard appears to be met
§16.1.8.B.(5).(a).[2]	Must be in harmony with the character of the adjacent zone	<p>Staff believe the proposed retail business is considered “in harmony with” the adjacent Business-Local Zone.</p> <p>The standard appears to be met</p>
§16.1.8.B.(5).(a).[3]	Must not adversely affect property values of the adjacent zone’s immediate neighborhoods	<p>The only portion of the Business-Local Zone that abuts the property is the Kittery Traffic Circle and other MDOT property.</p> <p>The standard does not appear applicable.</p>
§16.1.8.B.(5).(a).[4]	Not create traffic hazards or undue traffic congestion on streets in the adjacent zone	The landscaping requirements along the road frontage require more visual screening in the B-L zone than the C-3 zone. Granting this boundary line extension would reduce the risk of impacted visibility from more intense visual

		<p>screening along the traffic circle.</p> <p>The standard appears to be met.</p>
§16.1.8.B.(5).(a).[5]	<p>Not give off obnoxious gases, odors, smoke, or soot</p>	<p>The proposed marijuana business is required to contain all odors and smoke within the building.</p> <p>The standard appears to be met.</p>
§16.1.8.B.(5).(a).[6]	<p>Not cause disturbing emission of electrical discharges, dust, light, vibration, or noise</p>	<p>Staff do not consider the proposed light pole on the driveway as disturbing, as the further illumination it would provide on the abutting Kittery traffic Circle would not be an adverse impact.</p> <p>The standard appears to be met.</p>
§16.1.8.B.(5).(a).[7]	<p>Be adequately screened from the adjacent zone</p>	<p>Staff believe the screening requirements of the Commercial-3 zone are adequate for the portion of the lot zoned Business-Local.</p> <p>The standard appears to be met.</p>
Code Ref.	§16.7.10 Preliminary Site Plan Requirements	
	Standard	Determination
§16.7.10.C.(4).(a-i).	<ul style="list-style-type: none"> • Paper plan sheets no smaller than 11" x 17" • Scale of drawing no greater than 1 inch = 30 feet • Code block in right-hand corner • Standard boundary survey of existing conditions • Compass with arrow pointing true north • Locus map of property • Vicinity map and aerial photograph • Surveyed acreage of parcel(s), rights-of-way, wetlands, and amount of street frontage 	<p>Provided</p>

	<ul style="list-style-type: none"> Names and addresses of owners of record abutting property 	
§16.7.10.C.(4).(j).	Existing conditions survey including all identified structures, natural resources, rights-of-way, and utilities located on and within 100 feet of the property.	Provided
§16.7.10.C.(4).(k).	<ul style="list-style-type: none"> Proposed development area including: Location and detail of proposed structures and signs Proposed utilities including power, water, and sewer. Sewage facilities type and placement. Domestic water source Lot lines, rights-of-way, and street alignments Road and other paved area plans Existing and proposed setbacks Storage areas for waste or hazardous materials Topographic contours of existing contours and finished grade elevations Locations and dimensions of artificial features such as pedestrian ways, sidewalks, curb cuts, driveways, fences, retaining walls, 	Provided
§16.7.10.C.(4).(l).	Natural features or site elements to be preserved.	Provided
§16.7.10.C.(4).(m).	Identified property encumbrances.	Provided
§16.7.10.C.(4).(n).	Kittery Water District approval letter.	Provided
§16.7.10.C.(4).(o).	Erosion and sedimentation control plan.	Provided
§16.7.10.C.(4).(p).	Stormwater management plan and drainage analysis.	Provided
§16.7.10.C.(4).(q).	Soil survey.	Provided
§16.7.10.C.(4).(r).	Vehicular traffic report.	Provided
§16.7.10.C.(4).(s).	Traffic impact analysis.	Provided

§16.7.10.C.(4).(t).	Test pit analysis.	Provided
§16.7.10.C.(4).(u).	Approval letter from Town sewage.	Provided
§16.7.10.C.(4).(v).	Evaluation of development by Technical Review Committee department heads.	Provided
§16.7.10.C.(4).(w).	Additional submissions as required: <ul style="list-style-type: none"> • All additional requirements of a marijuana business per §16.5.32 • A formal lot boundary adjustment request • A narrative justifying approval of a special exception use. 	Provided

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DISCUSSION, NEXT STEPS, AND RECOMMENDATIONS

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The purpose of final review is for the planning board to see an application in its entirety, incorporate feedback from the public, and further solidify their stance on any requested modifications to standards. The applicant has provided the required traffic study addendum, special exception narrative, and all other requirements for new marijuana businesses in the Town. Staff and third-party engineering review have found the proposed development is in conformance with Town code and believe approval may be granted at this time.

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RECOMMENDED MOTIONS

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Below are recommended motions for the Board’s use and consideration:

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Motion to approve the application

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Move to approve the final site plan by Mike Sudak, on behalf of owner/applicant IDC 5 LLC.

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Motion to continue the application

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Move to continue review of the final site plan by Mike Sudak, on behalf of owner/applicant IDC 5 LLC.

161

**Kittery Planning Board
Findings of Fact
For 181 State Road
Site Plan Review**

**DRAFT
M 22 L 4-1 & 4-2**

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: Mike Sudak, on behalf of owner/applicant IDC5 LLC, is proposing to replace an existing restaurant and single-family dwelling with a 2,000 square foot marijuana retail store and associated parking on the properties of 181-185 State Road, Tax Map 22, Lots 4-1 and 4-2, a parcel split by the Business Local (B-L) and Old Post Road Commercial (C-3) Zone.

Pursuant to the Plan Review meetings conducted by the Planning Board as noted in the Plan Review Notes dated 4/4/24.

REQ'D	ACTION	COMMENTS	STATUS
NO	Sketch Plan	8/24/23	Continued
YES	Completeness/Acceptance	12/14/23	Accepted
NO	Site Visit	1/8/24	Held
YES	Public Hearing	1/11/24	Held
YES	Preliminary Plan Approval	1/11/24	Approved
YES	Final Plan Approval	4/11/24	Approved

Pursuant to the application and plan and other documents considered to be a part of a plan review decision by the Planning Board in this Finding of Fact consisting of the following (hereinafter the "Plan"):

1. Final site plan application received 2/28/24 from Mike Sudak of Attar Engineering.
2. Stormwater Management Report received 2/28/24 from Mike Sudak of Attar Engineering.

NOW THEREFORE, based on the entire record before the Planning Board and pursuant to the applicable standards in the Land Use and Development Code, the Planning Board makes the following factual findings and conclusions:

Chapter 16.7 GENERAL DEVELOPMENT REQUIREMENTS

16.7.10.D.(5).(b). 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:

Development Conforms to Local Ordinances.

Standard: *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.*

Finding: Located in a split-zone parcel, the proposed development conforms to the requirements listed in Title 16 for the C-3 and B-L Zone. The applicant is requesting a boundary line extension to allow uniform conformance of landscaping standards for the development.

Conclusion: This standard appears to be met.

Vote of _ in favor _ against _ abstaining

Water Supply Sufficient.

Standard: *The proposed development has sufficient water available for the reasonably foreseeable needs of the development.*

Finding: The proposed development has received confirmation from Kittery Water District that sufficient capacity exists to service all water and fire suppression needs.

Conclusion: This standard appears to be met.

Vote of _ in favor _ against _ abstaining

Sewage Disposal Adequate.

Standard: *The proposed development will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are utilized.*

Finding: The proposed development must remove the existing septic system and connect to Town sewer utilities. The Town Wastewater Department has confirmed sufficient capacity for anticipated wastewater needs.

Conclusion: This standard appears to be met.

Vote of _ in favor _ against _ abstaining

Stormwater Managed.

Standard: *The proposed development will provide for adequate stormwater management.*

Finding: The proposed development necessitated a stormwater management system which was reviewed by the Town's peer review engineering firm and found to be satisfactory.

Conclusion: This standard appears to be met.

Vote of _ in favor _ against _ abstaining

Traffic Managed.

Standard: *The proposed development will:*

[a] 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

[b] Provide adequate traffic circulation, both on-site and off-site.

Finding: The proposed development generated enough traffic to require a relevant impact study. The study proposed mitigation methods to ensure the property would not have an adverse impact to traffic to the abutting rights-of-way.

Conclusion: This standard appears to be met.

Vote of _ in favor _ against _ abstaining

Parking and Loading.

Standard: *Provisions have been made for safe internal vehicular circulation, loading and service areas, and parking associated with the proposed development.*

Finding: The proposed development has submitted a plan to show adequate room for emergency vehicle access, and exceeds parking requirements.

Conclusion: This standard appears to be met.

Vote of _ in favor _ against _ abstaining

Utilities.

Standard: *The size, type, and locations of all public utilities and private utilities to serve the proposed development will be installed per accepted engineering practices*

Finding: Public and private utility infrastructure have adequate capacity to service the entire proposed development. The utility plan has been found satisfactory after third-party engineer review.

Conclusion: This standard appears to be met.

Vote of _ in favor _ against _ abstaining

Erosion controlled.

Standard: *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.*

Finding: The proposed development will be required to provide erosion and sedimentation controls during construction and the approved stormwater management system will control the stormwater on-site.

Conclusion: This standard appears to be met.

Vote of _ in favor _ against _ abstaining

Groundwater protected.

Standard: *The proposed development will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater.*

Finding: It appears the proposed development will not cause any unreasonable adverse effects of the quantity or quality of groundwater.

Conclusion: This standard appears to be met.

Vote of _ in favor _ against _ abstaining

Freshwater wetlands identified.

Standard: *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.*

Finding: There are no freshwater wetlands on the site.

Conclusion: This standard appears to be met.

Vote of _ in favor _ against _ abstaining

River, stream or brook identified.

Standard: *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. Municipal solid waste disposal available. 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.*

Finding: It appears that a stream does not exist in or abutting the property within 75 feet.

Conclusion: This standard appears to be met.

Vote of _ in favor _ against _ abstaining

Water body quality and shoreline protected.

Standard: *Whenever situated entirely or partially within 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. Flood areas identified and development conditioned. All flood-prone areas within the project area have been identified on maps submitted as part of the application. Water and air pollution minimized. The proposed development will not result in undue water or air pollution. In making this determination, the following must be considered:*

- [a] Elevation of the land above sea level and its relation to the floodplains;*
- [b] Nature of soils and subsoils and their ability to adequately support waste disposal;*
- [c] Slope of the land and its effect on effluents;*
- [d] Availability of streams for disposal of effluents;*
- [e] Applicable state and local health and water resource rules and regulations; and*
- [f] Safe transportation, disposal and storage of hazardous materials.*

Finding: It appears that the proposed development will not adversely affect the quality of any water or wetland body.

Conclusion: This standard appears to be met.

Vote of __ in favor __ against __ abstaining

Aesthetic, cultural and natural values protected.

Standard: *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.*

Finding: The proposed development does not appear to have an adverse effect on aesthetic, cultural and natural values as described in the standard.

Conclusion: This standard appears to be met.

Vote of __ in favor __ against __ abstaining

Environmental considerations.

Standard: *The proposed development will not result in undue levels of lighting, noise, vibrations, smoke, heat, glare, fumes, dust, toxic matter, odors, or electromagnetic interference.*

Finding: The proposed development will not produce any adverse effects that would cause undue environmental degradation. Existing mature vegetation will be preserved to the greatest practical extent.

Conclusion: This standard appears to be met.

Vote of __ in favor __ against __ abstaining

Utilization of the site.

Standard: *The proposed development does reflect the natural capabilities of the site to support development.*

Finding: It appears that the proposed development is designed in a manner that respects the natural capabilities of the lot.

Conclusion: This standard appears to be met.

Vote of __ in favor __ against __ abstaining

Developer financially and technically capable.

Standard: *Developer is financially and technically capable to meet the standards of this section.*

Finding: It appears the developer is financially and technically capable of executing the project. A cost estimate and performance guarantee will be provided to Planning Staff prior to any permitting.

Conclusion: This standard appears to be met.

Vote of __ in favor __ against __ abstaining

16.7.10.D.(5).(f). Special Exception Criteria

If a special exception use is requested, the board must also determine that the special exception use will:

Maintain Harmony with Adjacent Properties.

Standard: *The special exception use will not prevent the orderly and reasonable use of adjacent properties or of properties in adjacent use zones.*

Finding: The proposed commercial use appears to be in harmony with the adjacent properties zoned for business and commercial use.

Conclusion: This standard appears to be met.

Vote of __ in favor __ against __ abstaining

Maintain Harmony with Adjacent Uses.

Standard: The special exception use will not prevent the orderly and reasonable use of permitted or legally established uses in the zone wherein the proposed use is to be located, or of permitted or legally established uses in adjacent use zones

Finding: By providing pedestrian access from the property to abutting commercial businesses, the proposed development appears to have a positive impact to the adjacent commercial uses.

Conclusion: This standard appears to be met.

Vote of __ in favor __ against __ abstaining

Maintain Public Safety.

Standard: The special exception must not adversely affect the safety, the health, and the welfare of the Town.

Finding: The applicant has provided traffic mitigation options to prevent an adverse impact to traffic safety. By expanding the pedestrian travel-way and providing fences to block light pollution prior to landscaping plantings, the project will maintain public safety along the Kittery Traffic Circle.

Conclusion: This standard appears to be met.

Vote of __ in favor __ against __ abstaining

Conformance with Title 16

Standard: *The special exception must be in harmony with and promote the general purposes and intent of this title..*

Finding: The proposed development appears to conform to the criteria, purposes, and intent of Title 16.

Conclusion: This standard appears to be met.

Vote of __ in favor __ against __ abstaining

Based on the foregoing Findings, the Kittery Planning Board finds the applicant has satisfied each of the review standards for approval and, therefore, 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:

1. Zone boundary line extension to allow the parcel to be held exclusively to the standards of the C-3 Zone, to allow for a uniform landscaping plan.

Conditions of Approval (to be included as notes on the final plan in addition to the existing notes):

1. Without prior approval, no changes, erasures, modifications or revisions may be made to any Planning Board approved final plan.
2. Applicant/contractor will follow Maine DEP Best Management Practices for all work associated with site and building construction to ensure adequate erosion control and slope stabilization.
3. Prior to the commencement of grading and/or construction within a building envelope, as shown on the Plan, the owner and/or developer must stake all corners of the envelope. These markers must remain in place until the Code Enforcement Officer determines construction is completed and there is no danger of damage to areas that are, per Planning Board approval, to remain undisturbed.
4. The applicant will provide a safety assessment for the Kittery Traffic Circle, which will be reviewed by a third-party engineer and Town Planning staff, prior to issuance of occupancy.
5. All Notices to Applicant contained in the Findings of Fact (dated: 4/11/24).

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

1. Incorporate any plan revisions on the site plan as recommended by Staff, Planning Board, or Peer Review Engineer, and submit for Staff review prior to endorsement and recording of the plan.

Notices to Applicant:

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. Three (3) paper copies of the final recorded plan 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. 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 KITTERY PLANNING BOARD ON 4/11/24

Dutch Dunkelberger, Planning Board Chair

Per Title 16.2.12.B(1) - 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.