

**KITTERY PLANNING BOARD
FINDINGS OF FACT
for
Route 236 / MacKenzie Lane
Site Plan Modification**

**UNAPPROVED
M28 L25D**

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/applicant Waebak LLC and agent Sarah Simon with GPI Engineering request consideration of a Site Plan modification to include the construction of a sewer connection to the approved car wash on a 324,233-sf lot located at the corner of Route 236 and MacKenzie Lane (Tax Map 28, Lot 25D) in the Commercial Zone (C-2).

Hereinafter the “Development”.

Pursuant to the Plan Review meetings conducted by the Planning Board as duly noted in the Plan Review Notes dated May 5, 2022;

ACTION	COMMENTS	STATUS
Sketch Plan Review	None.	N/A
Site Visit	July 7, 2020	HELD
Determination of Completeness/Acceptance	June 25, 2020	ACCEPTED
Public Hearing	July 23, 2020; August 27,2020	HELD
Final Plan Review and Decision	September 24, 2020	APPROVED
Site Plan Modification	May 12, 2022	PENDING

And pursuant to the Application and Plan and other documents considered to be a part of the plan review decision by the Town Planning Board in this Finding of Fact consisting of the following (Hereinafter the “Plan”).

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 and conclusions:

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.

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.*

<p>Finding: The site plan application for a car wash development with associated utilities conforms to applicable Title 16 standards with the waivers and conditions of approval included herein.</p> <p>Conclusion: This standard appears to be met.</p>
<p>Vote of __ in favor 0 against 0 abstaining</p>
<p>B. Freshwater Wetlands Identified.</p>
<p>Standard: <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>Vote of __ in favor 0 against 0 abstaining</p>
<p>C. River, Stream or Brook Identified.</p>
<p>Standard: <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>Vote of __ in favor 0 against 0 abstaining</p>
<p>D. Water Supply Sufficient. {and}</p>
<p>Standard: <i>The proposed development has sufficient water available for the reasonably foreseeable needs of the development.</i></p>
<p>E. Municipal Water Supply Available.</p>
<p>Standard: <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: The proposed development will not adversely impact the municipal water supply as indicated in a letter, dated March 3, 2020 from the Kittery water district.</p> <p>Conclusion: This standards appears to be met.</p>
<p>Vote of __ in favor 0 against 0 abstaining</p>
<p>F. Sewage Disposal Adequate.</p>
<p>Standard: <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: The proposed car wash will install a connection to a proposed public sewer system to be constructed within the Route 236 right-of-way, as approved by Town Council and permitted by the Town Sewer Department.</p> <p>Conclusion: This standard appears to be met.</p>
<p>Vote of __ in favor 0 against 0 abstaining</p>

G. Municipal Solid Waste Disposal Available.
Standard: <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 car wash is not connecting into the Town's sewer system.
Conclusion: This standard is not applicable.
Vote of __ in favor 0 against 0 abstaining
H. Water Body Quality and Shoreline Protected.
Standard: <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: The proposed car wash is not located in the Shoreland or Resource Protection Overlay Zones.
Conclusion: This standard is not applicable.
Vote of __ in favor 0 against 0 abstaining
I. Groundwater Protected.
Standard: <i>The proposed development will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater.</i>
Finding: The proposed car wash will not adversely affect groundwater as the gray water from the wash station will be collected, held and pump from a holding tank, and the non-point source runoff from the parking lot will be collected and treated by stormwater infrastructure.
Conclusion: This standard appears to be met.
Vote of __ in favor 0 against 0 abstaining
J. Flood Areas Identified and Development Conditioned.
Standard: <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 are no flood-prone areas present.
Conclusion: This standard is not applicable.
Vote of __ in favor 0 against 0 abstaining
K. Stormwater Managed.
Standard: <i>Stormwater Managed. The proposed development will provide for adequate stormwater management</i>

<p>Finding: The proposed car wash is located on a 7.44-acre lot with a designed stormwater collection and treatment infrastructure that will provide for adequate stormwater management.</p> <p>Conclusion: This standard appears to be met.</p>
<p>Vote of __ in favor 0 against 0 abstaining</p>
<p>L. Erosion Controlled.</p>
<p>Standard: <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></p>
<p>Finding: The contractor is following MDEP best management practices for erosion and sedimentation control with site work for the car wash</p>
<p>Conclusion: This standard appears to be met.</p>
<p>Vote of __ in favor 0 against 0 abstaining</p>
<p>M. Traffic Managed.</p>
<p>Standard: <i>The proposed development will:</i></p> <ol style="list-style-type: none"> 1. <i>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> 2. <i>Provide adequate traffic circulation, both on-site and off-site.</i>
<p>Finding: The increase in vehicular traffic generated by the car wash is mitigated by two elements: site design and the widening of MacKenzie Lane. Specifically, the site's layout is designed to allow for 11 cars to queue while waiting to use the car wash facility, and (2) the widening of MacKenzie Lane will permit an increase rate of access for right-hand turning traffic onto Route 236, thereby mitigating the queuing of the left-hand turning lane onto Route 236.</p>
<p>Conclusion: This standard appears to be met.</p>
<p>Vote of __ in favor 0 against 0 abstaining</p>
<p>N. Water and Air Pollution Minimized.</p>
<p>Standard: <i>The proposed development will not result in undue water or air pollution. In making this determination, the following must be considered:</i></p> <ol style="list-style-type: none"> 1. <i>Elevation of the land above sea level and its relation to the floodplains;</i> 2. <i>Nature of soils and sub-soils and their ability to adequately support waste disposal;</i> 3. <i>Slope of the land and its effect on effluents;</i> 4. <i>Availability of streams for disposal of effluents;</i> 5. <i>Applicable state and local health and water resource rules and regulations; and</i> 6. <i>Safe transportation, disposal and storage of hazardous materials.</i>
<p>Finding:</p> <ol style="list-style-type: none"> 1. All proposed development is located outside of a Flood Hazard Area. 2. Addressed in the previous standard on waste disposal. 3 thru 4. Not applicable to the proposed development. 5 thru 6. The applicant shall follow all state rules and regulations on removing gray water and any other hazardous byproducts from the site. In summary, the proposed car wash will not result in undue water or air pollution.
<p>Conclusion: This standard appears to be met.</p>

Vote of __ in favor 0 against 0 abstaining

O. 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: During the initial investigation of the property, the applicant discovered there was a New England Cottontail Rabbit sighting on the property located on the northwest portion of the lot, far away from the proposed car wash location. Considering the proximity between the proposed development and the sighting location of the cotton tail, it appears the car wash will not have an adverse impact on the location of that sighting. The applicant has reached out to Maine Inland Fisheries and Wildlife and has yet to receive a response on the locations significance. The proposed car wash appears it will not impact any significant aesthetic, cultural or natural values that require protection.

Conclusion: This standard appears to be met.

Vote of __ in favor 0 against 0 abstaining

P. Developer Financially and Technically Capable.

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

Finding: The applicant has received financing to construct the proposed car wash.

Conclusion: This standard appears to be met.

Vote of __ in favor 0 against 0 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:

1. Section 16.8, Table 1c. 5ft. wide sidewalks not to be required along MacKenzie Lane.

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 unless conforming with the provision under §16.10.9.1.2, §16.10.9.2 and §16.10.9.3.
2. Prior to the issuance of a building permit, the applicant shall execute and record at the York County Registry of Deeds an easement with the Town of Kittery to widen the easement for Mackenzie Lane.
3. Prior to the issuance of a building permit, the applicant shall submit a revised site plan, to be reviewed and approved by the Town's consultant engineer, that depicts and directs the excavation and removal of the existing soils between the foundation walls under the building and the volume of material between the bottom of the wash water tanks and native soils, and replaced with clean granular soils, as described in a review letter by CMA Engineers Inc., dated September 16, 2020.

4. All Notices to Applicant contained in the Findings of Fact (dated: 5/12/2022).

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

1. All existing conditions and plan notes from the prior Site Plan approval dated September 24, 2020 must be included on the modified plan.
2. The final approval and signing of any plan modification shall be conditioned on the following:
 - a. Kittery Sewer Department's design review and approval of the project
 - b. Kittery Water District's design review and approval of the project
 - c. Unutil's design review and approval of the project
 - d. MaineDOT's design review and approval of the project

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. 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 0 against 0 abstaining

APPROVED BY THE KITTERY PLANNING BOARD ON _____, 2022

Dutch Dunkelberger, Planning Board Chair

Appeal of Decision:

1. 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.