

ITEM 2

**Town of Kittery
 Planning Board Meeting
 July 14, 2022**

ITEM 3 – 41 Route 236 – Preliminary Site Plan Review

Action: accept plan as complete; set site walk; set public hearing; continue, approve, or deny plan. Pursuant to 16.4 *Land Use Regulations*, 16.4.20 *Special Exception Use Request*, 16.5.32 *Marijuana Business*, and 16.7 *Site Plan Review* of the Town of Kittery Land Use and Development Code, owner LaPierre Properties, LLC and applicant Well Field 44, LLC with agent Attar Engineering, Inc. requests approval for a special exception use to construct a 1,034-sf Marijuana Business with appurtenant infrastructure and a wetland alteration of 3,001-sf, located on real property with the address of 41 Route 236, Tax Map 29, Lot 1, in the Commercial 2 (C-2) zoning district.

PROJECT TRACKING

REQ'D	ACTION	COMMENTS	STATUS
No	Sketch Plan	Accepted May 26, 2022	N/A
YES	Site Visit		TBD
YES	Preliminary Plan Review Completeness/Acceptance	TBD July 14, 2022	Pending
YES	Public Hearing		TBD
YES	Preliminary Plan Approval		TBD
YES	Final Plan Review and Decision		TBD

Project Introduction

41 Route 236 (“Project”) is situated in the Commercial-2 (C-2) and Residential-Suburban (R-S) zoning districts with the majority being in the C-2 zone. The 4.45-acre lot fronts Route 236 from the west and is abutted by vacant lots, single-family residential, and commercial uses. The natural characteristics in and around the site consist of wetlands and forested areas. The Board reviewed plans for this site earlier this year but due to substantial changes, this plan is offered as sketch. The lot has significant wetlands (see Michael Cuomo’s letter to Brian Neilson, dated November 23, 2021), and a portion was filled to accommodate its current use as boat storage. The boat storage use received approval in 2009 from both the Town Code Enforcement Officer and Maine Department of Environmental Protection (“MDEP”). The MDEP approval was in the form of a ‘stormwater permit by rule’, as the applicant altered less than 4,300-sf of wetland and the Town approval was through the Business Use Change application process.

The submitted preliminary plan proposes to redevelop the current boat yard storage use to a Marijuana Business, specifically an adult use retail marijuana store. The proposed use is a special exception use, which requires the Board to consider additional review criteria as found 16.7.10.D *Review Process and Submission*

30 *Requirements* and 16.2.12.F *Basis of decision*. The applicant is proposing to build a 1,035-sf retail store
 31 with 8 on-site parking spaces and 12 overflow parking spaces on the adjoining property to the south (see
 32 letter from Darren LaPierre to Brandon Pollock dated April 24, 2022). The existing roadway now used for
 33 access will become one-way to service the off-site overflow parking. The existing curb cut into the lot will
 34 be abandoned and a new curb cut proposed to provide safer access to the lot. Both public water and sewer
 35 will be utilized and stormwater infrastructure is proposed to manage runoff from the proposed impervious
 36 surface. In order to provide the new access, approximately 3,001-sf of wetlands are proposed to be altered
 37 (filled).

38 A sketch site plan was reviewed and accepted by the Planning Board at their May 26, 2022 meeting. The
 39 sketch plan phase allows the Board to: 1) determine if sufficient information has been supplied, and if not
 40 request the information, 2) to ask questions and 3) give direction to the applicant. If the Board finds the
 41 application insufficient, the Board should request information to provide for the next meeting. Moreover,
 42 the Board needs to determine if the wetland alteration as proposed is permissible.

§16.3 Definitions	
Term	Definition
Wetland	Areas that under normal circumstances have hydrophytic vegetation, hydric soils and wetland hydrology, as determined in the Corps of Engineers Wetlands Delineation Manual — Waterways Experiment Station Technical Report Y-87-1, January 1987" (1987 manual). This definition of wetland is based on the 1987 manual and is not subject to further revisions and/or amendments.
Wetland Alteration	Filling, dredging, removal of vegetation, muck or debris, draining or otherwise changing the hydrology; construction or repair of a structure. On a case-by-case basis and as determined by the Planning Board, the term "alteration" may exclude: A. An activity of installing a fence post or planting shrubs by hand; B. Alteration of an existing structure such as a bench or handrail; and C. The construction, repair or alteration of a structure with minimal impact such as a nesting box, pasture fence or staff gauge.

43

44 **Staff Review**

45 *Plan Review Requirements:*

46 This preliminary plan submittal meets Preliminary Plan Review requirements (§16.7.10.C(4)), Land
 47 Use Zone dimensional requirements (§16.4.20), parking requirements (§16.7.11.F), and the land-use
 48 based marijuana business requirements (§16.5.32):

- 49 • Lot size exceeds the 20,000-sf required.
- 50 • Frontage meets the minimum requirement (150 ft).
- 51 • Setbacks are met for the C-2 zone (50 ft front, 30 feet side and rear).
- 52 • Parking meets the minimum on-site requirements (1 space per 175 sf gross floor area for retail),
 53 providing 8 spaces (including 1 handicapped space) where approximately 6 are required (1034 sf
 54 gross floor area / 175 = 5.9 spaces required). *ADDITIONAL PARKING ANALYSIS BELOW*
- 55 • The proposed building is set 100 feet back from the edge of the wetlands.
- 56 • Water and wastewater connections are shown.
- 57 • Stormwater infrastructure are shown on the plans but have yet to be reviewed by the Town’s peer
 58 review engineer.
- 59 • The proposed exterior wall of the building is greater than 1,000 feet from the daycare on Route

- 60 236.
- 61 • Area of customer access is 401 sf which is 1 foot greater than the minimum required (400 sf).
 - 62 • Building floor plans and elevations were submitted and appear to meet the square footage
 - 63 requirements for the use and the minimum design standards from the Kittery Design Handbook.
 - 64 • A lighting plan was included on the Grading & Utilities Plan, showing pole-mounted full-shield
 - 65 fixtures. However, no lighting is shown on the proposed sidewalk along the exit driveway.

66 *Off-Site Parking:*

67 The applicant proposes additional off-site parking to accommodate overflow from the on-
68 site spaces provided, and has included a letter from the adjacent property owner. Providing
69 off-site parking appears to be a benefit considering the use is thought to be quite popular
70 (at least early on). Per 16.7.11.F.(4).(j):

71 *Required off-street parking in all commercial, business and industrial zones must*
72 *be located on the same lot with the principal building or use, or within 100 feet*
73 *measured along lines of public access; except that, where off-street parking cannot*
74 *be provided within these limits, the Board of Appeals may permit such off-street*
75 *parking to be located a reasonable distance from the principal building or use,*
76 *measured along lines of public access. Such parking areas must be held under the*
77 *same ownership or lease, and evidence of such control or lease is required. Such*
78 *lots must be located within business or industrial districts.”*

79 Are the adjacent spaces provided located within 100 feet of the principal building or use?
80 Staff questions whether providing off-site parking constitutes an extension of the use,
81 which in this case is highly regulated and is granted to a specific property address via the
82 concluded lottery process. Or is the marijuana retail use still contained to the principal
83 building or lot, and the owners are simply allowed to avail themselves of certain off-site
84 parking flexibility that might be granted to any use per Title 16? Staff has reached out to
85 the Town attorney but does not yet have an answer at the time this review was published.

86 *Traffic Analysis:*

87 The applicant has provided a traffic analysis from Seawall, a traffic engineering firm.
88 Seawall contends that the trip generation of a retail marijuana use does not rise to the
89 threshold required for a traffic movement permit (TMP) from the Maine Department of
90 Transportation (MDOT). The analysis was submitted to MDOT but staff is unaware of any
91 answer as of July 8, 2022. Additionally, staff believes that if the existing exit drive to the
92 adjacent property is to be utilized, the curb cut on Route 236 where that driveway meets
93 the adjacent property should be closed. The applicant should be prepared to discuss.

94 Further, Seawall indicates there are no capacity concerns along Route 236 but recommends
95 a 25-foot right turn lane into the site to allow right-turning (southbound) vehicles access to
96 the site without impacting southbound traffic flow. No such right-turn lane is depicted on
97 the preliminary plan. Also, Seawall states there is a need to study left-turning movements
98 (northbound) from Route 236 into the site to determine if a future left turn lane might be
99 warranted. The Planning Board should ask the applicant about this and discuss.

100 *Wetland Alteration:*

101 The existing site contains wetlands on nearly all sides of the current boat yard use, which
102 is itself situated on wetland fill. The wetlands were delineated by Michael Cuomo, Maine
103 Soil Scientist, on November 22, 2021. The applicant proposed impacts to the existing
104 wetlands in order to construct a new driveway entrance from Route 236. This would impact
105 1,367 square feet of wetlands. Another wetland impact would be to 845 square feet in order
106 to widen the existing drive connecting to the adjacent property. In total, the applicant
107 proposes to impact 2,212 square feet of wetland impacts. The applicant will be required to
108 gain DEP approval and pay wetland impact fees to the Town and State, if approved.

109 However, the applicant also proposes to remove 10,500 square feet of previous fill on the
110 western edge of the property. This is the area that was previously filled for the boat yard
111 use. Staff believes this is a positive action that could have benefits to abutting properties.
112 The Planning Board should inquire what wetland restoration activities or mitigate plans the
113 applicant proposes to insure the improved health of this wetland.

114 The applicant includes a letter from Maine DEP indicating no significant impacts to New
115 England cottontail rabbits from this project. Staff has provided the Beginning with Habitat
116 map for further reference. Does the applicant contend there is no further need for Natural
117 Resources Protection Act (NRPA) permitting?

118 Additionally, Mr. Cuomo – the soil scientist – suggested the applicant have the site
119 investigated for vernal pools in the spring at two locations: one in the northern area of the
120 lot and one along the southern boundary. Mr. Cuomo did return to investigate but not until
121 June 7, 2022, which is outside the vernal pool evaluation season. The applicant has thus
122 labeled these areas “potential vernal pools.” The applicant states that Maine DEP
123 guidelines allow up to 25% disturbance within a 250-foot boundary of vernal pools of
124 special significance and that the proposed project disturbs less than that threshold. Staff
125 would like more information on how much disturbed area is within the 250-foot buffer of
126 each “potential” vernal pool, and should be prepared to discuss this with the Planning
127 Board.

128 *Additional Review Items:*

129 Planning Department staff have not yet held a Technical Review Committee meeting with
130 Town department heads. This is typically scheduled during the preliminary plan review
131 public hearing stage.

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133 **Next Steps**

134 The Board voted to accept the sketch plan at the May 26, 2022 meeting. The applicant has applied for
135 Preliminary Site Plan Review along with a Wetland Alteration.

136 The Board will want to consider whether the preliminary plan appears to be complete enough to accept,
137 that the plan generally meets the Title 16 standards, and that questions have been answered or will be

138 answered during subsequent reviews or meetings. If the Board is satisfied, the Board may wish to vote to
139 accept the application and plans. The Board should also decide whether or not a site walk will take place
140 or when a public hearing is to be scheduled. A Major Site Plan requires a public hearing to be held after a
141 preliminary plan is accepted, so the Planning Board will need to determine when that is scheduled.

142 The applicant's letter states a request for three waivers from Plan Requirements:

- 143 - Waiver from providing Plan Requirement §16.7.10C(4)(k)[3]: Sewage facilities type and
144 placement. Test pit locations, at least two of which must meet the State of Maine Plumbing Code
145 requirements, must be shown;
- 146 - Waiver from providing Plan Requirement §16.7.10C(4)(k)[9]: Machinery permanently installed
147 locations likely to cause appreciable noise at the lot lines;
- 148 - Waiver from providing Plan Requirement §16.7.10C(4)(k)[10]: Raw, finished or waste materials
149 to be stored outside the buildings, and any stored material of a toxic or hazardous nature;

150 The applicant further states that the above are not applicable to the site as the proposed use will be connected
151 to public sewer, will not have machinery installed, nor will have raw materials stored outside the buildings.
152 Staff does not believe that omitting Plan Requirements that are not applicable requires a waiver from the
153 Planning Board but supports the above waiver requests nonetheless.

154

155 **Recommended Motions**

156 *Motion to accept the preliminary plan:*

157 Move to accept the preliminary plan application by owner LaPierre Properties, LLC and applicant Well
158 Field 44, LLC, requesting approval for a special exception use to construct a 1,034-sf Marijuana Business
159 with appurtenant infrastructure and a wetland alteration of 3,001-sf, located on real property with the
160 address of 41 Route 236, Tax Map 29, Lot 1, in the Commercial 2 (C-2) zoning district.

161 *Motion to accept the preliminary plan with conditions:*

162 Move to accept the preliminary plan application by owner LaPierre Properties, LLC and applicant Well
163 Field 44, LLC, requesting approval for a special exception use to construct a 1,034-sf Marijuana Business
164 with appurtenant infrastructure and a wetland alteration of 3,001-sf, located on real property with the
165 address of 41 Route 236, Tax Map 29, Lot 1, in the Commercial 2 (C-2) zoning district with the condition(s)
166 [conditions to follow].

167 *Motion to continue the sketch plan:*

168 Move to continue the preliminary plan application by owner LaPierre Properties, LLC and applicant
169 Well Field 44, LLC, requesting approval for a special exception use to construct a 1,034-sf Marijuana
170 Business with appurtenant infrastructure and a wetland alteration of 3,001-sf, located on real property with
171 the address of 41 Route 236, Tax Map 29, Lot 1, in the Commercial 2 (C-2) zoning district

172 *Motion to schedule site walk:*

173 Move to schedule a site walk on ____ (insert date) ____ at ____ (insert time) ____ on real property
174 with the address of 41 Route 236, Tax Map 29, Lot 1, in the Commercial 2 (C-2) zoning district

175 in regards to the Marijuana Business and wetland alteration application submitted by owner
176 LaPierre Properties, LLC and applicant Well Field 44, LLC.

177 *Motion to schedule a public hearing:*

178 Move to schedule a public hearing at the _____, 2022 Planning Board meeting for
179 owner LaPierre Properties and applicant Well Field 44, LLC, requesting for approval for a special
180 exception use to construct a 1,034-sf Marijuana Business with appurtenant infrastructure and a
181 wetland alteration of 3,001-sf, located on real property with the address of 41 Route 236, Tax Map
182 29, Lot 1, in the Commercial 2 (C-2) zoning district.

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