

**Town of Kittery
Planning Board Meeting
May 12, 2022**

ITEM 2— 460 US Route 1—Site Plan Modification

Action: Accept application as complete; and vote on plan application; Pursuant to §16.3.23 *Mixed-Use*, §16.7 *Site Plan Review and* of the Town of Kittery Land Use and Development Code, the Planning Board shall consider a site plan modification application from applicant PigPenPartners and agent Civil Consultants requesting approval to construct 10,000-sf outdoor dining space with a 180-sf outdoor bar and converting 360-sf of customer access space within the restaurant to employee space on real property with an address of 460 U.S. Route 1 (Tax Map 61, Lot 27A) located in the Mixed-Use (MU) Zone and Shoreland (OZ-SL-250) and Resource Protection (OZ-RP) Overlay Zones.

REQ'D	ACTION	COMMENTS	STATUS
NO	Sketch Plan	N/A	Not Applicable
NO	Site Visit	TBD	TBD
YES	Completeness/Acceptance	May occur on May 12, 2022	TBD
No	Public Hearing	TBD	TBD
YES	Final Plan Review and Decision	May occur on May 12, 2022	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 16.4.4.13 - 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.

Project Introduction

The property of 460 US Route 1 is located in the Mixed-Use (MU) zoning district in addition to Resource Protection (OZ-RP) and Shoreland (OZ-SL-250') Overlay Zones. The lot size is approximately 11 acres The 1,140 ft frontage is along US Route 1. Existing structures on the lot include a restaurant and retail store with associated parking infrastructure and accessory facilities, which were approved by the Planning Board in 2010. Existing natural features consist of large swaths of forested lands and wetlands greater than an acre in size. Abutting the lot is a long-term nursing care facility and a lot with a single-family dwelling unit. Across US Route 1 is the Homestead development (under construction) and to the south is Lewis Road.

The proposed site plan modification intends to construct a 10,000 sf outdoor seating area with a 180 sf bar while removing 360 sf of customer access space within the existing restaurant as well as eliminating an overflow parking area via revegetation. The purpose of this plan is to permit the outdoor seating area, which is expressly authorized under the provision of §16.5.20. Due to the pandemic, the applicant has had two-years to test the outdoor seating area and has found it to be a great asset. However, in order for the area to continue to be used as is, the Board must review and approve the application.

The application currently before the Board is a site plan modification request. This type of application does not require sketch or preliminary review, nor is a site walk or public hearing required. If the Board finds that all the requirements are met, it can move to a final vote. Below are the applicable standards for this proposed development.

Code Ref.	§16.4.23 Mixed-Use (MU)	
	Standard	Comment
§16.4.23.D(2)(a)	Minimum lot size: [1] Lots with frontage on Route 1: 200,000-sf. [2] Lots without frontage on Route 1: 80,000-sf.	This standard appears to be satisfied as the lot is approximately 11 acres in size.
§16.4.23.D(2)(b)	Minimum street frontage: On Route 1: 250-ft. [1] Other Streets: 150-ft.	This standard appears to be satisfied as frontage is over 1,000 feet.
§16.4.23.D(2)(c)	Minimum front setback: 30-ft.	The modification (outdoor dining) is not located within the setback.
§16.4.23.D(2)(d)	Minimum rear and side setbacks: 30-ft.	The modification (outdoor dining) is not located within the setbacks.
§16.4.23.D(2)(e)	Maximum building height: 40-ft.	This standard appears to be satisfied as the building is less than two stories tall.
§16.4.23.D(2)(f)	Maximum height above grade of building-mounted signs: 40-ft.	This standard appears to be satisfied and is not applicable to the modification.
§16.4.23.D(2)(h)	Minimum setback from streams, water bodies and wetlands: in accordance with Table 16.9, § 16.3.2.17 and Appendix A, Fee Schedules.	This standard appears to be satisfied per previous permits and approvals. The modification – an outdoor dining area - is located between the street and the existing building.
§16.4.23.D(2)(i)	Buffer to neighboring lot with an existing residence within 100 feet of the lot line: 40-ft.	This standard appears to be satisfied as the outdoor dining area is located well beyond 100 feet from all lot lines.
§16.4.23.D(4)	Mixed-use requirement. The Mixed-Use Zone is intended for the creation of an area in the Town that has a mix of uses and in which no single type of use predominates. To this end, larger scale projects must incorporate a mix of principal uses into the development. Any new development that creates more than 20,000 square feet of gross floor area must include at least two principal uses as set forth in the list of permitted uses and special exceptions. To fulfill this requirement, the smaller use or combination of smaller uses must contain at least 10% of the gross floor area. The combination of retail uses that are permitted uses and one larger retail use allowed as a special exception does not fulfill this requirement. This provision does not apply to the development of a single lot of record as of April 1, 2004, that has a lot area of less than 200,000 square feet.	This standard appears to be satisfied as the existing bakery and restaurant are the two primary uses. The outdoor dining area will provide supplemental dining space to the restaurant.
§16.4.23.D(5)	All new parking areas must be located at the side of, and/or to the rear of, principal buildings. Where unique circumstances exist and it is demonstrated to the Planning Board that prohibition of parking in front of the principal building is not practicable, with the Board's approval, 10 or fewer parking spaces may be located closer to the front lot line than a principal building. All new or altered parking must be visually screened from U.S. Route 1, Lewis Road, Cutts Road, and Haley Road by extensive landscaping, earthen berms, and/or fencing (see Design Handbook for examples of acceptable screening).	This standard appears to be satisfied since the applicant is not adding parking area surface, merely restriping to add one space (aisle standards are met) to the east of the building to meet the parking requirements associated with the outdoor dining area while removing 360 feet from the restaurant's indoor dining floor space.
§16.4.23.D(7)(a)	Landscape planter strip. A vegetated landscape planter strip 30 feet in depth (as measured from the edge of the property line) must be provided along the length of all developed portions of a parcel that are adjacent to a street right-of-way. The planter strip must include the following landscape elements...:	The outdoor dining area does not encroach into the space designated for the planter strip. The landscaping shown on these plans appears to be the landscaping approved in 2010.
§16.4.23.D(7)(a) [1]	Ground cover. The entire landscape planter strip must be vegetated except for approved driveways, walkways, bikeways, and screened utility equipment.	See above - the standard appears to be met.
§16.4.23.D(7)(a) [2]	Streetside trees. A minimum of one street tree must be planted for each 25 feet of street frontage. The trees may be spaced along the frontage or grouped or clustered to enhance the visual quality of the site (see Design Handbook for examples). The trees must be a minimum 2.5 inch caliper, and be at least 12 feet high at the time of planting. The species should be selected from the list of approved street trees in the Design Handbook. Existing large healthy trees must be preserved if practical and will count toward this requirement.	The outdoor dining area does not have additional street tree requirements. Existing street trees are shown on the plan.

§16.4.23.D(7)(a) [3]	Planter strip. Shrubs and flowering perennials must be planted at a minimum of 10 plants per 40 linear feet of street frontage unless existing woodlands are being retained or such planting is inconsistent with the retention of rural landscape features. The plant material should be selected from the list of approved materials in the Design Handbook. The plants must be placed within the planter strip to enhance the visual character of the site and augment natural features and vegetation (see Design Handbook for examples of appropriate treatments).	The outdoor dining area does not have additional planter strip requirements. Existing tree locations are shown on the plans. The landscaping shown appears to have been the landscaping approved in 2010 based on a landscaping plan found in the file for this property.
§16.4.23.D(7)(a) [4]	[b] Depth of landscape planter strip. In instances where the required average depth of the landscape planter strip is legally utilized, in accordance with previous permits or approval, for parking, display, storage, building, or necessary vehicle circulation, the depth may be narrowed by the Planning Board to the minimum extent necessary to achieve the objective of the proposed project, provided that the required shrubs and perennials are planted along the street frontage to soften the appearance of the development from the public street. If providing the required landscape planter strip along with other required landscaping and required vegetated areas in and around wetlands would cause the project to exceed the required open space standards, the depth of the landscape planter strip and the front yard may be reduced by the Planning Board so that the open space standards are not exceeded, but in no case to less than 20 feet for this reason.	Not applicable.
§16.4.23.D(7)(b)	Buffer area. Where buffering is required, it must provide a year-round visual screen to minimize adverse impacts and screen new development (see Design Guidelines for examples of appropriate buffers for various situations), and may consist of fencing, evergreens, retention of existing vegetation, berms, rocks, boulders, mounds or combinations thereof. Within three growing seasons, the buffer must provide a year-round screen at least eight feet in height or such lower height as determined by the Planning Board to be appropriate for the situation. Buffer areas must be maintained and kept free of all outdoor storage, debris, and rubbish. The width of the buffer area may be reduced by the Planning Board if the function of the buffer is still fulfilled.	Not applicable – the developed area is surrounded on all sides except the front by wetlands and wooded areas.
§16.4.23.D(7)(d)	Lighting. Outdoor lighting must provide the minimum illumination needed for the safe use of the site while enhancing the nighttime visual character of the site. Lighting must conform to the standards for outdoor lighting in Chapter 16.7.11.H.	This standard appears to be satisfied as the applicant is proposing that the outdoor bar will be lit and the dining area is roped off with zposts that will each have a small light. Since this outdoor dining area is seasonal and close of business is 8:30 pm, there will not be a lot of lighting required.
§16.4.23.D(7)(e)	Outdoor service and storage areas. Service and storage areas must be located to the side or rear of the building. Facilities for waste storage such as dumpsters must be located within an enclosure and be visually buffered by fencing, landscaping, and/or other treatments (see Design Handbook for examples of appropriate buffering).	The outdoor dining area has no additional needs related to service and storage areas. This standard appears to be satisfied as these service areas are located behind the building.
§16.4.23.D(8)	Sidewalks and roadways must be provided within the site to internally join abutting properties that are determined by the Planning Board to be compatible. In addition, safe pedestrian route(s) must be provided to allow pedestrians to move within the site and between the principal customer entrance and the front lot line where a sidewalk exists or will be provided or where the Planning Board determines that such a route is needed for adequate pedestrian safety and movement.	The stone dust walkway to the new outdoor dining area is shown along with the proposed pedestrian crossing. Pedestrians will continue to enter from the parking to the east, walk along the front of the building, use the crosswalk and then walk over grass to the path. An additional crossing will be located on the west side of the building for servers and restaurant employees to use. Both crossings will be striped as such and have signs (see Sheet C3 Notes & Details)
§16.4.23.D(9)	Open space standards. Open space must be provided as a percentage of the total area of the lot, including freshwater wetlands, water bodies, streams, and setbacks. Thirty-five percent of each lot must be designated as open space. Required open space must be shown on the plan with a note dedicating it as “open space.”	Open space standards are met and shown on the plans.

§16.4.23.D(9)(b)	The open space must be located to create an attractive environment on the site, minimize environmental impacts, protect significant natural features or resources on the site, and maintain wildlife habitat. Where possible, the open space must be located to allow the creation of continuous open space networks in conjunction with existing or potential open space on adjacent properties.	See preceding comment. The applicant is proposing to abandon an overflow parking area and reseed with Kentucky bluegrass and perennial rye grass. There was discussion at the last meeting about pollinator friendly/native plants, but given the area is surrounded by lawn, the applicant proposes to blend the former parking area into its surroundings.
§16.4.23.D(9)(c)	[1] Cases where integrating open space would require exceeding the open space standards. In cases where the topography, wetlands, and existing development on the lot dictates that more than 75% of the required open space be located outside the front portion of the lot, a percentage of the open space normally required in the front portion of the lot may be shifted to the rear portion of the lot in order to achieve the required amount of vegetated open space and not reduce the allowable developable area on the lot, provided minimum landscaping standards are satisfied.	The outdoor dining area does not have additional open space requirements and this requirement is met by the existing development.
Code Ref.	§16.5.20 Outdoor Dining	
	Standard	Comment
§16.5.20.A(1)(a)	Within the buildable lot area in all zoning districts where restaurants are allowed as either a permitted or a special exception use;	Restaurants are a permitted use in the Mixed-Use zone.
§16.5.20.A(1)(b)	Within the front, side and/or rear yards (setbacks) of the C-1, C-2, C-3, B-L, B-L1, MU, MU-BI, MU-KF and MU-N zones where such a setback does not abut a residential use; and	Applicant has provided engineered and land surveyed quality plat plans. This standard appears to be satisfied.
§16.5.20.B(1)	Outdoor dining on-site must meet all the requirements of the pertinent zone's buffering and screening requirements.	The outdoor dining area meets this standard as there are wooded areas and wetlands on both sides and the dining area is situated well away from both side lot lines.
§16.5.20.B(2)	Proposed outdoor dining on-site must comply with all conditions pertaining to any existing variances, special exceptions or other approvals granted for the property as well as any conditions imposed by the granting of the site plan review approval for the outdoor dining itself.	The landscaping provided and shown on the site plans appears to be the same as the landscaping that was likely approved in 2010.
§16.5.20.B(3)	All the proposed outdoor dining activities must be conducted on private property owned, leased or otherwise controlled by the applicant unless separate approval for the use of any public rights-of-way has been obtained from the Town.	This standard is satisfied.
§16.5.20.B(4)	The proposed outdoor dining must not impede a site's internal circulation or its access and egress.	This standard appears to be satisfied.
§16.5.20.B(5)	No additional parking is required for outdoor dining at existing restaurants where on-street parking is available. For outdoor dining areas in existing restaurants where on-street parking is not available, if the outdoor dining area is 1,000 square feet or less, no additional parking is required. For outdoor dining areas in existing restaurants over 1,000 square feet but less than 2,000 square feet, one additional parking space is required. Thereafter, one additional parking space is required for every additional 1,000 sf.	This standard appears to be satisfied; based on the size of the outdoor seating and the parking calculations under Notes on Sheet C1 Additional material submitted indicates that seating is limited to 124.
§16.5.20.C(1)	The site plan must be drawn to scale, showing the dimensions of the proposed outdoor dining area, and its location relative to the structure where the restaurant is located.	This standard appears to be satisfied.

§16.5.20.C(2)	The site plan must show the location of any proposed or existing pavement, hardscaping, landscaping, planters, fencing, canopies, umbrellas, awnings or barriers surrounding or delineating the outside dining area.	This standard appears to be satisfied as the site plan seems complete, including the roped off area proposed for outdoor dining.
§16.5.20.C(3)	Calculations demonstrating the number of tables that may be placed within the proposed outdoor dining area according to state and local regulations must be submitted.	This standard is satisfied; as at the meeting on April 14, the applicant stated that 16 picnic tables seating 3-6 people, 4 small party tables seating 2-4 and 10-12 seats at the bar would be placed. This information is also included in the cover letter material submitted by the applicant. With an outdoor dining area of 10,000 square feet, there is over 80 sf per seat using the stated maximum capacity of 124 seats. The standard is 15 feet per seat. See Condition of Approval Notes to be added to the final plan.
§16.5.20.C(4)	For outdoor dining areas that must be reviewed under site plan review, the above requirements must be met in addition to the submission requirements of §16.7 unless a submission requirements waiver is granted by the Planning Board.	This standard appears to be satisfied. See this section's comments.
Code Ref.	Stormwater and Surface Drainage	
	Standard	Comment
§16.7.11.C	Adequate provision must be made for drainage of all stormwater generated with the development and any drained groundwater through a management system of natural and constructed features. Where possible, existing natural runoff control features, such as berms, swales, terraces and wooded areas must be retained to reduce runoff and encourage infiltration of storm waters. Otherwise, drainage may be accomplished by a management system of constructed features such as swales, culverts, underdrains and storm drains	It is possible that the area proposed for outdoor dining might become somewhat compacted over time with possible loss of vegetative cover. However, the outdoor dining area is within a large grassed area and the applicant intends to reseed as necessary during off-season when the outdoor dining area is not being used to maintain that vegetated cover. See also the notes from the applicant's engineer.
Code Ref.	Post-Construction Stormwater Management	
	Standard	Comment
§16.7.11.D(3)(b)	Exception. This section does not apply to new development or redevelopment on a lot, tract or parcel where that lot, tract or parcel is part of a subdivision that has received approval of its post-construction stormwater management plan and stormwater management facilities under the Town's subdivision or other zoning, planning or other land use ordinances; said lot, tract or parcel will not require additional review under this section but must comply with the post-construction stormwater management plan for that approved subdivision.	This standard does not apply to such a minor modification that doesn't include any additional impervious surface.
Code Ref.	Parking and Loading	
	Standard	Comment
§16.7.11.F(4)(d)	<ul style="list-style-type: none"> Retail stores and financial institutions: 1 parking space for each 175 square feet of gross floor area Restaurant: 1 parking space for each three seats. Seating is calculated by dividing the total floor area with customer access by 15 	It appears that the proposed uses and their corresponding parking requirements are in compliance with the code. The applicant has submitted the amount of outdoor seating – 124 seats in total. Outdoor dining as noted in the Outdoor Dining section above has its own parking requirements.
Other Issues/Comments		
	<ul style="list-style-type: none"> The overflow parking will be reseeded with grass species per the plan notes. 	

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35 Next Steps

36 If all the outstanding issues as described above or discovered during the meeting are resolved to the Board's satisfaction,
37 the Board will want to consider voting to accept and approve the application. Staff recommends approval based on the
38 submission materials provided for this meeting. If an issue does arise, staff recommends considering conditional approval.

40 Recommended Motions

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

43 *Motion to accept application as complete*

44
45 Move to accept the site plan modification application from applicant PigPenPartners and agent Civil Consultants requesting
46 approval to construct 10,000-sf outdoor dining space with a 180-sf outdoor bar and converting 360-sf of customer access
47 space within the restaurant to employee space on real property with an address of 523 U.S. Route 1 (Tax Map 61, Lot 27A)
48 located in the Mixed-Use (MU) Zone and Shoreland (OZ-SL-250) and Resource Protection (OZ-RP) Overlay Zones.

50 *Motion to approve the site plan modification application with conditions:*

51
52 Move to approve the site plan modification application from applicant PigPenPartners and agent Civil Consultants
53 requesting approval to construct 10,000-sf outdoor dining space with a 180-sf outdoor bar and converting 360-sf of customer
54 access space within the restaurant to employee space on real property with an address of 460 U.S. Route 1 (Tax Map 61,
55 Lot 27A) located in the Mixed-Use (MU) Zone and Shoreland (OZ-SL-250) and Resource Protection (OZ-RP) Overlay
56 Zones with the condition that a note be added to the plan stating the maximum amount of seating as 124 and that an
57 occupancy sign be added to the outdoor dining area stating this maximum.

59 *Motion to approve the site plan modification application with additional condition(s):*

60 Move to approve the site plan modification application from applicant PigPenPartners and agent Civil Consultants
61 requesting approval to construct 10,000-sf outdoor dining space with a 180-sf outdoor bar and converting 360-sf of customer
62 access space within the restaurant to employee space on real property with an address of 460 U.S. Route 1 (Tax Map 61,
63 Lot 27A) located in the Mixed-Use (MU) Zone and Shoreland (OZ-SL-250) and Resource Protection (OZ-RP) Overlay
64 Zones with the condition that 1) a note be added to the plan stating the maximum amount of seating as 124 and 2) that an
65 occupancy sign be added to the outdoor dining area stating this maximum and 3) *add the additional condition(s)*.

Kittery Planning Board
Findings of Fact
For 460 US Route 1
Site Plan Modification Review

UNAPPROVED
M 61 L 27A

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: applicant PigPenPartners and agent Civil Consultants requests approval to construct 10,000-sf outdoor dining space with a 180-sf outdoor bar and converting 360-sf of customer access space within the restaurant to employee space on real property with an address of 460 U.S. Route 1 (Tax Map 61, Lot 27A) located in the Mixed-Use (MU) Zone and Shoreland (OZ-SL-250) and Resource Protection (OZ-RP) Overlay Zones.

Hereinafter the “Development”.

Pursuant to the Plan Review meetings conducted by the Planning Board as noted in the Plan Review Notes dated 5/12/2022;

REQ'D	ACTION	COMMENTS	STATUS
NO	Sketch Plan	N/A	Not Applicable
NO	Site Visit	TBD	TBD
YES	Completeness/Acceptance	April 14, 2022	COMPLETE
NO	Public Hearing	TBD	TBD
YES	Final Plan Review and Decision	May occur on April 14, 2022	TBD

and pursuant to the Project Application and Plan and other documents considered to be a part of the approval by the Planning Board in this finding consist of the following and as noted in the Plan Review Notes dated 5/12/2022 (Hereinafter the “Plan”).

1. Modification Application and Site Plan, Civil Consultants, dated 3/14/2022, with revisions dated 4/14/22, 4/26/22 and 4/27/22
2. Stormwater Analysis, Civil Consultants, dated: Not applicable to this modification

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 as required by Section §16.7.10(5)(b) and as recorded below:

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:

[1] 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: The proposed development conforms to Title 16 as the proposed outdoor dining area meets the parking, setback, buffering/screening and circulation requirements pertinent to outdoor dining as well as pertinent site plan review requirements

Conclusion: This standard appears to be met.

Vote of __ in favor __ against __ abstaining

[2] Water Supply Sufficient.

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

Finding: The proposed development for an outdoor seating area is not proposing any additional water supply infrastructure.

Conclusion: This standard appears to be met.

Vote of __ in favor __ against __ abstaining

[3] 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 for an outdoor seating area is not proposing any additional sewer infrastructure. Further, an additional 124 seats as proposed will not necessitate the improvement of the existing onsite sewer facilities.

Conclusion: This standard appears to be met.

Vote of __ in favor __ against __ abstaining

[4] Stormwater Managed.

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

Finding: The proposed development appears to not increase the existing and permitted run-off rate.

Conclusion: This standard appears to be met.

Vote of __ in favor __ against __ abstaining

[5] 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 has demonstrated that it will not case unreasonable congestion and unsafe conditions onto public ways and will provide for adequate on-and off-site traffic circulation.

Conclusion: This standard appears to be met.

Vote of ___ in favor ___ against ___ abstaining

[6] 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 demonstrated that internal vehicular circulation will be safe, adequate loading and service areas are provided, and the requisite number of parking spaces based on the proposed regulated uses are offered.

Conclusion: This standard appears to be met.

Vote of ___ in favor ___ against ___ abstaining

[7] 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: The proposed development is not constructing additional utilities to accommodate the new use of the lot.

Conclusion: This standard appears to be met.

Vote of ___ in favor ___ against ___ abstaining

[8] 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: It appears the proposed development will not cause any unreasonable soil erosion. However, concerning stormwater run-off, the proposed outdoor dining will require proper management to ensure vegetative cover continues to be maintained. To off-set any effects from the outdoor dining area, the existing overflow parking is to be revegetated, which will assist infiltration and reduce the velocity of stormwater flow.

Conclusion: This standard appears to be met.

Vote of ___ in favor ___ against ___ abstaining

[9] 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

[10] 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: It appears that all freshwater wetlands have been identified on the site plan.

Conclusion: This standard appears to be met.

Vote of ___ in favor ___ against ___ abstaining

[11] 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.

Conclusion: This standard appears to be met.

Vote of ___ in favor ___ against ___ abstaining

[12] 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

[13] 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 describe in the standard.

Conclusion: This standard appears to be met.

Vote of __ in favor __ against __ abstaining

[14] 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.

Conclusion: This standard appears to be met.

Vote of __ in favor __ against __ abstaining

[15] 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

[16] 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 to effectuate the project.

Conclusion: This standard appears to be met.

Vote of __ in favor __ against __ 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: None.

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

1. No changes, erasures, modifications or revisions may be made to any Planning Board approved final plan. (Title §16.7.12.C).
2. Seating within the outdoor dining area is limited to 124 seats per this plan. Any proposed additional seating must be reviewed and approved by the Code Enforcement Officer.
3. A maximum occupancy sign (124) for the outdoor seating area is required and can be hung at the entrance of the outdoor dining area. If that location is not possible, it can be hung on the outdoor bar.
4. 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.
5. 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.
6. Excluding the changes made under this site plan modification approval, all other conditions of the originally approved application remain in effect,
7. All Notices to Applicant contained in the Findings of Fact (dated: 5/12/2022).

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

1. Incorporate any plan revisions on the modification 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 May 12, 2022

Dutch Dunkelberger, Planning Board Chair

Appeal:

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.