

Town of Kittery Planning Board Meeting February 24, 2022

ITEM 7—35 Tilton Avenue—Medical Marijuana Registered Caregiver Home Establishment

Action: Continue to a subsequent meeting, or vote on application. Pursuant to §16.3.2.4 Residential-Urban, §16.8 Design and Performance Standards for Built Environment and §16.10.11 Medical Marijuana Registered Caregiver Home Establishment of the Town of Kittery Land Use and Development Code, the Planning Board shall review an application from applicant Delta Lab, LLC requesting approval for a special exception to operate a Medical Registered Caregiver Home Establishment on real property with an address of 35 Tilton Ave. (Tax Map 16, Lot 178) located in the Residential-Urban (R-U) Zone.

PROJECT TRACKING

REQ'D	ACTION	COMMENTS	STATUS
No	Sketch Plan	Not Pursued	N/A
No	Site Visit	November 4, 2021	HELD
No	Public Hearing	November 18, 2022; and January 27, 2022	HELD
Yes	Final Plan Review and Decision	May occur on February 24, 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 application before the Planning Board (“Board”) proposes a Medical Marijuana Registered Caregiver Home Establishment (“Home Establishment”) on real property with an address of 35 Tilton Avenue. The subject property is a signal-family dwelling unit within the Residential-Urban zone. In addition to the dwelling unit, there is a garage and a shed on the property in close proximity to each other. Surrounding the subject property and along Tilton Avenue are signal-family dwelling units. To the Town’s knowledge, there are no other medical marijuana registered caregiver home establishment businesses or other home occupation dwelling units along Tilton Avenue. Further, the subject property is serviced by water and sewer. From a zoning perspective, the lot and structures therein are legally nonconforming. The application is not proposing any sort of expansion which would require Board of Appeals approval. The primary focus is on the use as set of standards in §16.8.30.2 and §16.10.11 and whether the applicant has demonstrated compliance with the requisite standards.

The applicant is seeking approval to operate a Medical Marijuana Registered Caregiver Home Establishment. The nature of the operation is to grow cannabis within what appears to be the garage and to deliver the product by motor vehicle to registered patients of the applicant. It appears that patients will not be entering the property to retrieve any of the cannabis grown for themselves.

The Planning Board has a set of narrow criteria for Home Establishment applications which is enumerated herein. Further, the Board needs to review the special exception standards to determine compliance.

Application Review

§16.2.2 Definitions	
Standard	Comment
<p>Medical Marijuana Registered Caregiver Home Establishment</p> <p>means a medical marijuana registered caregiver business operating on the property of a dwelling unit serving as the primary residence of the Registered Caregiver.</p>	It appears that the applicant falls under this definition.

Code Ref.	§16.3 Article II Zone Definitions, Uses and Standards	
	Standard	Comment
§16.3.2.4.D(2)(b)	Minimum lot size: 20,000-sf.	It appears that this standard is not satisfied, as the lot is legally nonconforming.
§16.3.2.4.D(2)(c)	Minimum street frontage: 100-ft.	It appears that this standard is not satisfied, as the lot is legally nonconforming.
§16.3.2.4.D(2)(d)	Minimum front setback: 30-ft.	It appears that this standard is not satisfied, as the house is legally nonconforming.
§16.3.2.4.D(2)(e)	Minimum rear and side setbacks: 15-ft.	It appears that this standard is not satisfied, as the house is legally nonconforming.
§16.3.2.4.D(2)(f)	Maximum building height: 35-ft.	It appears the standard is satisfied.
	Maximum building coverage: 20%	It appears that this standard is not satisfied, as the house is legally nonconforming.

Code Ref.	§16.10.8.30.2	
	Standard	Comment
§16.8.30.2.A	Manufacturing of medical marijuana products may occur only in zoning districts where a Marijuana Manufacturing Facility is permitted.	The proposed Medical Marijuana Registered Caregiver Home Establishment (“Home Establishment”) is proposing only to grow and deliver the product to patients. Planning Board should confirm if patients will be entering the Home Establishment for pick-up. If it is the case the patients will be present on site, the applicant should demonstrate to the Planning Board where they intend to provide parking.
§16.8.30.2.B	A Medical Marijuana Registered Caregiver Home Establishment is restricted to the property of a dwelling unit serving as the primary residence of the Registered Caregiver. Proof of primary residence will be determined by voter registration, vehicle registration, property tax bill and/or other documentation acceptable to the Town	It appears on the property card of the Town’s assessing records that the applicant parents are the owners of the property. The applicant has provided a lease agreement demonstrating the business is permitted to operate in the dwelling unit. Moreover, the applicant has registered his vehicle at this address. The Planning Board should confirm that 35 Tilton Avenue is and will be the applicant primary residence.
§16.8.30.2.C	The Registered Caregiver must provide documentation demonstrating ownership of the dwelling unit or a lease agreement permitting the registered caregiver to operate a Medical Marijuana Registered Caregiver Home Establishment.	The applicant has provided a commercial lease agreement demonstrating the business is permitted to operate in the dwelling unit. It appears the applicant will be living in the dwelling unit.
§16.8.30.2.D	A Medical Marijuana Registered Caregiver Home Establishment must be an accessory use of the property, and is limited to utilize 40% or 400-square feet, whichever is greater, of the total floor area available within the dwelling unit.	This requirement appears to be satisfied as 285-sf is to be used as the area of operation. It appears the garage will be the designated area. The Planning Board will want to confirm this.
§16.8.30.2.E	A Medical Marijuana Registered Caregiver Home Establishment is permitted only to see patients, provide consultations, and perform other functions, pursuant to 22 M.R.S. 558-C §2423-A.	This standard appears to be satisfied as the applicant has attested that the Home Establishment will be only delivering to patients.
§16.8.30.2.F	Hours of operation may be between 7 am and 7 pm Sunday through Saturday inclusive, and must be by appointment only.	This standard appears to be satisfied.
§16.8.30.2.G	A Medical Marijuana Registered Caregiver Home Establishment may not have more than three (3) employees.	The applicant stated during the October 28, 2021, Planning Board meeting, and again during the November 4, 2021, site visit that he may consider in the future hiring immediate family members to work for the company. This standard appears to be satisfied

§16.8.30.2.H	There must be adequate parking on the lot to accommodate the property's residents in accordance with this Title and zone-specific standards of this Title; provided that at a minimum the site must include two parking spots plus one spot for each employee.	It appears that the nature of the operation is to deliver the product to patients. The applicant has stated multiple times that he has no intention on having any patients visit the property. The Planning Board may want to condition any approval stating that the applicant must submit a modification request if patients were to visit the property.
§16.8.30.2.I	A Medical Marijuana Registered Caregiver Home Establishment must mitigate offensive odors such that they are not detectable by reasonable means at the property lines. Odors must be controlled by whatever best practices exist.	The applicant has provided a narrative outlining the odor control plan. The Planning Board has requested that CMA review the plan so as to give them a better understanding of how effective the system would work. As of February 22, 2022, the applicant has refused to agree to submit payment for CMA to review the project, so CMA has yet to conduct the analysis.
§16.8.30.2.J	A Medical Marijuana Registered Caregiver Home Establishment is permitted to cultivate a cumulative total of 30 mature plants or 500 square feet of plant canopy, 60 immature plants, and unlimited seedlings. Cultivation may occur indoors, outdoors, or both.	The Planning Board should inquire into the crop rotation, meaning the number of mature and immature plants that would be present at any given moment on average.
§16.8.30.2.K	The installation and displaying of signage advertising the presence of a Medical Marijuana Registered Caregiver Home Establishment on a lot is prohibited.	This standard appears to be satisfied.

Code Ref.	§16.10.11.2 Permit Required	
	Standard	Comment
§16.10.11.2.A	An applicant seeking Planning Board approval for a Medical Marijuana Registered Caregiver Home Establishment must submit a complete application with the following furnished documents:	
§16.10.11.2.A.i	Proof of property ownership or lease agreement in the Town of Kittery;	This standard appears to be satisfied.
§16.10.11.2.A.ii	Proof of residency in Town of Kittery as determined by voter registration, vehicle registration or other documentation deemed acceptable to the Town;	This standard appears to be satisfied.
§16.10.11.2.A.iii	All relevant State of Maine license information demonstrating the applicant as a valid registered caregiver;	This standard appears to be satisfied.
§16.10.11.2.A.iv	A site plan that depicts all proposed outdoor growing areas. The Planning Board may require a site plan designed by a licensed surveyor or civil engineer registered in the State of Maine.	This standard is not applicable as it appears no growing operations are to take place outdoors.
§16.10.11.2.A.v	A floor plan of the building showing the existing and proposed layout and square footage.	This standard appears to be satisfied.
§16.10.11.2.A.vi	Narrative describing the nature of the registered caregiver operation.	This standard appears to be satisfied.

Discussion, next steps, and recommendations

The primary issue at this point of the process is the adequacy of the odor mitigation plan. The applicant has stated that he will not provide the funds to allow CMA Engineers, Inc. to review the plan. Due to this impediment, it is impossible to determine if the system would be adequate, as an expert opinion is needed to determine compliance. In addition to the review standards above, considering the proposed use requires special exception approval, the Planning Board is directed, pursuant to §16.6.4.D(2) to use the criteria below in evaluating the merits of the proposed development. The Board should review standards and decide whether the conclusions, based on the record of the application, are accurate.

Code Ref.	§16.6.6 Basis for decision	
	Standard	Comment
§16.6.6.A(2)(a)	The proposed use will not prevent the orderly and reasonable use of adjacent properties or of properties in adjacent use zones;	Based on the information provided to date, it is unclear if the odor mitigation system will be effective, therefore adjacent properties may be adversely impacted.
§16.6.6.A(2)(b)	The 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;	The exhaust from the growing area may prevent the orderly and reasonable use of the permitted established uses as a property analysis of the system was not permitted to occur as the applicant refused to pay for the peer review by CMA Engineer's Inc.
§16.6.6.A(2)(c)	The safety, the health and the welfare of the Town will not be adversely affected by the proposed use or its location; and	Again, it is unclear if the odors from the growing facility will adversely impact the health and welfare of abutting properties. Given the analysis has been prevented from occurring by the applicant, a reasonable method to determine compliance has been disallowed.
§16.6.6.A(2)(d)	The use will be in harmony with and promote the general purposes and intent of this title.	Considering that there are outstanding issues regarding the growing facility of the Home Establishment, it is not unreasonable to conclude that the use will not be in harmony with and promote the general purposes and intent of Title 16.
16.6.6.B Factors of consideration		
§16.6.6.B(1)	The character of the existing and probable development of uses in the zone and the peculiar suitability of such zone for the location of any of such uses;	Based on the information provided by the applicant, this standard appears not to be satisfied.
§16.6.6.B(2)	The conservation of property values and the encouragement of the most appropriate uses of land;	Based on the information provided by the applicant, this standard appears not to be satisfied.
§16.6.6.B(3)	The effect that the location of the proposed use may have upon the congestion or undue increase of vehicular traffic congestion on public streets or highways;	Based on the information provided by the applicant, this standard appears to be satisfied.
§16.6.6.B(4)	The availability of adequate and proper public or private facilities for the treatment, removal or discharge of sewage, refuse or other effluent (whether liquid, solid, gaseous or otherwise) that may be caused or created by or as a result of the use;	Based on the information provided by the applicant, this standard appears to be satisfied.
§16.6.6.B(5)	Whether the use, or materials incidental thereto, or produced thereby, may give off obnoxious gases, odors, smoke or soot;	Based on the information provided by the applicant, this standard appears not to be satisfied.
§16.6.6.B(6)	Whether the use will cause disturbing emission of electrical discharges, dust, light, vibration or noise;	Based on the information provided by the applicant, this standard appears to be satisfied. However, applicant will need to demonstrate to the CEO that the proper electric system is in place to safely operate the growing facility.
§16.6.6.B(7)	Whether the operations in pursuance of the use will cause undue interference with the orderly enjoyment by the public of parking or of recreational facilities, if existing, or if proposed by the Town or by other competent governmental agency;	Based on the information provided by the applicant, this standard appears to be satisfied, as this will be a delivery only business.
§16.6.6.B(8)	The necessity for paved off-street parking;	Based on the information provided by the applicant, this standard appears to be satisfied.
§16.6.6.B(9)	Whether a hazard to life, limb or property because of fire, flood, erosion or panic may be created by reason or as a result of the use, or by the structures to be used, or by the inaccessibility of the property or structures thereon for the convenient entry and operation of fire and other emergency apparatus, or by the undue concentration or assemblage of persons upon such plot;	Based on the information provided by the applicant, this standard appears to be satisfied, as only a small grow facility is planned to be added to the property located in the garage.
§16.6.6.B(10)	Whether the use, or the structures to be used, will cause an overcrowding of land or undue concentration of population or unsightly storage of equipment, vehicles or other materials;	Based on the information provided by the applicant, this standard appears to be satisfied, as all storage and usage will occur within the garage.
§16.6.6.B(11)	Whether the plot area is sufficient, appropriate and adequate for the use and the reasonably anticipated operation and expansion thereof;	Based on the information provided by the applicant, this standard appears to be satisfied.

§16.6.6.B(12)	Whether the proposed use will be adequately screened and buffered from contiguous properties;	Based on the information provided by the applicant, this standard appears to be satisfied.
§16.6.6.B(13)	The assurance of adequate landscaping, grading and provision for natural drainage;	This standard is not applicable.
§16.6.6.B(14)	Whether the proposed use will provide for adequate pedestrian circulation;	This standard is not applicable.
§16.6.6.B(15)	Whether the proposed use anticipates and eliminates potential nuisances created by its location; and	Based on the information provided by the applicant, this standard appears not to be satisfied, as the odor mitigation plan is unsatisfactory.
§16.6.6.B(16)	The satisfactory compliance with all applicable performance standard criteria contained in Chapters 16.8 and 16.9.	Based on the information provided by the applicant, this standard appears not to be satisfied, as the odor mitigation plan is unsatisfactory.

Recommended Motions

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

Motion to continue application

Move to continue a Medical Registered Caregiver Home Establishment application from applicant Delta Lab, LLC requesting approval to operate a Medical Registered Caregiver Home Establishment on real property with an address of 35 Tilton Ave. (Tax Map 16, Lot 178) located in the Residential-Urban (R-U) Zone.

Motion to approve/deny application

Move to **(approve/deny)** a Medical Registered Caregiver Home Establishment application from applicant Delta Lab, LLC requesting approval to operate a Medical Registered Caregiver Home Establishment on real property with an address of 35 Tilton Ave. (Tax Map 16, Lot 178) located in the Residential-Urban (R-U) Zone.

KITTERY PLANNING BOARD

M 16 L 176

FINDINGS OF FACT

UnApproved

for
35 Tilton Avenue
Medical Marijuana Registered Caregiver Home Establishment Application

Note: This approval by the Planning Board constitutes an agreement between the Town and the Applicant incorporating the site plan and supporting documentation, the Findings of Fact, and all waivers and/or conditions approved and required by the Planning Board.

WHEREAS: applicant Delta Lab, LLC requests approval to operate a Medical Registered Caregiver Home Establishment on real property with an address of 35 Tilton Ave. (Tax Map 16, Lot 178) located in the Residential-Urban (R-U) Zone.

Hereinafter the “Home Establishment”.

Pursuant to the Plan Review meetings conducted by the Planning Board as duly noted in the Plan Review Notes dated 2/22/2022;

REQ'D	ACTION	COMMENTS	STATUS
No	Sketch Plan	Not Pursued	N/A
No	Site Visit	November 4, 2021	HELD
No	Public Hearing	November 18, 2022; and January 27, 2022	HELD
Yes	Final Plan Review and Decision	May occur on February 24, 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.

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 11/18/2021 (Hereinafter the “Plan”).

Medical Marijuana Registered Caregiver Home Establishment Application

1. Medical Marijuana Registered Caregiver Home Establishment Application, dated September 20, 2021.
2. Order Control Plan, filed on November 8, 2021
3. Commercial Lease, dated November 1, 2021

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 **§16.10.11.2.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:

CHAPTER §16.6.6 BASIS FOR DECISION

§16.6.6.A(2)(a)

Standard: The proposed use will not prevent the orderly and reasonable use of adjacent properties or of properties in adjacent use zones;

Finding: It appears that the proposed development (**DOES / DOES NOT**) prevent the orderly and reasonable use of adjacent properties or of properties in adjacent use zones;

Finding: It appears

<p>Conclusion: The requirement appears to be <u>(MET / NOT MET)</u>.</p>	
	Vote: ___ in favor ___ against ___ abstaining
<p>§16.6.6.A(2)(b)</p> <p>Standard: The 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.</p> <p>Finding: It appears that the proposed development <u>(DOES / DOES NOT)</u> 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.</p> <p>Conclusion: The requirement appears to be <u>(MET / NOT MET)</u>.</p>	
	Vote: ___ in favor ___ against ___ abstaining
<p>§16.6.6.A(2)©</p> <p>Standard: The safety, the health and the welfare of the Town will not be adversely affected by the proposed use or its location; and</p> <p>Finding: It appears that the proposed development <u>(DOES / DOES NOT)</u> adversely affect the safety, the health and the welfare of the Town.</p> <p>Conclusion: The requirement appears to be met.</p>	
	Vote: ___ in favor ___ against ___ abstaining
<p>§16.6.6.A(2)(d)</p> <p>Standard: The use will be in harmony with and promote the general purposes and intent of this title.</p> <p>Finding: It appears that the proposed development <u>(IS/IS NOT)</u> in harmony with and promote the general purposes and intent of this title.</p> <p>Conclusion: The requirement appears to be <u>(MET / NOT MET)</u>.</p>	
	Vote: ___ in favor ___ against ___ abstaining
16.6.6.B Factors of consideration	
<p>§16.6.6.B(1)</p> <p>Standard: The character of the existing and probable development of uses in the zone and the peculiar suitability of such zone for the location of any of such uses;</p> <p>Finding: It appears that the proposed development <u>(IS / IS NOT)</u> suitable for the location and zone.</p> <p>Conclusion: The requirement appears to be <u>(MET / NOT MET)</u>.</p>	
	Vote: ___ in favor ___ against ___ abstaining
<p>§16.6.6.B(2)</p> <p>Standard: The conservation of property values and the encouragement of the most appropriate uses of land;</p> <p>Finding: It appears that the proposed development <u>(DOES / DOES NOT)</u> promote the conservation of property values and <u>IS / IS NOT</u> an appropriate use of the land.</p> <p>Conclusion: The requirement appears to be <u>(MET / NOT MET)</u>.</p>	
	Vote: ___ in favor ___ against ___ abstaining
<p>§16.6.6.B(3)</p> <p>Standard: The effect that the location of the proposed use may have upon the congestion or undue increase of vehicular traffic congestion on public streets or highways;</p> <p>Finding: It appears that the proposed development <u>(DOES / DOES NOT)</u> expand congestion or undue increase of vehicular traffic congestion on public streets or highways.</p> <p>Conclusion: The requirement appears to be <u>(MET / NOT MET)</u>.</p>	
	Vote: ___ in favor ___ against ___ abstaining
<p>§16.6.6.B(4)</p>	

<p>Standard: The availability of adequate and proper public or private facilities for the treatment, removal or discharge of sewage, refuse or other effluent (whether liquid, solid, gaseous or otherwise) that may be caused or created by or as a result of the use;</p> <p>Finding: It appears that the proposed development <u>(DOES/ DOES NOT)</u> provide adequate treatment, removal or discharge of sewage, refuse or other effluent.</p> <p>Conclusion: The requirement appears to be <u>(MET / NOT MET)</u>.</p>	<p>Vote: ___ in favor ___ against ___ abstaining</p>
<p>§16.6.6.B(5)</p> <p>Standard: Whether the use, or materials incidental thereto, or produced thereby, may give off obnoxious gases, odors, smoke or soot;</p> <p>Finding: It appears that the proposed development <u>(DOES / DOES NOT)</u> give off obnoxious gases, odors, smoke or soot.</p> <p>Conclusion: The requirement appears to be <u>(MET / NOT MET)</u>.</p>	<p>Vote: ___ in favor ___ against ___ abstaining</p>
<p>§16.6.6.B(6)</p> <p>Standard: Whether the use will cause disturbing emission of electrical discharges, dust, light, vibration or noise;</p> <p>Finding: It appears that the proposed development <u>(DOES / DOES NOT)</u> cause disturbing emission of electrical discharges, dust, light, vibration or noise.</p> <p>Conclusion: The requirement appears to be <u>(MET / NOT MET)</u>.</p>	<p>Vote: ___ in favor ___ against ___ abstaining</p>
<p>§16.6.6.B(7)</p> <p>Standard: Whether the operations in pursuance of the use will cause undue interference with the orderly enjoyment by the public of parking or of recreational facilities, if existing, or if proposed by the Town or by other competent governmental agency;</p> <p>Finding: It appears that the proposed development <u>(DOES / DOES NOT)</u> cause undue interference with the orderly enjoyment by the public of parking or of recreational facilities, if existing, or if proposed by the Town or by other competent governmental agency.</p> <p>Conclusion: The requirement appears to be <u>(MET / NOT MET)</u>.</p>	<p>Vote: ___ in favor ___ against ___ abstaining</p>
<p>§16.6.6.B(8)</p> <p>Standard: The necessity for paved off-street parking;</p> <p>Finding: It appears that the proposed development <u>(DOES / DOES NOT)</u> require the necessity for paved off-street parking.</p> <p>Conclusion: The requirement appears to be <u>(MET / NOT MET)</u>.</p>	<p>Vote: ___ in favor ___ against ___ abstaining</p>
<p>§16.6.6.B(9)</p> <p>Standard: Whether a hazard to life, limb or property because of fire, flood, erosion or panic may be created by reason or as a result of the use, or by the structures to be used, or by the inaccessibility of the property or structures thereon for the convenient entry and operation of fire and other emergency apparatus, or by the undue concentration or assemblage of persons upon such plot;</p> <p>Finding: It appears that the proposed development <u>(DOES / DOES NOT)</u> create a hazard to life, limb or property because of fire, flood, erosion or panic as a result of the use, or by the structures to be used, or by the inaccessibility of the property or structures thereon for the convenient entry and operation of fire and other emergency apparatus, or by the undue concentration or assemblage of persons upon such plot.</p> <p>Conclusion: The requirement appears to be <u>(MET / NOT MET)</u>.</p>	<p>Vote: ___ in favor ___ against ___ abstaining</p>
<p>§16.6.6.B(10)</p> <p>Standard: Whether the use, or the structures to be used, will cause an overcrowding of land or undue concentration of population or unsightly storage of equipment, vehicles or other materials;</p>	<p>Vote: ___ in favor ___ against ___ abstaining</p>

<p>Finding: It appears that the proposed development (DOES / DOES NOT) cause an overcrowding of land or undue concentration of population or unsightly storage of equipment, vehicles or other materials.</p> <p>Conclusion: The requirement appears to be (MET / NOT MET).</p>	<p>Vote: <u> </u> in favor <u> </u> against <u> </u> abstaining</p>
<p>§16.6.6.B(11)</p>	
<p>Standard: <i>Whether the plot area is sufficient, appropriate and adequate for the use and the reasonably anticipated operation and expansion thereof;</i></p> <p>Finding: It appears that the proposed development (HAS / DOES NOT HAVE) sufficient, appropriate and adequate plot area for the use and the reasonably anticipated operation and expansion thereof.</p> <p>Conclusion: The requirement appears to be (MET / NOT MET).</p>	<p>Vote: <u> </u> in favor <u> </u> against <u> </u> abstaining</p>
<p>§16.6.6.B(12)</p>	
<p>Standard: Whether the proposed use will be adequately screened and buffered from contiguous properties;</p> <p>Finding: It appears that the proposed development (DOES / DOES NOT) adequate screening and buffer space from contiguous properties.</p> <p>Conclusion: The requirement appears to be (MET / NOT MET).</p>	<p>Vote: <u> </u> in favor <u> </u> against <u> </u> abstaining</p>
<p>§16.6.6.B(13)</p>	
<p>Standard: The assurance of adequate landscaping, grading and provision for natural drainage;</p> <p>Finding: It appears that the proposed development (DOES / DOES NOT HAVE) assurances of adequate landscaping, grading and provision for natural drainage;</p> <p>Conclusion: The requirement appears to be (MET / NOT MET).</p>	<p>Vote: <u> </u> in favor <u> </u> against <u> </u> abstaining</p>
<p>§16.6.6.B(14)</p>	
<p>Standard: Whether the proposed use will provide for adequate pedestrian circulation;</p> <p>Finding: It appears that the proposed development (DOES / DOES NOT) provide for adequate pedestrian circulation.</p> <p>Conclusion: The requirement appears to be (MET / NOT MET).</p>	<p>Vote: <u> </u> in favor <u> </u> against <u> </u> abstaining</p>
<p>§16.6.6.B(15)</p>	
<p>Standard: Whether the proposed use anticipates and eliminates potential nuisances created by its location; and</p> <p>Finding: It appears that the proposed development (DOES / DOES NOT) anticipate and eliminates potential nuisances created by its location.</p> <p>Conclusion: The requirement appears to be (MET / NOT MET).</p>	<p>Vote: <u> </u> in favor <u> </u> against <u> </u> abstaining</p>
<p>§16.6.6.B(16)</p>	
<p>Standard: The satisfactory compliance with all applicable performance standard criteria contained in Chapters 16.8 and 16.9.</p> <p>Finding: It appears that the proposed development (DOES / DOES NOT) comply with all applicable performance standard criteria contained in Chapters 16.8 and 16.9.</p> <p>Conclusion: The requirement appears to be (MET / NOT MET).</p>	<p>Vote: <u> </u> in favor <u> </u> against <u> </u> abstaining</p>

<p>§16.8.30.2 Standards for Marijuana Registered Caregivers Home Establishments</p>
<p>§16.8.30.2.A</p>

Standard: Manufacturing of medical marijuana products may occur only in zoning districts where a Marijuana Manufacturing Facility is permitted.

Finding: the applicant has demonstrated that the manufacturing of marijuana products will not occur on the property.

Conclusion: This standard appears to be met.

Vote of ___ in favor ___ against ___ abstaining

§16.8.30.2.B

Standard: A Medical Marijuana Registered Caregiver Home Establishment is restricted to the property of a dwelling unit serving as the primary residence of the Registered Caregiver. Proof of primary residence will be determined by voter registration, vehicle registration, property tax bill and/or other documentation acceptable to the Town

Finding: The applicant has provided sufficient evidence that their primary residence is within the building of the proposed Medical Marijuana Registered Caregiver Home Establishment.

Conclusion: This standard appears to be met.

Vote of ___ in favor ___ against ___ abstaining

§16.8.30.2.C

Standard: The Registered Caregiver must provide documentation demonstrating ownership of the dwelling unit or a lease agreement permitting the registered caregiver to operate a Medical Marijuana Registered Caregiver Home Establishment.

Finding: The applicant has provided a lease agreement for the property.

Conclusion: This standard appears to be met.

Vote of ___ in favor ___ against ___ abstaining

§16.8.30.2.D

Standard A Medical Marijuana Registered Caregiver Home Establishment must be an accessory use of the property, and is limited to utilize 40% or 400-square feet, whichever is greater, of the total floor area available within the dwelling unit.

Finding: The applicant is proposing to utilize 258-sf. of the property as an area of operation.

Conclusion: This standard appears to be met.

§16.8.30.2.E

Standard A Medical Marijuana Registered Caregiver Home Establishment is permitted only to see patients, provide consultations, and perform other functions, pursuant to 22 M.R.S. 558-C §2423-A

Finding: It appears that the applicant is proposing to only to tend to patients as directed by state statute.

Conclusion: This standard appears to be met.

Vote of ___ in favor ___ against ___ abstaining

§16.8.30.2.F

Standard: Hours of operation may be between 7 am and 7 pm Sunday through Saturday inclusive, and must be by appointment only.

Finding: It appears that the applicant will only make deliveries to patients and not have any patients visit the property to seek treatment.

Conclusion: This standard appears to be met.

Vote of ___ in favor __ against __ abstaining

§16.8.30.2.G

Standard: A Medical Marijuana Registered Caregiver Home Establishment may not have more than three (3) employees.

Finding: It appears that the applicant will not have more than three employees.

Conclusion: This standard appears to be met.

Vote of ___ in favor __ against __ abstaining

§16.8.30.2.H

Standard: There must be adequate parking on the lot to accommodate the property's residents in accordance with this Title and zone-specific standards of this Title; provided that at a minimum the site must include two parking spots plus one spot for each employee.

Finding: It appears that the applicant has adequate parking, as no patients are to visit the Home Establishment.

Conclusion: This standard appears to be met.

Vote of ___ in favor __ against __ abstaining

§16.8.30.2.I

Standard: A Medical Marijuana Registered Caregiver Home Establishment must mitigate offensive odors such that they are not detectable by reasonable means at the property lines. Odors must be controlled by whatever best practices exist.

Finding: The applicant has not provided sufficient information demonstrating compliance with this standard

Conclusion: This standard is not met.

Vote of ___ in favor __ against __ abstaining

§16.8.30.2.J

Standard: A Medical Marijuana Registered Caregiver Home Establishment is permitted to cultivate a cumulative total of 30 mature plants or 500 square feet of plant canopy, 60 immature plants, and unlimited seedlings. Cultivation may occur indoors, outdoors, or both.

Finding: It appears that the applicant will stay under the plant and canopy limit.

Conclusion: This standard appears to be met.

Vote of ___ in favor __ against __ abstaining

§16.8.30.2.K

Standard: The installation and displaying of signage advertising the presence of a Medical Marijuana Registered Caregiver Home Establishment on a lot is prohibited.

Finding: There will be no signage on the property that will advertise the presence of a Home Establishment.

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 / will not have**) a significant detrimental impact, and the Kittery Planning Board hereby (**grants final approval for / denies**) the Development at the above referenced property, (**including any waivers granted or conditions as noted**).

(If application is approved, read Waivers, Conditions of Approval and Notice to Applicant)

Waivers: None.

Conditions of Approval

1. No changes, erasures, modifications or revisions may be made to any Planning Board approved final plan. (Title 16.10.9.1.2)
2. All Notices to Applicant contained in the Findings of Fact (dated: 2/24/2022).

Notices to Applicant:

1. 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 February 24, 2022

Dutch Dunkelberger, Planning Board Chair

Appeal:

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.