

**Town of Kittery
Planning Board Meeting
May 26, 2022**

ITEM 2 – 523 US Route 1 – Final Site Plan Review

Action: Continue to a subsequent meeting or vote on final plan; Pursuant to §16.4.23 *Mixed-Use*, §16.7 *Site Plan Review* of the Town of Kittery Land Use and Development Code, the Planning Board shall consider a final site plan application from applicant GSC Enterprises, LLC and agent Haley Ward, Inc. requesting final approval to construct 1,010-sf coffee shop with a drive-through with appurtenant infrastructure and landscaping on real property with an address of 523 U.S. Route 1 (Tax Map 68, Lot 26) located in the Mixed-Use (MU) Zone.

PROJECT TRACKING

<u>REQUIRED</u>	<u>ACTION</u>	<u>COMMENTS</u>	<u>STATUS</u>
NO	SKETCH PLAN	NOT PURSUED	N/A
YES	SITE VISIT	OCTOBER 7, 2021	HELD
YES	PRELIMINARY PLAN REVIEW / COMPLETENESS ACCEPTANCE	SEPTEMBER 23, 2021	ACCEPTED
YES	PUBLIC HEARING	10/28/2021, CONT. 11/18/2021; CONT. 12/9/2021	HELD
YES	PRELIMINARY PLAN APPROVAL	DECEMBER 9, 2021	APPROVED
YES	FINAL PLAN REVIEW AND DECISION	APRIL 14, 2022; CONT. MAY 12, 2022; CONT. May 26, 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”) is a final site plan application that seeks to construct a drive-through coffee shop with a gross building footprint of approximately 1,010-sf. The project intends to incorporate internal road infrastructure that derives access from US Route 1 along with landscaping and stormwater best management practices.

The current site comprises of a 13.5-ac lot with approximately 1.87-ac designated as a xeric, barren surface that is intermittently used as a farm stand, accessory parking area or excess material storage space. In the rear of the property are wetlands and forested areas. Abutting the subject lot is a lot with commercial business selling patio

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furniture, other vacant lots and a private way, Parsons Lane that accesses a cell phone tower and a few residential lots. Across US Route 1 from the property is mixed-use development with a residential component, another lot with a dwelling unit, and an approved redevelopment of the property at 524 US Route 1 that intended to construct a manufacturing facility, though that approval has been replaced by a new residential proposal which would increase traffic noticeably in the area if it were to be approved. This proposed site plan application has received preliminary approval, but there are a handful of outstanding issues that need to be address before final approval is granted.

The task before the Board at this juncture is to determine if the plan materials as revised meet the standards for final approval or if additional information is required before a definitive vote is taken.

CURRENT ISSUES

There are two major items that the Board will need to discuss and make a determination on before moving forward with final plan review: (1) is the proposed use (drive-through only coffee shop) permitted in the Mixed-Use zoning district, and (2) consideration of a waiver request by the applicant to not use Parsons Lane to access the site.

Issue 1: The Use of a Drive-Through Coffee Shop

Below is are two definitions that describe the essence of the proposed use:

RESTAURANT: An establishment where food or food and drink are prepared and sold for consumption on the premises by the public and includes cafes, coffee shops and similar establishments that serve food.

DRIVE-THROUGH FACILITY: Any portion of a structure from which business is transacted, or is capable of being transacted, directly with customers located in a motor vehicle during such business transaction.

A restaurant, which a coffee shop falls under, is a permitted used under §16.4.23.B *Permitted uses*; however, drive-through facility is not found under §16.4.23.B *Permitted uses* or §16.4.23.C *Special exception*. The question for the Board is whether or not drive-through facility has to be specifically authorized as a permitted or special exception use under §16.4.23 in order for it to be allowed to exist in the zoning district, or is it an ancillary function of the permitted use of a restaurant? There are a few fast-food establishments in town that currently utilize a drive-through facility: Burger King, McDonalds, Aroma Joe’s (Rt. 236) and Starbucks. These businesses are located in the C-1 and C-2 zoning districts, which also authorizes a restaurant as a permitted use, but does not specifically list drive-through facility as a permitted or special exception use. Moreover, §16.7.11.E(5)(e) reads as follows:

Nonresidential projects that include drive-through services shall be designed and have sufficient stacking capacity to avoid the queuing of vehicles on any public street.

It appears that the code characterizes a drive-through facility as a component of the primary use, which would be the restaurant in this case, and does not specifically treat it as a type of primary use. This approach appears to be how drive-through facilities have been historically managed in Kittery. To staff’s knowledge, this question did not come up during the review of the existing Aroma Joe’s business at 89 Route 236 (Map 28 Lot 14-2). That use was approved as a “drive-thru only restaurant” according to the Findings of Fact issued January 14, 2016, which found it compatible with a “Restaurant” use.

Issue 2: The Use of Parsons Lane

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At the preliminary application phase, the Planning Board requested the applicant to provide an alternative site layout of the proposed development that utilized Parsons Lane exclusively to access/exit the site. The applicant has provided the alternative layout, but has requested a waiver to solely access/exit the site from US Route 1. The applicant has stated that it would be cost prohibitive and unsafe to have the access / egress of the site from Parsons Lane. The applicant elaborated that the Maine Department of Transportation (MaineDOT) agrees with this position and has preliminarily approved the proposed traffic movement permit, which would utilize US Route 1 completely. Nevertheless, MaineDOT understands that the Town under its home rule authority may require that Parson Lane be used in lieu of access from US Route 1.

It appears, at the moment, that the safest way into the site would be from US Route 1, unless extensive development were to occur to bring Parsons Lane to a state that would be safe to utilize. The Planning Board needs to determine which direction the applicant must pursue (utilize US Route 1 or Parsons Lane to access the site) and revise the site plan accordingly.

CMA has sent revised comments via email to staff on the suitability of US Route 1 as the entrance to the site. That email is included with this staff report. CMA believes the entrance on Route 1 to be the safest option due to better visibility than Parsons Lane, and the desired alignment of this driveway with any proposed project across Route 1. A project has not materialized but there is an approved plan for a roadway and any subsequent plan submitted would like use that same location.

OTHER ISSUES

Below are other issues that the applicant needs to address before a vote on final plan approval occurs:

1. Address all of CMA's comments to their and the Board's satisfaction.

The applicant has addressed CMA's comments as indicated in their memo dated April 27, 2022.

2. Revise the site plan with notes detailing how the existing fill will be handled based on the recommendations of the geotechnical analysis conducted by S.W.Cole Engineering, Inc. dated March 8, 2022.

The site plan has been revised with Stormwater & Erosion Control Management and Maintenance Notes on sheet C102 dated 04-25-2022. At the May 12, 2022 Planning Board meeting, the Board indicated a preference for the Stormwater & Erosion Control Management and Maintenance Notes to be presented in an Operations & Maintenance document and not simply notes on the plan. The applicant has prepared a Post Construction Stormwater Management Plan as Appendix K to their most recent submittal.

3. The applicant is requesting three waivers in total:
 - a. Waiver from 16.5.27.E.(2) – ACCESS CONTROL AND TRAFFIC IMPACTS
Applicant requests waiver from the standard that the primary entrance must be from the secondary street and instead wishes for the primary entrance to come from US Route 1.
 - b. Waiver from 16.7.11.H. – EXTERIOR LIGHTING STANDARDS
Applicant requests waiver from the lighting standards to have the drive-through lighting exceed the maximum intensity.

- c. Waiver from Kittery Design Handbook to construct a flat roof

Applicant requests waiver to allow the rear portion of the building to have a flat roof.

DISCUSSION AND NEXT STEPS

The applicant has resubmitted all plans and documents requested by the Planning Board and staff. CMA are still reviewing the Post Construction Stormwater Management Plan but staff's review indicates the plan includes all relevant information, including responsible parties, an inspection and maintenance log, and planned corrective actions. The Planning Board should make a final determination on this Final Site Plan, including the status of the three requested waivers, as there appeared to be consensus of the Board at the May 12, 2022 meeting to grant the waiver request.

RECOMMENDED MOTIONS

Based on the above analysis and review of the application materials, staff recommends the following:

Motion to approve the waiver request from Section 16.5.27.E.(2) to allow access to the lot from US Route 1 and not from the secondary street, Parsons Lane.

Motion to approve the waiver request from Section 16.7.11.H. to allow the building lighting at the drive-through to exceed the maximum intensity.

Motion to approve the waiver request from the Kittery Design Handbook to allow a flat roof on the rear portion of the building.

Motion to approve the final site plan application from applicant GSC Enterprises, LLC and agent Haley Ward, Inc. requesting final approval to construct 1,010-sf coffee shop with a drive-through with appurtenant infrastructure and landscaping on real property with an address of 523 U.S. Route 1 (Tax Map 68, Lot 26) located in the Mixed-Use Zone (MU) with the following conditions: