

**Kittery Planning Board**  
**Findings of Fact**  
**For 523 US Route 1**  
**Site Plan Review**

**UNAPPROVED**  
**M 68 L 26**

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

**WHEREAS:** Owner Charles Lynch, applicant GSC Enterprises, and agent Haley Ward request 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.

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	Not Pursued	N/A
YES	Site Visit	October 7, 2021	HELD
YES	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	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 5/26/2022 (Hereinafter the “Plan”).

1. Aroma Joe’s Site Plan and associated documents, Haley Ward, revised 5/18/22

**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 coffee shop and drive through with parking lot meets the parking, setback, buffering/screening and circulation requirements pertinent to site plan review requirements.

<b>Conclusion:</b> This standard appears to be met.
<b>Vote of ___ in favor ___ against ___ abstaining</b>
<b>[2] Water Supply Sufficient.</b>
<b>Standard:</b> <i>The proposed development has sufficient water available for the reasonably foreseeable needs of the development.</i>
<b>Finding:</b> The proposed use plans to connect to public water and has received a capacity letter from the Water District stating water supply is sufficient.
<b>Conclusion:</b> This standard appears to be met.
<b>Vote of ___ in favor ___ against ___ abstaining</b>
<b>[3] Sewage Disposal Adequate.</b>
<b>Standard:</b> <i>The proposed development will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are utilized.</i>
<b>Finding:</b> The proposed use plans to tie into existing sewer infrastructure and has received a capacity letter from the Sewer Department.
<b>Conclusion:</b> This standard appears to be met.
<b>Vote of ___ in favor ___ against ___ abstaining</b>
<b>[4] Stormwater Managed.</b>
<b>Standard:</b> <i>The proposed development will provide for adequate stormwater management.</i>
<b>Finding:</b> The proposed development includes approximately 22,604 SF of parking lot and driveways. All disturbed areas not to be made impervious will be revegetated, resulting in a net decrease of approximately 0.312 acres of impervious area for the site. The applicant has prepared a Post Construction Stormwater Management Plan.
<b>Conclusion:</b> This standard appears to be met.
<b>Vote of ___ in favor ___ against ___ abstaining</b>
<b>[5] Traffic Managed.</b>
<b>Standard:</b> <i>The proposed development will:</i>  <i>[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</i>  <i>[b] Provide adequate traffic circulation, both on-site and off-site.</i>
<b>Finding:</b> The proposed development will not cause unreasonable congestion and unsafe conditions onto public ways and provides for adequate on-and off-site traffic circulation.
<b>Conclusion:</b> This standard appears to be met.
<b>Vote of ___ in favor ___ against ___ abstaining</b>

<b>[6] Parking and Loading.</b>
<b>Standard:</b> <i>Provisions have been made for safe internal vehicular circulation, loading and service areas, and parking associated with the proposed development.</i>
<b>Finding:</b> The proposed development shows that internal vehicular circulation will be safe, with adequate loading and service areas are provided, and the number of parking spaces is sufficient based on the proposed regulated uses.
<b>Conclusion:</b> This standard appears to be met.
Vote of ___ in favor ___ against ___ abstaining
<b>[7] Utilities.</b>
<b>Standard:</b> <i>The size, type, and locations of all public utilities and private utilities to serve the proposed development will be installed per accepted engineering practices</i>
<b>Finding:</b> The proposed development will utilize existing public utilities for the proposed use and lighting the building and parking areas in accordance with Town regulations.
<b>Conclusion:</b> This standard appears to be met.
Vote of ___ in favor ___ against ___ abstaining
<b>[8] Erosion controlled.</b>
<b>Standard:</b> <i>The proposed development will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results.</i>
<b>Finding:</b> The proposed development will be required to provide erosion and sedimentation controls during construction. The existing slope at the southwest corner of the site will be flattened while avoiding encroachment on the adjacent wetland and the slope will be stabilized with erosion control matting. A Post Construction Stormwater Management Plan has been prepared by the applicant.
<b>Conclusion:</b> This standard appears to be met.
Vote of ___ in favor ___ against ___ abstaining
<b>[9] Groundwater protected.</b>
<b>Standard:</b> <i>The proposed development will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater.</i>
<b>Finding:</b> It appears the proposed development will not cause any unreasonable adverse effects of the quantity or quality of groundwater.
<b>Conclusion:</b> This standard appears to be met.
Vote of ___ in favor ___ against ___ abstaining
<b>[10] Freshwater wetlands identified.</b>
<b>Standard:</b> <i>All freshwater wetlands within the project area have been identified on any maps submitted as part of the application, regardless of the size of these wetlands.</i>

**Finding:** The plan identifies wetlands on the rear of property. Site development and disturbance are outside the required setbacks associated with the wetlands.

**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 within 75 feet.

**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.

<b>Conclusion:</b> This standard appears to be met.
<b>Vote of ___ in favor ___ against ___ abstaining</b>
<b>[14] Environmental considerations.</b>
<b>Standard:</b> <i>The proposed development will not result in undue levels of lighting, noise, vibrations, smoke, heat, glare, fumes, dust, toxic matter, odors, or electromagnetic interference.</i>
<b>Finding:</b> The proposed development will not produce any adverse effects that would cause undue environmental degradation.
<b>Conclusion:</b> This standard appears to be met.
<b>Vote of ___ in favor ___ against ___ abstaining</b>
<b>[15] Utilization of the site.</b>
<b>Standard:</b> <i>The proposed development does reflect the natural capabilities of the site to support development.</i>
<b>Finding:</b> The proposed development is designed in a manner that respects the natural capabilities of the lot.
<b>Conclusion:</b> This standard appears to be met.
<b>Vote of ___ in favor ___ against ___ abstaining</b>
<b>[16] Developer financially and technically capable.</b>
<b>Standard:</b> <i>Developer is financially and technically capable to meet the standards of this section.</i>
<b>Finding:</b> It appears the developer is financially and technically capable to effectuate the project.
<b>Conclusion:</b> This standard appears to be met.
<b>Vote of ___ in favor ___ against ___ abstaining</b>

**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. 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.
3. 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.

4. All Notices to Applicant contained in the Findings of Fact (dated: 5/26/2022).

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

1. Incorporate any plan revisions on the site 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 26, 2022

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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.