

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

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

Action: Continue to a subsequent meeting or vote on final plan application; 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	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.

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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 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

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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

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 xx, 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.

3. The applicant is requesting three waivers in total:

- a. Waiver from 16.5.27.E.(2) – ACCESS CONTROL AND TRAFFIC IMPACTS

Applicant requests a waiver from the standard of accessing the site from the secondary road, since this is a corner lot. MDOT and CMA review indicate the safer driveway is a direct connection to Route 1, due to sight distance issues with Parsons Lane. Staff recommends the Planning Board carefully weigh the analysis from CMA.

- b. Waiver from 16.7.11.H. – EXTERIOR LIGHTING STANDARDS

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Applicant requests a waiver from the exterior lighting standards to not provide the required lighting level in the area right at the drive through window. CMA review indicates the plan does not meet the standard. The applicant contends additional lighting is necessary to facilitate customer access and safety.

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

Applicant requests a waiver to construct a flat roof on the rear portion of the building. Applicant contends there is adequate screening of mechanical equipment on the flat roof section in question at the rear of the building, and that providing a sloped roof would require a redesign and the need for space on the site to locate mechanical equipment.

DISCUSSION AND NEXT STEPS

The Planning Board should deliberate the Route 1 vs. Parsons Lane entrance and restaurant use issues and arrive at a consensus. Staff is prepared to support the approval of the plan. There are some outstanding issues regarding submittal items the applicant must present for Final Plan, which can be cleared up prior to May 26 Planning Board meeting.

RECOMMENDED MOTIONS

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

Move to continue 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 (MU) Zone.