

**Town of Kittery
 Planning Board Meeting
 April 28, 2022**

ITEM 2—8 Dexter Lane—Final Site Plan Review

Action: Continue application to a subsequent meeting, vote to accept final plan application. Pursuant to 16.4 *Land Use Regulations*, 16.2.12.D(4) *Special exception use request*, 16.5 *General Performance Standards* and §16.7 *Site Plan Review* of the Kittery Town Code, the Planning Board shall hold a public hearing on an application from owner The Outlet Mall of Kittery, LLC and applicant Tree Tips 3, LLC with agent Attar Engineering, Inc. requesting approval for a special exception use to operate a Marijuana Business within an existing commercial retail space located on real property with the address of 8 Dexter Lane, Unit 8, Tax Map 47, Lot 3, in the Commercial 1 (C-1) zoning district.

REQ'D	ACTION	COMMENTS	STATUS
No	Sketch Plan	Not pursued.	N/A
YES	Site Visit	February 1, 2022	HELD
YES	Preliminary Plan Review Completeness/Acceptance	January 27, 2022	HELD
YES	Public Hearing	March 10, 2022	HELD
YES	Preliminary Plan Approval	Approved with conditions March 10, 2022	HELD
YES	Final Plan Review and Decision	TBD	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

8 Dexter Lane (“Project”) is located in the Commercial-1 (C-1) zoning district. The lot fronts Dexter Lane which exits onto US Route 1 and connects to an internal driveway system located on an abutting lot (Map 47 – Lot 4) to the northeast. Directly to the north of the Project is a parking lot that services the retail stores located on Map 47-4. To the east of the lot is an abandoned retail store with a parking lot. 8 Dexter Lane itself is a shopping mall complex, which was constructed in 1989. The building has 8 retail store front units of which only a few appear to be occupied. The Project will occupy Unit #8 and proposes to provide approximately 1,941-sf of customer access space. The parking lot associated to the building appears to be able to accommodate 79 vehicles. The building is connected to the water and sewer system and has a stormwater management plan.

The proposed preliminary site plan application before the Planning Board (“Board”) puts forth a plan to change the current use of the unit from an abandon retail use to marijuana adult use store. The proposed use is a special exception use, which requires the Board to consider addition review criteria as found under 16.2.12.F *Basis of decision*. To accommodate the new use, the applicant is proposing to partition the unit by providing 1,941-sf toward customer access space (retail area / bathroom) and 801-sf of employee restrict area (flex space, employee bathroom, and vault). There is no proposed site work on the lot. The applicant has provided a traffic impact

analysis, which will be peer review by CMA Engineers, Inc. in order to determine if there is enough vehicular infrastructure to support the proposed use.

The Board didn't have any major issues at the initial preliminary meeting. There were questions regarding odor mitigation and operations. The issues of signage requirements came up as well, but the applicant said they would comply with the ordinance. The Board also held a site visit on February 1, 2022. The Board's major concern, again, was odor mitigation, security and if there were any plans of future expansion to an adjacent unit.

This is the public hearing phase of the application, and the objective is for the Board to hold the public hearing and make recommendations to the applicant if they find that the application may proceed to final plan review. If there are too many outstanding issues that should be dealt with during preliminary review, the Board should tell the applicant what specific information needs to be reviewed before moving forward.

April 28, 2022 Staff Review

The applicant submitted all applicable materials for Final Plan Review on April 19, 2022. At the March 10, 2022 Planning Board meeting, the Board approved the Preliminary Plan with the following condition:

1. Written verification of acceptance by Kittery Police Department, Kittery Fire Department, and Kittery Department of Public Works

The applicant has satisfied the above condition, as Town Police, Fire, and DPW have no concerns with the plan. Further, the applicant has made these corrections to the plan: noting that language regarding the Knox Box has been added to the Site Plan and Operations Plan; notation calling for the remediation and inspection of mold has been added to the Site Plan. The Town's peer review engineer, CMA, has also indicated they are satisfied with the traffic analysis. CMA did note that the odor control language appears appropriate but they suggest that the odor control system be developed by a qualified HVAC contractor or engineer. Planning Department staff have no additional comments on this plan.

Final Plan Review

§16.3 Definitions	
Standard	Comment
Marijuana Business	Means an Adult Use Marijuana Store, Marijuana Cultivation Facility, Medical 336 Marijuana Registered Dispensary, Medical Marijuana Caregiver Retail Store, Marijuana Manufacturing 337 Facility, or Marijuana Testing Facility.
Marijuana Adult Use Store	Means a facility licensed under 28-B MRS Chapter 1 to purchase 333 adult use marijuana, immature marijuana plants and seedlings from a cultivation facility, and to sell adult use 334 marijuana, adult use marijuana products, immature marijuana plants and seedlings to consumers.

Code Ref.	§16.4.19.E C-1 Zone Standards	
	Standard	Comment
§16.4.19.E(2)(a)	Minimum lot size: 40,000 square feet.	It appears that this standard is satisfied.
§16.4.19.E(2)(b)	Minimum street frontage per building: No minimum* *NOTE: All lots must meet the requirements of Article XVI, Lots, unless specifically modified by this section (§ 16.3.2.11). Street frontage must provide sufficient vehicular and pedestrian access for the uses proposed while meeting public health and safety requirements (e.g., Fire Department, Department of Public Works). The applicant must demonstrate to the municipal permitting authority, that the street frontage and lot design meet these requirements to the extent practicable.	It appears that this standard is satisfied.
§16.4.19.E(2)(c)	Maximum front setback: 15 feet* *The Planning Board may, at its discretion, allow a greater setback when public amenities such as benches, pocket parks, outdoor dining or seating areas are proposed. Properties in the C-3 Zone with frontage on Old Post Road, including those lots which also have frontage on Route 1 Bypass, are required to have at least a fifteen-foot setback on Old Post Road.	It appears that this standard is satisfied.
§16.4.19.E(2)(d)	Minimum rear and side yards: 15 feet.* *NOTE: Except where side and/or rear setbacks of proposed new uses abut a single-family use and/or any properties located on the east side of Route 1 from the southernmost extent of the C-1 Zone north to properties abutting Ox Point Drive in which case a minimum of 40 feet is required. See § 16.3.2.11C(4)(e) for buffer requirements.	It appears that this standard is satisfied.
§16.4.19.E(2)(e)	Maximum building height: 40 feet.	It appears that this standard is satisfied.

Code Ref	§16.5.27 Streets and Pedestrian/Sidewalks Site Design Standards	
	Standard	Comment
§16.5.27.E(1)	Vehicular access to the development must be arranged to avoid traffic use of local residential streets.	The applicant submitted additional comments related to traffic management as part of the final plan submittal. CMA is satisfied with the comments and clarifications from the applicant as stated in an email from Bill Straub dated March 23, 2022 (attached to this report). It appears this standard is satisfied.
§16.5.27.E(2)	Where a lot has frontage on two or more streets, the access to the lot must be provided to the lot across the frontage and to the street where there is lesser potential for traffic congestion and for hazards to traffic and pedestrians.	It appears that this standard is not applicable.
§16.8.4.5.C	The street giving access to the lot and neighboring streets which can be expected to carry traffic to and from the development must have traffic-carrying capacity and be suitably improved to accommodate the amount and types of traffic generated by the proposed use. No development may increase the volume/capacity ratio of any street above 0.8 nor reduce any intersection or link level of service to "D" or below.	A comprehensive review of the traffic impact analysis provided by the applicant shall determine compliance with is standard. Per the traffic analysis submitted and clarified as part of the final plan submittal, the turning movements into and out of the site will operate at a level of service "A" and "B." It appears this standard is satisfied.

§16.5.27.E(4)	Where necessary to safeguard against hazards to traffic and pedestrians and/or to avoid traffic congestion, provision must be made for turning lanes, traffic directional islands, frontage roads, driveways and traffic controls within public streets.	It appears that this standard is not applicable.
§16.5.27.E(5)	Accessways must be of a design and have sufficient capacity to avoid hazardous queuing of entering vehicles on any street.	This standard appears to be satisfied.
§16.5.27.E(6)	Where topographic and other conditions allow, provision must be made for circulation driveway connections to adjoining lots of similar existing or potential use: (a) When such driveway connection will facilitate fire protection services as approved by the Fire Chief; or (b) When such driveway will enable the public to travel between two existing or potential uses, generally open to the public, without need to travel upon a street.	It appears that this standard is satisfied.
Code Ref	§16.7.11.A Water Supply	
§16.7.11.A(1)	The development shall be provided with a system of water supply that provides each use with an adequate supply of water.	It appears that this standard is satisfied.
§16.7.11.A(2)	If the project is to be served by a public water supply, the applicant shall secure and submit a written statement from the Kittery Water District that the proposed water supply system conforms with its design and construction standards, will not result in an undue burden on the source of distribution system, and will be installed in a manner adequate to provide needed domestic and fire protection flows.	It appears that this standard is satisfied.
Code Ref.	§16.7.11.B Stormwater and Surface Drainage	
§16.7.11.B	See section for all standards.	It appears that this standard is satisfied, as no site work is proposed.
Code Ref.	16.7.11.F Parking, Loading and Traffic	
§16.7.11.F(1)(a)	All development, special exceptions and changes in use must comply with the performance standards herein and, where applicable, those contained in Article V of this chapter. The Planning Board may impose additional reasonable requirements, which may include off-site improvements, based on the following considerations: [1] Sight distances along public rights-of-way; [2] The existence and impact upon adjacent access points and intersections; [3] Turning movements of vehicles entering and leaving the public streets; [4] Snow removal; and [5] General condition and capacity of public streets serving the facility.	The applicant has added a note to the plan stating that in the instance the lot reaches its capacity for snow storage, all excess snow will be carried off site. It appears this standard is satisfied.
§16.7.11.F(1)(e)	All traffic flow in parking areas is to be clearly marked with signs and/or surface directions at all times.	It appears that this standard is satisfied.
§16.7.11.F(1)(f)	Off-street parking must be constructed in accordance with Table 2 of this chapter, set out at the end of §16.7.11.F, Parking Loading and Traffic.	It appears that this standard is satisfied.
§16.7.11.F(4)(f)	A parking area must meet the wetland and water body setback requirements for structures for the district in which such areas are located, per Table 16.5.30, Minimum Setback from Wetlands and Water Bodies; except, in the Commercial Fisheries/Maritime Uses Overlay Zone, parking area must be set back at least 25 feet from the normal high-water line or the upland edge of a wetland. The setback requirement for a parking area serving public boat-launching facilities, in zones other than the Commercial, Business-Local, Residential-Urban Zones, and the Commercial Fisheries/Maritime Uses Overlay Zone, may be reduced to no less than 50 feet from the normal high-water line or upland edge of a wetland if the Planning Board finds no other reasonable alternative exists.	It appears that this standard is satisfied.
§16.7.11.F(4)(g)	Parking landscaping is required for parking areas containing 10 or more parking spaces and must have at least one tree per eight spaces. Such trees are to be located either within the lot or within five feet of it. Such trees are to be at least 1 1/2 inches in diameter, with no less than 25 square feet of unpaved soil or permeable surface area per tree. At least 10% of the interior of any parking area having 25 or more spaces is to be maintained with landscaping, including trees, in plots of at least five feet in width.	The Board may want to discuss with the applicant additional opportunities to improve the landscape in the lot, if at all. While no parking lot landscaping changes are proposed, the plan does note that landscape planter boxes will be installed adjacent to the suite entrance.
§16.7.11.F(4)(i)	If parking spaces are provided for employees, customers or visitors, then accessible	The applicant has updated the plans dated 4/18/2022 to include a crosswalk from the

	<p>parking spaces must be included in each such parking area in conformance with the following table: (see table)</p> <p>[1] Each accessible parking space must contain a rectangular area at least 19 feet long and eight feet wide with access to a designated and marked five-foot-wide aisle. All required accessible parking spaces are to be identified by a vertical sign displaying the international symbol of accessibility; pavement marking alone is not adequate to identify accessible parking spaces.</p> <p>[2] The total number of accessible parking spaces is to be distributed to serve the various accessible entrances as well as possible.</p> <p>[3] At least one accessible route is to connect from each accessible parking space to the accessible building entrance.</p>	<p>ADA spaces to the curb ramp. It appears this standard is satisfied.</p>
Code Ref.	§16.8 Article XVII Utilities	
§§16.7.11.G(2)	<p>Utilities, where feasible, are to be installed underground. The Board must require the developer to adopt a prudent avoidance approach when aboveground electrical installations are approved.</p>	<p>It appears that this standard is satisfied</p>

Code Ref.	.5.32 Marijuana Businesses	
§16.5.32.B(1)	<p>Marijuana Businesses may not locate within 1,000 feet of a public or private school or a public recreation facility measured from the exterior wall of the Marijuana Business in a straight line to the property line of the protected use. This section does not prohibit the activity of a caregiver or other authorized individual from administering medical marijuana to a qualified patient who is located within one of these protected areas.</p>	<p>It appears that this standard is satisfied</p>
§16.5.32.B(2)	<p>Marijuana Businesses may not have any odor of marijuana detectible beyond the area controlled by the business, whether that be a leased or owned area that is a portion or all of a recorded parcel of land. Odors must be controlled by whatever best practices exist.</p>	<p>It appears that this standard is satisfied as onsite packaging or growing of marijuana products is not to occur. Board should inquire if there would any instances that marijuana odors would be present. Applicant should provide an odor mitigation plan for review. Applicant has provided an Operations Plan that includes Odor Mitigation Plan. CMA suggests that any odor control systems be developed by a qualified HVAC contractor or engineer.</p>
§16.5.32.B(3)	<p>Marijuana grown by any Marijuana Business may be grown indoors only. For the purpose of this section hoop houses or outdoor tunnels must not be considered as an indoor growing facility and are prohibited for marijuana cultivation by a Marijuana Business.</p>	<p>It appears that this standard is not applicable.</p>
§16.5.32.B(4)	<p>The design of any building containing a Marijuana Business must conform to the standards within this Title and the Town of Kittery Design Handbook.</p>	<p>No proposed exterior modifications are to occur in this application.</p>
§16.5.32.B(5)	<p>The area of any Marijuana Business accessible to customers must be no less than 400 nor more than 2,000 square feet.</p>	<p>It appears that this standard is satisfied, as only 1,941-sf of the store front's floor space will be accessible by customers.</p>
§16.5.32.B(6)	<p>Parking must conform to Article IX.</p>	<p>It appears, besides the comments above, that this standard is satisfied.</p>
§16.5.32.B(7)	<p>Any building containing a Marijuana Business must be protected by fire suppression measures and fire alarms to the satisfaction of the Fire Chief and in accordance with all applicable building codes.</p>	<p>The Fire Chief is satisfied with the plan, but will perform a more in-depth review prior to building permit issuance and occupancy.</p>
§16.5.32.B(8)	<p>The Owner of any Marijuana Business, at the time of application for a building permit, must provide an affidavit from a master electrician or electrical engineer certifying that the electrical components can meet the electrical load demands of the use.</p>	<p>This standard would have to be satisfied during the building permit phase of this application.</p>
§16.5.32.B(9)	<p>I. Security.</p>	<p>The Police Chief is satisfied with the plan.</p>

	1. The Licensed Premises must have video surveillance capable of covering the exterior and interior of the facility. The video surveillance system must be operated with continuous recording twenty-four hours per day, seven days per week and video retained for a minimum duration of thirty (30) days. Such records must be made available to law enforcement agencies when investigating a criminal complaint.	
§16.5.32.B(10)	The Licensed Premises must have an approved wastewater discharge plan in accordance with this Title and Title 13.	It appears that this standard is satisfied
§16.5.32.B(11)	The Licensed Premises must have exterior lighting that conforms with this Title and the Town of Kittery's Design Handbook. The Planning Board, at its discretion, may require motion sensors covering the full perimeter of the building(s).	Planning Board should discuss if motion sensors surrounding the building or area to be rented (Unit 8), is necessary. Applicant has provided an Operations Plan that includes sufficient provision of exterior lighting, along with security cameras. It appears that this standard is satisfied.

Code Ref.	§16.7.10 Review Process and Submission	
	Standard	Comment
§16.7.10.C(4)(b)	With scale of the drawings no greater than one-inch equals 30 feet for developments less than 10 acres, and one inch equals 50 feet for all others;	It appears that this standard is satisfied.
§16.7.10.C(4)(c)	Code block in the lower right-hand corner. The block must contain: (a) Name(s) and address(es) of the applicant and owner; (b) Name of the project; (c) Name and address of the preparer of the plan, with professional seal, if applicable; (d) Date of plan preparation/revision, and a unique ID number for the plan and any revisions;	It appears that this standard is satisfied.
§16.7.10.C(4)(d)	Standard boundary survey conducted by a surveyor licensed in the State of Maine, in the manner recommended by the State Board of Registration for Land Surveyors;	It appears that this standard is satisfied.
§16.7.10.C(4)(e)	An arrow showing true North and the magnetic declination, a graphic scale, and signature blocks for the owner(s) and members of the Planning Board;	It appears that this standard is satisfied.
§16.7.10.C(4)(f)	Locus map showing the property in relation to surrounding roads, within 2,000 feet of any property line of the development;	It appears that this standard is satisfied.
§16.7.10.C(4)(g)	Vicinity map and aerial photograph showing the property in relation to surrounding properties, roads, geographic, natural resource (wetland, etc.), historic sites, applicable comprehensive plan features such as proposed park locations, land uses, zones, and other features within 50feet from any boundary of the proposed development;	It appears that this standard is satisfied.
§16.7.10.C(4)(h)	Surveyed acreage of the total parcel, of rights-of-way, wetlands, and area to be disturbed and amount of street frontage;	It appears that this standard is satisfied.
§16.7.10.C(4)(i)	Names and addresses of all owners of record of property abutting the development, including those across a street;	It appears that this standard is satisfied.
§16.7.10.C(4)(j)	Existing Development Area Conditions, including but not limited to: [1] Location and description of all structures, including signs, existing on the site, together with accesses located within 100 feet of the property line; [2] Essential physical features such as watercourses, wetlands, floodplains, wildlife habitat areas, forest cover, and outcroppings; [3] Utilities existing, including power, water, sewer, holding tanks, bridges, culverts and drainageways.	It appears that this standard is satisfied.
§16.7.10.C(4)(j)	Proposed development area conditions including, but not limited to: [1] Structures; their location and description including signs, to be placed on the site, floor plan of exterior walls and accesses located within 100 feet of the property line; [2] Utilities proposed including power, water, sewer, holding tanks, bridges, culverts and drainageways; [3] Sewage facilities type and placement. Test pit locations, at least two of which must meet the State of Maine Plumbing Code requirements, must be shown; [4] Domestic water source; [5] Parks, open space, or conservation easement locations; [6] Lot lines, interior and exterior, right-of-way, and street alignments; [7] Road and other paved ways plans, profiles and typical sections including all relevant data; [8] Setbacks existing and proposed;	It appears that most these standards are satisfied. Some of the standards are not applicable due to the scope of the application. See application's narrative, dated, November 18, 2021.

	<p>[9] Machinery permanently installed locations likely to cause appreciable noise at the lot lines;</p> <p>[10] Raw, finished or waste materials to be stored outside the buildings, and any stored material of a toxic or hazardous nature;</p> <p>[11] Topographic contours of existing contours and finished grade elevations within the development;</p> <p>[12] Pedestrian ways/sidewalks, curbs, driveways, fences, retaining walls and other artificial features locations and dimensions proposed;</p> <p>[13] Temporary marker locations adequate to enable the Planning Board to readily locate and appraise the layout of the development;</p> <p>[14] Land proposed to be dedicated to public use and the conditions of such dedication;</p>	
§16.7.10.C(4)(b)	Legal interest documents showing legal interest of the applicant in the property to be developed. Such documents must contain the description upon which the survey was based;	It appears that this standard is satisfied.
§16.7.10.C(4)(m)	Property encumbrances currently affecting the property, as well as any proposed encumbrances;	It appears that this standard is satisfied.
§16.7.10.C(4)(n)	Water District approval letter, if public water is used, indicating there is adequate supply and pressure to be provided to the development;	It appears that this standard is satisfied.
§16.7.10.C(4)(o)	Erosion and sedimentation control plan endorsed by the York County Soil and Water Conservation District or the Town's engineering consultant;	It appears that this standard is not applicable.
§16.7.10.C(4)(p)	Stormwater management preliminary plan for stormwater and other surface water drainage prepared by a registered professional engineer including the general location of stormwater and other surface water drainage areas;	The applicant did not submit a plan for review as no site work is proposed.
§16.7.10.C(4)(q)	Soil survey for York County covering the development. Where the soil survey shows soils with severe restrictions for development, a high intensity Class "A" soil survey must be provided;	It appears that this standard is not applicable.
§16.7.10.C(4)(r)	Vehicular traffic report estimating the amount and type of vehicular traffic that will be generated by the development on a daily basis and for peak hours;	CMA reviewed the submitted traffic analysis and the applicant's response to earlier questions and is satisfied with the plan. It appears this standard is satisfied.
§16.7.10.C(4)(s)	Test pit(s) analysis prepared by a licensed site evaluator when sewage disposal is to be accomplished by subsurface disposal, pits, prepared by a licensed site evaluator.	This standard is not applicable.
§16.7.10.C(4)(t)	Traffic impact analysis in accordance with § 16.5.27.E for developments involving 40 or more parking spaces or which are projected to generate more than 400 vehicle trips per day;	CMA reviewed the submitted traffic analysis and the applicant's response to earlier questions and is satisfied with the plan. It appears this standard is satisfied.
§16.7.10.C(4)(t)	Town Sewage Department or community system authority letter, when sewage disposal is to be through a public or community system, approving the connection and its location;	It appears that this standard is satisfied.
§16.7.10.C(4)(u)	Letters of evaluation of the development by the Chief of Police, Fire Chief, Commissioner of Public Works, and, for residential applications, the superintendent of schools, must be collected and provided by the Town Planner.	The relevant Town departments have weighed in and have approved the plan. It appears this standard is satisfied.
§16.7.10.C(5)	<p>Additional requirements. In its consideration of an application/plan, the Planning Board may at any point in the review require the applicant to submit additional materials, studies, analyses, and agreement proposals as it may deem necessary for complete understanding of the application. Such materials may include:</p> <ol style="list-style-type: none"> (1) Traffic impact analysis... (2) Environmental analysis... (3) Hydrological analysis... 	At the planning Board discretion.

In addition to the review standards above, considering the proposed use requires special exception approval, the Planning Board is directed, pursuant to 16.2.12.F to use the criteria below in evaluating the merits of the proposed

development. The Board should review standard and decide whether the application complies. Comment section is left blank intentionally and will be populated through the course of the Board’s review.

Code Ref.	§16.2.12. F. Basis for decision	
	Standard	Comment
§16.2.12.F(1)(a)[1]	The proposed use will not prevent the orderly and reasonable use of adjacent properties or of properties in adjacent use zones;	The propose use is a retail use, the same as much of the existing development and area.
§16.2.12.F(1)(a)[2]	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 proposed use was added to the zone as a Special Exception Use and will not prevent the reasonable use of legally established uses in the zone.
§16.2.12.F(1)(a)[3]	The safety, the health and the welfare of the Town will not be adversely affected by the proposed use or its location; and	The applicant has provided an Operations Plan that details the security measures to be installed, and for odor mitigation plans to be followed. The health, safety, and welfare of the Town will not be adversely affected.
§16.2.12.F(1)(a)[4]	The use will be in harmony with and promote the general purposes and intent of this title.	The use is in harmony with other adjacent retail uses.
16.2.12.F(2) Factors of consideration		
§16.2.12.F(2)(a)	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;	The character of the existing and proposed uses is similar and the location is suitable.
§16.2.12.F(2)(b)	The conservation of property values and the encouragement of the most appropriate uses of land;	The use is allowed in the zone and appropriate.
§16.2.12.F(2)(c)	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;	The applicant has provided traffic impact analysis, reviewed by the Town, which states that the level of service for traffic generated will not place undue congestion on Route 1 or turning movements.
§16.2.12.F(2)(d)	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;	There are available and adequate public facilities for the treatment of sewage.
§16.2.12.F(2)(e)	Whether the use, or materials incidental thereto, or produced thereby, may give off obnoxious gases, odors, smoke or soot;	The applicant has provided an Odor Mitigation Plan to prevent the escape of obnoxious odors.
§16.2.12.F(2)(f)	Whether the use will cause disturbing emission of electrical discharges, dust, light, vibration or noise;	The use will not cause disturbing emission of electrical discharges, dust, light, vibration or noise;
§16.2.12.F(2)(g)	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;	The use will not cause undue interference with the orderly enjoyment by the public of parking or recreational facilities.
§16.2.12.F(2)(h)	The necessity for paved off-street parking;	Off-street parking is being provided by the use.
§16.2.12.F(2)(i)	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;	No hazard to life, limb, or property because of fire, flood, erosion, or panic will be created as a result of the use.
§16.2.12.F(2)(j)	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;	No overcrowding of land will be caused by the use.
§16.2.12.F(2)(k)	Whether the plot area is sufficient, appropriate and adequate for the use and the reasonably anticipated operation and expansion thereof;	The area of the proposed use is adequate.

§ 16.2.12.F(2)(l)	Whether the proposed use will be adequately screened and buffered from contiguous properties;	The use is proposed in an existing building and site that already includes adequate buffering.
§ 16.2.12.F(2)(m)	The assurance of adequate landscaping, grading and provision for natural drainage;	The use includes adequate landscaping.
§ 16.2.12.F(2)(n)	Whether the proposed use will provide for adequate pedestrian circulation;	Adequate pedestrian exists at the proposed site.
§ 16.2.12.F(2)(o)	Whether the proposed use anticipates and eliminates potential nuisances created by its location; and	The proposed use plans to occupy a vacant storefront and demonstrates adequate operational plans to enforce any nuisances.
§ 16.2.12.F(2)(p)	The satisfactory compliance with all applicable performance standard criteria contained in Chapters 16.6 and 16.7.	The use is in compliance with all applicable performance standard criteria contained in Chapters 16.6 and 16.7.

Next Steps

Overall, the site plan appears to conform with the standards outlined in §16.4, §16.5 and §16.7 with minor issues as stated above. The next step is to determine if the submitted project meets the relevant requirements of Title 16. If so, the Final Site Plan may be approved by the Board.

Staff Recommendation

April 28, 2022

Based on staff and peer review of the submitted Final Site Plan, the below is a recommended motion for the Board's consideration:

Motion to approve Final Site Plan

Move to approve the final site plan application from owner The Outlet Mall of Kittery, LLC and applicant Tree Tips 3, LLC with agent Attar Engineering, Inc. requesting approval for a special exception use to operate a Marijuana Business within an existing commercial retail space located on real property with the address of 8 Dexter Avenue, Unit 8, Tax Map 47, Lot 3, in the Commercial 1 (C-1) zoning district with the following condition:

1. Odor mitigation systems as designated in the Operation Plan shall be developed by a qualified HVAC contractor or engineer that can document appropriate sizing, operations, and maintenance and design details.

However, if the Board chooses not to approve at this time, staff recommends the following motion for the Board's consideration:

Motion to continue application

Move to continue the final site plan application to the _____ [DATE] _____ Planning Board meeting.

**KITTERY PLANNING BOARD
FINDINGS OF FACT -
for
8 Dexter Lane, Unit 8
Special Exception Use – Marijuana Business**

**M 47 L 3
Unapproved**

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 The Outlet Mall of Kittery LLC and applicant Tree Tips 3 LLC requests approval for a Marijuana Business within an existing commercial retail space located on real property with the address of 8 Dexter Lane, Unit 8, Tax Map 47, Lot 3, in the Commercial 1 (C-1) zoning district.

Hereinafter the “Development”.

Pursuant to the Plan Review meetings conducted by the Planning Board as duly noted in the Plan Review Notes dated 04/28/2022;

Sketch Plan Review	N/A	
Site Visit	Held	2/1/2022
Preliminary Plan Completeness Review	Held, Accepted	1/27/2022
Public Hearing	Held	3/10/2022
Preliminary Plan Approval	Granted (with conditions)	3/10/2022
Final Plan Approval	Granted	4/28/2022

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 04/28/2022 (Hereinafter the “Plan”).

1. Final Plan Review Documents, Attar Engineering, Inc. letter dated April 19, 2022
2. Marijuana Retail Store Site Plan, Attar Engineering, Inc. dated April 18, 2022
3. Operations Plan prepared by Tree Tips 3 LLC (revised, submitted April 19, 2022)

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.D.(5) 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:

A. 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, Article IV Land Use Zone Regulations, Section 16.4.19.(18).

Conclusion: This use is allowed by Special Exception Use with Planning Board approval, and this standard

appears to be met.
Vote of _ in favor 0 against 0 abstaining
B. Freshwater Wetlands Identified.
Standard: <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: No freshwater wetlands within the project area have been identified on any maps submitted.
Conclusion: This standard appears to be met.
Vote of _ in favor 0 against 0 abstaining
C. River, Stream or Brook Identified.
Standard: <i>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.</i>
Finding: No rivers, streams, nor brooks are identified within or abutting the proposed project.
Conclusion: This standard appears to be met.
Vote of _ in favor 0 against 0 abstaining
D. Water Supply Sufficient. {and}
Standard: <i>The proposed development has sufficient water available for the reasonably foreseeable needs of the development.</i>
E. Municipal Water Supply Available.
Standard: <i>The proposed development will not cause an unreasonable burden on an existing water supply, if one is to be used.</i>
Finding: The proposed development is located within an existing commercial development that already has water service connected to and in use on the premises.
Conclusion: This standard appears to be met.
Vote of _ in favor 0 against 0 abstaining
F. Sewage Disposal Adequate.
Standard: <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>
Finding: The proposed development is located within an existing commercial development that already has sewer service connected to and in use on the premises.
Conclusion: This standard appears to be met.
Vote of _ in favor 0 against 0 abstaining

G. Municipal Solid Waste Disposal Available.
Standard: <i>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.</i>
Finding: The proposed development doesn't not require any changes to municipal solid waste services. The proposed development will dispose of marijuana / cannabis waste in accordance with the rules and regulations of the Maine Office of Marijuana Policy as outlined in the submitted Operations Plan.
Conclusion: This standard appears to be met.
Vote of _ in favor 0 against 0 abstaining
H. Water Body Quality and Shoreline Protected.
Standard: <i>Whenever situated entirely or partially within two hundred fifty (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.</i>
Finding: The proposed development is not located within two hundred fifty (250) feet of any wetland.
Conclusion: This standard appears to be met.
Vote of _ in favor 0 against 0 abstaining
I. Groundwater Protected.
Standard: <i>The proposed development will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater.</i>
Finding: The proposed development will use the existing connection to public water and will not adversely affect the quality or quantity of groundwater.
Conclusion: This standard appears to be met.
Vote of _ in favor 0 against 0 abstaining
J. Flood Areas Identified and Development Conditioned.
Standard: <i>All flood-prone areas within the project area have been identified on maps submitted as part of the application based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant. If the proposed development, or any part of it, is in such an area, the applicant must determine the one hundred (100) year flood elevation and flood hazard boundaries within the project area. The proposed plan must include a condition of plan approval requiring that principal structures in the development will be constructed with their lowest floor, including the basement, at least one foot above the one hundred (100) year flood elevation.</i>
Finding: No flood hazard zones were identified to be located on the property.
Conclusion: This standard appears to be met.
Vote of _ in favor 0 against 0 abstaining

K. Stormwater Managed.
Standard: <i>Stormwater Managed. The proposed development will provide for adequate stormwater management</i>
Finding: The proposed development will use existing stormwater infrastructure in place and will not create additional impervious surface or additional runoff
Conclusion: This standard appears to be met.
Vote of _ in favor 0 against 0 abstaining
L. Erosion Controlled.
Standard: <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>
The Contractor shall follow MDEP best management practices for erosion and sediment control (silt fencing, silt sacks, etc.), and CMA Engineers will be notified to observe application during construction.
Finding: No changes to the existing impervious surface are proposed and the development will utilize the existing stormwater infrastructure in place.
Conclusion: This standard appears to be met.
Vote of _ in favor 0 against 0 abstaining
M. Traffic Managed.
Standard: <i>The proposed development will:</i>
<ol style="list-style-type: none"> 1. <i>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> 2. <i>Provide adequate traffic circulation, both on-site and off-site.</i>
Finding: A traffic impact study was completed by the Sewall Company (December 2021) using conventional methodologies, including estimates of traffic generation from marijuana dispensaries in the Institute of Traffic Engineers (ITE) trip generation document. The Town's peer review engineer, CMA, reviewed the traffic study. The results indicate that there is insignificant deterioration of performance levels at the signalized intersection to the north of the Dexter Lane/Route 1 intersection, and the Dexter Lane/Route 1 intersection.
Conclusion: This standard appears to be met.
Vote of _ in favor 0 against 0 abstaining
N. Water and Air Pollution Minimized.
Standard: <i>The proposed development will not result in undue water or air pollution. In making this determination, the following must be considered:</i>
<ol style="list-style-type: none"> 1. <i>Elevation of the land above sea level and its relation to the floodplains;</i> 2. <i>Nature of soils and sub-soils and their ability to adequately support waste disposal;</i> 3. <i>Slope of the land and its effect on effluents;</i> 4. <i>Availability of streams for disposal of effluents;</i> 5. <i>Applicable state and local health and water resource rules and regulations; and</i> 6. <i>Safe transportation, disposal and storage of hazardous materials.</i>

<p>Finding:</p> <ol style="list-style-type: none"> 1. Not applicable due to condition of existing development conditions. 2. Not applicable due to condition of existing development conditions. 3. Not applicable due to condition of existing development conditions. 4. The site is located approximately xxx feet from Spruce Creek but has no direct contact with the boundary of the creek. Since the proposed use is being located inside an existing development, the proposed use should not adversely impact the water quality and quantity of the stream. 5. Not applicable due to condition of existing development conditions. 6. Any marijuana or cannabis refuse will be discarded in accordance with the applicant's Operations Plan and conforming to the rules and regulations of the Maine Office of Marijuana Policy.
<p>Conclusion: This standard appears to be met.</p>
<p>Vote of __in favor 0 against 0 abstaining</p>
<p>O. Aesthetic, Cultural and Natural Values Protected.</p>
<p>Standard: <i>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.</i></p>
<p>Finding: The proposed use is to be located in an existing development and will not have an undue adverse effect on the scenic or natural beauty of the area.</p>
<p>Conclusion: This standard appears to be met.</p>
<p>Vote of __in favor 0 against 0 abstaining</p>
<p>P. Developer Financially and Technically Capable.</p>
<p>Standard: <i>Developer is financially and technically capable to meet the standards of this section.</i></p>
<p>Finding: The developer will provide an inspection escrow in an amount suitable to cover the costs of on-site inspection by the Peer Review Engineer to ensure the proposed development is constructed according to the approved plan.</p>
<p>Conclusion: This standard appears to be met.</p>
<p>Vote of __in favor 0 against 0 abstaining</p>

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:

1. 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. Odor mitigation systems as designated in the Operation Plan shall be developed by a qualified HVAC contractor or engineer that can document appropriate sizing, operations, and maintenance and design details.
- 5. All Notices to Applicant contained in the Findings of Fact (dated: 04/28/2022).

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

- 6. Incorporate any plan revisions on the final plan as recommended by Staff, Planning Board, or Peer Review Engineer, and submit for Staff review prior to presentation of final plan for endorsement.
- 7. Provide the additional documents and/or responses to all CMA comments prior to presentation of final plan.

Notices to Applicant: (not to be included on the final plan)

- 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 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. The owner and/or developer, in an amount and form acceptable to the Town Manager, must file with the municipal treasurer an instrument to cover the cost of all infrastructure and right-of-way improvements and site erosion and stormwater stabilization, including inspection fees for same.
- 5. 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 _____, 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.