

ITEM 3

Town of Kittery Planning Board Meeting May 26, 2022

ITEM 3— 41 Route 236—Sketch Site Plan Review

Action: Accept application as complete; if accepted, set site walk. Pursuant to 16.4 *Land Use Regulations*, 16.4.20 *Special Exception Use Request*, 16.5.32 *Marijuana Business*, and 16.7 *Site Plan Review* of the Town of Kittery Land Use and Development Code, owner LaPierre Properties, LLC and applicant Well Field 44, LLC with agent Attar Engineering, Inc. requests approval for a special exception use to construct a 1,034-sf Marijuana Business with appurtenant infrastructure and a wetland alteration of 3,001-sf, located on real property with the address of 41 Route 236, Tax Map 29, Lot 1, in the Commercial 2 (C-2) zoning district.

PROJECT TRACKING

REQ'D	ACTION	COMMENTS	STATUS
No	Sketch Plan	May 26, 2022	N/A
YES	Site Visit		TBD
YES	Preliminary Plan Review Completeness/Acceptance		TBD
YES	Public Hearing		TBD
YES	Preliminary Plan Approval		TBD
YES	Final Plan Review and Decision		TBD

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

41 Route 236 (“Project”) is situated in the Commercial-2 (C-2) and Residential-Suburban (R-S) zoning districts with the majority being in the C-2 zone. The 4.45-acre lot fronts Route 236 from the west and is abutted by vacant lots, single-family residential, and commercial uses. The natural characteristics in and around the site consist of wetlands and forested areas. The Board reviewed plans for this site earlier this year but due to substantial changes, this plan is offered as sketch. The lot has significant wetlands (see Michael Cuomo’s letter to Brian Neilson, dated November 23, 2021), and a portion was filled to accommodate its current use as boat storage. The boat storage use received approval in 2009 from both the Town Code Enforcement Officer and Maine Department of Environmental Protection (“MDEP”). The MDEP approval was in the form of a ‘stormwater permit by rule’, as the applicant altered less than 4,300-sf of wetland and the Town approval was through the Business Use Change application process.

The proposed sketch site plan application before the Planning Board (“Board”) proposes to change the current use as a boat yard storage area into a Marijuana Business, specifically an adult use store. The proposed use is a special exception use, which requires the Board to consider additional review criteria as found 16.7.10.D *Review Process and Submission Requirements* and 16.2.12.F *Basis of decision*. The applicant is proposing to build a 1,035-sf retail

29 store with 8 on-site parking spaces and 12 overflow parking spaces on the adjoining property to the south (see letter
 30 from Darren LaPierre to Brandon Pollock dated April 24, 2022). The existing roadway now used for access will
 31 become one-way to service the off-site overflow parking. The existing curb cut into the lot will be abandoned and
 32 a new curb cut proposed to provide safer access to the lot. Both public water and sewer will be utilized and
 33 stormwater infrastructure is proposed to manage runoff from the proposed impervious surface. In order to provide
 34 the new access, approximately 3,001-sf of wetlands are proposed to be altered (filled).

35 The sketch plan phase allows the Board to: 1) determine if sufficient information has been supplied, and if not
 36 request the information, 2) to ask questions and 3) give direction to the applicant. If the Board finds the application
 37 insufficient, the Board should request information to provide for the next meeting. Moreover, the Board needs to
 38 determine if the wetland alteration as proposed is permissible. If it were to be deemed a prohibited application of
 39 the wetland alterations provisions found under §16.9.3.7 *Wetland alteration approval criteria*, the Board should
 40 direct the applicant to apply for a relief (variance) from the Board of Appeals (“BOA”), pursuant to §16.6.4
 41 *Appeals/requests to Board of Appeals* to build a structure within the setback of a wetland greater than an acre.

§16.3 Definitions	
Term	Definition
Wetland	Areas that under normal circumstances have hydrophytic vegetation, hydric soils and wetland hydrology, as determined in the Corps of Engineers Wetlands Delineation Manual — Waterways Experiment Station Technical Report Y-87-1, January 1987" (1987 manual). This definition of wetland is based on the 1987 manual and is not subject to further revisions and/or amendments.
Wetland Alteration	Filling, dredging, removal of vegetation, muck or debris, draining or otherwise changing the hydrology; construction or repair of a structure. On a case-by-case basis and as determined by the Planning Board, the term "alteration" may exclude: A. An activity of installing a fence post or planting shrubs by hand; B. Alteration of an existing structure such as a bench or handrail; and C. The construction, repair or alteration of a structure with minimal impact such as a nesting box, pasture fence or staff gauge.

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43 **Items to consider:**

- 44 1. What MDEP permitting is required for this re: stormwater management and wetland alteration? Is a NRPA
 45 permit required?
 46 2. Has the applicant approached MaineDOT for permitting yet?
 47 3. The soil scientist’s letter stated that the larger wetland may be a wetland of special significance (presence
 48 of emergent marsh vegetation in excess of 20,000 sf) – according to the Town’s *Wetland Setbacks for*
 49 *Special Situations*, this would require a 75-foot setback for stormwater management systems.
 50 4. All setbacks for the stormwater management systems (detention & bioretention) should be noted on the
 51 plan.
 52 5. The soil scientist’s letter also suggested that a vernal pool investigation should occur this spring. Has it?
 53 6. The curb cut proposed for abandoning should be blocked off – the adjoining property has two others.
 54 7. ADA parking is required in each section of proposed parking areas per 16.7.11.F.(4)(i). The back parking
 55 area proposed for employees will require an ADA-compliant space as well.
 56 8. Is the “Wetland Area Filled In 2009-2020” shown to the west of the building going to be part of the wetland
 57 mitigation plan required for the wetland alteration permit?

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- 59 9. The use requires 1 parking space for every 175 feet of gross floor area. The applicant is providing 6 spaces
60 on-site for the 1,034-sf building which meets the requirements. However, the applicant believes more
61 parking will be needed for customers. How far away is the 12-space “overflow” parking as proposed? Title
62 16 requires “a reasonable distance” per 16.7.F.(4).(j). The Planning Board may review an off-site parking
63 area because they are the permitting authority for the principal use – the adult-use marijuana store.
64 10. Floorplans were submitted but no building elevations were included.

65 **Staff Recommendations**

66 This sketch plan meets general dimensional (16.4.20), parking (16.7.11.F), and some land-use based marijuana
67 business requirements (16.5.32):

- 68 • Lot size exceeds the 20,000-sf required.
- 69 • Frontage meets the minimum requirement (150 ft).
- 70 • Setbacks are met for the C-2 zone (50 ft front, 30 feet side and rear).
- 71 • Parking meets the requirements (1 space per 175 sf gross floor area for retail).
- 72 • The proposed building is set 100 feet back from the edge of the wetlands.
- 73 • Water/wastewater connections not shown – will need to be included with preliminary plan submission.
- 74 • The proposed exterior wall of the building is greater than 1,000 feet from the daycare on Route 236.
- 75 • Building design was not submitted so unclear if the building would meet Design Handbook standards.
- 76 • Lighting plan similar to utility connections – will need to be included with preliminary plan.
- 77 • Area of customer access is 401 sf which is 1 foot greater than the minimum required (400 sf).

78 According to 16.7.10.B, the Board must cause written guidance to be given to the applicant, should the Board wish
79 addition information included or changes made to the plans. The Board may do this via conditions if a plan
80 acceptance motion is made or request that staff convey written guidance to the applicant per the Board’s discussion
81 during the meeting and continue the sketch plan to a future meeting.

82 **Next Steps**

83 The Board will want to consider whether the plan appears to be complete enough to accept, that the plan generally
84 meets the Title 16 standards and that questions have been answered or will be answered during the preliminary plan
85 phase. If the Board is satisfied, the Board may wish to vote to accept the application and plans. Under 16.7.10.B,
86 the Board is tasked with deciding whether or not a site walk will take place. The Board may set the date now or
87 wait until the preliminary plan submission.

88 **Recommended Motions**

89 *Motion to accept the sketch plan:*

90 Move to accept the sketch plan application by owner LaPierre Properties, LLC and applicant Well Field 44,
91 LLC with agent Attar Engineering, Inc. requests approval for a special exception use to construct a 1,034-sf
92 Marijuana Business with appurtenant infrastructure and a wetland alteration of 3,001-sf, located on real property
93 with the address of 41 Route 236, Tax Map 29, Lot 1, in the Commercial 2 (C-2) zoning district.

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95 *Motion to accept the sketch plan with conditions:*

96 Move to accept the sketch plan application by owner LaPierre Properties, LLC and applicant Well Field 44,
97 LLC with agent Attar Engineering, Inc. requests approval for a special exception use to construct a 1,034-sf
98 Marijuana Business with appurtenant infrastructure and a wetland alteration of 3,001-sf, located on real property
99 with the address of 41 Route 236, Tax Map 29, Lot 1, in the Commercial 2 (C-2) zoning district with the condition(s)
100 [conditions to follow].

101 *Motion to continue the sketch plan:*

102 Move to continue the sketch plan application by owner LaPierre Properties, LLC and applicant Well Field 44,
103 LLC with agent Attar Engineering, Inc. requests approval for a special exception use to construct a 1,034-sf
104 Marijuana Business with appurtenant infrastructure and a wetland alteration of 3,001-sf, located on real property
105 with the address of 41 Route 236, Tax Map 29, Lot 1, in the Commercial 2 (C-2) zoning district

106 *Motion to schedule site walk:*

107 Move to schedule a site walk on ___(insert date)___ at ___(insert time)___ on real property with the
108 address of 41 Route 236, Tax Map 29, Lot 1, in the Commercial 2 (C-2) zoning district in regards to the
109 Marijuana Business and wetland alteration application submitted by owner LaPierre Properties, LLC and
110 applicant Well Field 44, LLC with agent Attar Engineering, Inc.

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