

**ITEM 2**

**Town of Kittery  
 Planning Board Meeting  
 November 17, 2022**

**ITEM 2 – 181 State Road – Sketch Site Plan Review, Marijuana Business**

Board **MUST** take Action: Accept application as complete or Deny; if accepted, set site walk. Pursuant to 16.4 *Land Use Regulations*, 16.4.21 *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, applicant IDC 5, LLC and agent Sebago Technics request approval for special exception use to construct a 1,100-sf Marijuana Business on real property with an address of 181 State Road (Tax Map 22, Lot 4) located in the Commercial (C-3) Zone and Business Local (BL) Zone.

**PROJECT TRACKING**

| REQ'D | ACTION  | COMMENTS  | STATUS |
|-------|---|---|--------|
| No    | Sketch Plan                                     | June 23, 2022, July 28, 2022 (CONTINUED FOR 90 DAYS) MUST Take Action <b>11/17/2022</b> | N/A    |
| YES   | Site Visit                                      | TBD   | TBD    |
| YES   | Preliminary Plan Review Completeness/Acceptance | TBD   | TBD    |
| YES   | Public Hearing                                  | TBD   | TBD    |
| YES   | Preliminary Plan Approval                       | TBD   | TBD    |
| YES   | Final Plan Review and Decision                  | TBD   | 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:**

181 State Road ("Project") is situated in the Commercial-3 (C-3) and Business Local (B-L) zoning districts with the majority being in the C-3 zone. The .48-acre lot fronts the traffic circle at the convergence of State Road and Route 236, has Route 1 Bypass at the rear (west) of the property, and is abutted to the north by a commercial real estate office in the C-3 zone. The site is currently developed with one 800 square-foot single-family dwelling and one 613 square-foot restaurant with associated parking, addressed as 185 State Road and 181 State Road, respectively. The site exhibits elevation changes from south to north, with higher elevations near the Route 1 Bypass roadway.

The property is currently owned by Penn Concessions LLC but is under contract to purchase by the applicant. The applicant notes the property lines depicted are based on the Penn Condominium Plan from 2005. The purchase and sale agreement would convey both the single-family residence and the commercial building to the applicant.

This is the third time that this sketch site plan application has come before the Planning Board to propose to change the current restaurant use into a Marijuana Business, specifically an adult use store. The existing single-family dwelling unit would remain. The proposed use is a special exception use, which requires the Board to consider additional review criteria as found 16.7.10 *Review Process and Submission Requirements* and 16.2.12.F *Basis of decision*.

What has changed: The applicant is proposing to redevelop the existing restaurant and gravel parking area with a cannabis retail building that has decreased in size for the second time since the Board first reviewed the

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30 application on June 23, from 2,070 sqft, now redesigned to 1,100 sqft with paved access and parking area including  
31 related site improvements such as but not limited to, utility connections, stormwater infrastructure, and  
32 landscaping.

33 One of the existing curb cuts into the lot will be retained and widened and parking areas are now proposed to be  
34 only on the right side of the new building. The applicant has conferred with MDOT and MDOT is in favor of the  
35 single drive configuration as well as revegetation of the current paved apron area between the two existing curb  
36 cuts. The parking area has decreased dramatically in size from 29 parking spaces. There are now 2 ADA compliant  
37 spaces and 4 compact car spaces with the option to create an additional 4 spaces for (10 total if needed). Because  
38 the building has shrunk significantly, the parking requirement (“Retail store” calculation of one space per 175  
39 square feet of gross floor area (16.7.11.F.(4)) is now 6 parking spaces for 1,100 sqft.

40 The site plan includes details, such as where the curb cuts, sidewalk, pedestrian crossings and driveway aprons  
41 are or will be

42 *What remains the same or nearly so:* Both public water and sewer will be utilized and stormwater infrastructure  
43 is proposed to manage runoff from the proposed impervious surface *but is not shown on the sketch plans. The*  
44 *applicant will submit this information at preliminary plan.* The existing uses currently share a sewage disposal  
45 system, which the applicant intends to abandon and connect both the marijuana business and remaining  
46 residential use to the public sewer.

47 Staff notes that 16.5.32.B.(5) limits the customer access area of any Marijuana Business from 400 square feet to  
48 2,000 square feet and the applicant should explain how the building is divided. *The applicant intends to provide*  
49 *that information with preliminary plan submission.* From materials submitted for the June meeting, the lot appears  
50 to be outside 1,000 feet of any public or private school or public recreation facility (pursuant to 16.5.32.B.(1)).

51 The lot is split zoned C-3 and BL, with the majority of the lot within C-3. The sketch plan depicts the Marijuana  
52 Business use wholly within the C-3 zone. Per Section 16.1.8.B.(5),

53 The sketch plan phase allows the Board to: 1) determine if sufficient information has been supplied and, if not,  
54 request the information; 2) to ask questions; and 3) give direction to the applicant. If the Board finds the  
55 application insufficient, the Board should request information to be provided for the next meeting.

56 **Staff Recommendations:**

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57 This sketch plan meets general dimensional (16.4.21), parking (16.7.11.F), and the basic marijuana business  
58 requirements (16.5.32) at this time.

- 59 • The lot is legally nonconforming as to its size, as a 40,000 square foot lot is the standard in the C-3 zone.  
60 BL zone has no minimum lot size requirement.
- 61 • Rear and side setbacks are 10 feet for the C-3 zone but require 15 feet abutting a single-family use. The  
62 side and rear setbacks appear to be met.
- 63 • Parking meets and the requirements (1 space per 175 sf gross floor area for retail).
- 64 • Water/wastewater connections not shown – will need to be included with preliminary plan submission.
- 65 • Building design was completely reconfigured and the façade and footprint of the new building was  
66 submitted and will be facing the frontage as required by Title 16.
- 67 • Lighting plan similar to utility connections – will need to be included with preliminary plan.

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- 68 • Area of customer access should be determined (minimum 400 sf; maximum 2,000 sf).
- 69 • All the items under Items to Consider should be addressed by the applicant.

### 70 **This is the response to the Boards Questions per the continuance request on July 28<sup>th</sup> 2022:**

71 The Boards previous 7 Questions Listed Below have been answered. Note the previous action was to continue the  
72 application for a period **not to exceed 90 days (10/27/22)**, which upon next submission, must include the  
73 following information for potential acceptance:

74 1.) Plan must show clearly and with a label where the MaineDOT ROW is located, including the area called the  
75 apron, which the applicant has indicated would be at least partially revegetated.

76 **The plan has been updated. Please see the attached plan with the MaineDOT ROW delineated. The applicant is**  
77 **proposing the removal of the existing apron area. As part of the revised submission, the site plan has been redesigned**  
78 **to eliminate additional impervious including one of the existing access drives at this time.**

79 2. Plan must show clearly and with a label where the zonal boundary of the C-3 and B-L zones is located on the  
80 property.

81 **The plan has been updated. Please see the attached plan with the zonal boundary shown.**

82 3. Applicant must submit an answer from MaineDOT on whether or not the applicant can partially or wholly  
83 revegetate the apron area in question and provide any other comments or conditions MaineDOT might have or  
84 place on that area.

85 **The applicant's team has had many conversations with MDOT. Maine DOT will require a driveway entry permit for**  
86 **the project and is supportive of the single-drive configuration, leaving the two driveways (One for the business and one**  
87 **for the residence) in place as configured currently and, the revegetation of the apron area.**

88 4. Applicant must situate the building to face the road as required by Title 16.

89 **The building has been reconfigured and is facing the road as required by Title 16. While the final building has not been**  
90 **designed, the applicant understands the façade must present to the frontage.**

91 5. Applicant must place the entire site on one plan sheet, including the residential building and driveway.

92 **The plan has been updated. Please see the attached plan which shows the project area in its entirety.**

93 6. Applicant must request the 50-foot C-3 Zone boundary extension and give reasons why such an extension  
94 should be granted or provide information as to how the project as proposed intends to work with the split zone  
95 and the requirements for each.

96 **Working with planning staff and in accordance with the Town ordinance, a Zone Boundary Extension will not be**  
97 **required at this time. The entirety of cannabis use remains in the C-3 zone. The proposed project elements that are to**  
98 **occur in the BL Zone are all allowed uses including parking areas, pedestrian access, and circulation connecting**  
99 **abutting properties (16.4.17B.10, 16.4.17B.35). The project benefits from existing driveways and will further support**  
100 **the goal of the ordinance as described in section 16.4.17. The proposed improvements to be sited in the BL zone have**  
101 **been designed to meet the requirements of the zone, including 16.4.17.4 Landscaping/site improvements and 16.4.17.5**  
102 **Traffic and Circulation standards. We would welcome the board's support in extending the zone to align with the**  
103 **property boundary line or centerline of the road as described in section 16.4.6 of the ordinance, (Spoke with Kylie, they**  
104 **are NOT pursuing this change).**

105 7. Applicant must provide a basic rendering of the building as viewed from the street.

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106 **A building elevation of typical construction is included with this letter. Given the conversations to date, we request the**  
107 **board allow space for the final building design and review of aesthetic elements to occur during the site plan review.**

108 **Next Steps:**

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

114 Staff does not see impediments to the Board accepting this sketch plan as presented. Accepting it with conditions,  
115 should the Board desire to, will ensure that the applicant has the Board's requests on record. The next phase of  
116 the process, the preliminary plan phase, requires more extensive submission materials, including traffic reports,  
117 grading plans etc.

118 **Recommended Motions:**

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119 ***Motion to accept the sketch plan** application by applicant IDC 5, LLC and agent Sebago Technics requesting*  
120 *approval for special exception use to construct a 1,100-sf Marijuana Business on real property with an address of*  
121 *181 State Road (Tax Map 22, Lot 4) located in the Commercial (C-3) Zone and Business Local (BL) Zone.*

122 ***Motion to deny the sketch plan** by applicant IDC 5, LLC and agent Sebago Technics requesting approval for*  
123 *special exception use to construct a 1,100-sf Marijuana Business on real property with an address of 181 State*  
124 *Road (Tax Map 22, Lot 4) located in the Commercial (C-3) Zone and Business Local (BL) Zone., with the following*  
125 *condition(s): [TBD].*

126 **Motion to schedule site walk** on \_\_\_ (insert date) \_\_\_ at \_\_\_ (insert time) \_\_\_ on real property with an address of  
127 181 State Road (Tax Map 22, Lot 4) located in the Commercial (C-3) Zone and Business Local (BL) Zone with  
128 applicant IDC 5, LLC and agent Sebago Technics

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