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Town of Kittery Maine Planning Board Meeting January 10, 2019

ITEM 3 - 88 Pepperrell Road – The Bistro – Parking Plan Review for Business Use Change Action: Approve or deny plan. Owner, Chatham Street, LLC, and applicant, Ann Kendall, are establishing a new business entity in an existing facility where intensity of use is significantly different, located at 88 Pepperrell Cove (Tax Map 27 Lot 49) in the Business Local (B-L) and Shoreland Overlay (OZ-SL-250') Zones.

Background

The proposed development is part of a property-wide redevelopment effort that consists of the interior renovation of the three existing buildings, "The View" (previously Captain Simeons), "The Bistro" (previously Frisbee's Market), and "TheWharf" (previously Lobster in the Rough), located at 88 Pepperrell Cove. The existing/previous uses on site were retail, residential, storage, office and restaurant.

The proposed development being considered by the Board is the conversion of existing Frisbee's Market space listed on the town's tax card as stores or retail space along with an apartment. The Board reviewed this property last year for the applicant's proposed renovations to the lower level of the existing restaurant (The View) building, a small store and take-out ice cream restaurant to be named "Provisions". Both retail businesses and restaurants needed a special exception use approval by the Board since it's located in the Shoreland Overlay Zone, which the Board approved.

The review of "The Bistro" was to consider if the proposed change from retail (the Frisbee's Market) to restaurant (the Bistro) is significantly different in intensity of use. The applicable provision in the Town Code is 16.10.3.6.3 below:

16.10.3.6 Business Use Review.

All business use including the following must be reviewed by the CEO and Town Planner to ensure compliance with the requirements of this Code including:

- 1. Movement of an existing commercial or business entity from like to like facilities/use where major building/site modifications are not made;
- 2. Movement of an existing commercial or business use into related facility/use buildings;
- 3. Establishment of new commercial or business entity in an existing facility where intensity of use is not significantly different.

A business use review that conforms to this provision is not subject to Planning Board Review per 16.10.3.2:

16.10.3.2 Other Development Review.

Unless subject to a Shoreland Development Plan Review per 16.10.3.4, the following do not require Planning Board approval:

A.Single and duplex family dwellings.

- B. Expansion of existing use where the expanded use will require fewer than six additional parking spaces.
- C. Division of land into lots (i.e., two lots) which division is not otherwise subject to Planning Board review as a subdivision.
- D. Business use as provided in Section 16.4.3.5.

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Per 16.4.3.5 below, Staff may refer to Planning Board a business use change application for their consideration.

16.4.3.5 Business Use Changes.

The Planner and the Code Enforcement Officer are to review and approve, or refer to the Planning Board for action, all business use changes which occur that fall below Planning Board review thresholds as outlined in Sections 16.10.3.2 and 16.10.3.6. Approval must be based on compliance with all requirements of this Code.

The applicant had submitted a parking summary that demonstrated the site's existing 108 parking spaces were adequate for all the proposed uses of the four new businesses (Provisions, The Wharf, The View and The Bistro). The summary had some minor inaccuracies that needed correcting but the total still appeared to be sufficient. The changes included:

A. adding the ice cream take-out area in the proposed Provisions to the total gross retail square area, resulting in 500 sf rather than 475. The number of parking spaces incurred still remained the same.

B. revising the total to conform to the method for calculating parking per 16.8.9.4.D: When determination of the number of parking spaces required results in a requirement of a fractional space, any fraction of one-half or less may be disregarded, while a fraction in excess of one-half is counted as one parking space.

After considerable discussion regarding the business use change at the October 26, 2017 meeting, the Board voted to return the applicant to the Town Planner and the Code Enforcement Officer as a business use change but not of such an intensity that requires Planning Board purview with the condition that the applicant prior to opening the final project the Wharf come back with a detailed plan for parking for the entire project. Since that time, the applicant has changed the order of the opening of the new businesses with the Bistro now being the final project.

At the December 13, 2018, Planning Board meeting, the Board considered the proposed parking plan. Concerns were raised about the parking calculations relative to the existing and proposed uses, possible shoreland development violations and required parking standards. The Board voted to continue the review to the next meeting and scheduled a site walk for December 27, 2018.

The site walk was held on Thursday, December 27, 2018. A copy of the draft minutes from that site walk is attached to this report.

Staff Review

This staff review has been amended as of Thursday, January 10, 2019. All new comments in this analysis are underlined. Information no longer pertaining to the project is removed by strikethrough (like this).

After the December 13, 2018 meeting staff met with the applicant representatives to address the discrepancies in the parking calculations and try to get a plan that conforms to the Title 16 parking requirements. It was determined at that meeting that the if the applicant could not meet Title 16 parking requirements, they would need to seek relief from those parking standards from the Board of Appeals, as allowed per Section 16.6.4.C.(2). Specifically,

1. Parking landscaping is required for parking areas containing 10 or more 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. In addition, for any parking area having 25 or more spaces at least 10% of the interior of the parking area is to be maintained with landscaping, including trees in plots of at least five feet in width.

- 2. Where off-street parking for more than six vehicles is required or provided there are certain construction requirements that need to be met (16.8.9.4.K.):
 - a. The surface of driveways, maneuvering areas and parking areas must be uniformly graded with a subgrade consisting of gravel or equivalent materials at least six inches in depth, well-compacted and with a wearing surface equivalent in qualities of compaction and durability to fine gravel.
 - b. A system of surface drainage must be provided in such a way that the water runoff does not run over or across any public sidewalk or street or adjacent property. Where catch basins are required, oil traps are to be provided.
 - c. Where artificial lighting is provided, it must be shaded or screened so that no light source is visible from outside the area and its access driveways.

The ordinance does allow, in specific cases of hardship, the Board of Appeals to reduce the requirements for off-street parking where it is clearly demonstrated that such reduction will not detract from neighborhood values, inconvenience the public or increase congestion in the streets, per 16.8.9.4.L. An appeal to the Board of Appeals has been made seeking relief from the above-mentioned standards. The Board of Appeals met on Tuesday, January 8, 2019, and heard the miscellaneous variation requests from the applicant regarding the parking lot design standards. The results of that meeting are included in the analysis below and attached to the end of this document, which include the Board of Appeals findings of fact.

The meeting with applicant at the December 27th site walk clarified and addressed a number of the issues outlined below:

- 1. The spaces next to the Bistro and in front of The View will need to be verified. The parking area has recently been repaved and contains no striping. The existing parking layout does not appear to work for flow through travel to Bellamy Lane. The existing deck / stair structure to the rear of the Bistro building further constricts flow through traffic. The plan needs to show more detailed dimensions to ensure proper clearances are met for public safety. There is also a concern for pedestrian safety due to the proposed traffic flow and the constrained spaces of the development area. The parking spaces in this area have been redesigned with thirteen (13) spaces now shown and a 12-foot-wide travelway in the rear out to Bellamy Lane. The plan has been revised to show signage and surface markings indicating one-way travel.
- 2. It is noted that at the July 27, 2017 Planning Board meeting, applicant Ann Kendall requested review and approval for a Special Exception use for Provisions retail and Annabelle's take-out ice cream restaurant. The approval required four (4) parking spaces for the uses. The applicant is calculating 2.42 spaces with the current plan. The parking plan has been revised to indicate 3.56 spaces will be provided for the total calculation.
- 3. Dwelling units. There is a separate structure, a 3-bedroom single-family dwelling that requires 2 parking spaces. The parking plan submitted has a note on the single-family dwelling, "split level, wood framed house (4BR)." There doesn't appear to be permits to convert the 3-bedroom dwelling to a 4 bedroom. This needs clarification. Verification of septic system capacity needs be submitted to the CEO before a Certification of Occupancy can be issued for the apartment in the Bistro building.
- 4. Per the applicant, the second-floor apartment between the two floors of the Bistro will be constructed at a later date, converted to storage only. An application for a change of use is required to convert the second floor to storage. Storage would require one (1) parking space per 500 sf of gross floor area. The submitted parking plan identifies this area as a 115-seat Bistro and

- a 2BR apartment. This needs clarification / correction. Code Department is requiring that an "as built" plan for basement, dormers, uses & parking be submitted. The future dwelling unit does identify the required parking in the parking calculations on the plan. The dwelling unit will require a certificate of occupancy separate from the business uses.
- 5. Per 16.9.2.2.A in a Shoreland Overlay Zone cutting of vegetation is prohibited within a strip of land extending 100 feet, horizontal distance, inland from the normal high-water line, except to remove safety hazards. Elsewhere in the Shoreland Overlay Zone, the cutting or removal of vegetation is limited to that which is necessary for uses expressly authorized in the zone. The exterior seating area had previous partial vegetation and partial crushed stone. The entire exterior seating area now has crushed sea shells. The area of vegetation that was removed and replaced with sea shells must be replanted with grass. The area that was previously crushed stone that is now sea shells should have been a request to the Planning Board to keep sea shells in the unvegetated area instead of crushed stone. See aerial photos, attached. The plan has been revised to show 42 seats in the outdoor service area. Restoration of the crushed seashell area to its previous limit must be performed to the satisfaction of Shoreland Resource Officer prior to the opening of the Wharf in the spring.
- 6. Per 16.8.9.1.E, all traffic flow is to be clearly marked with signs and/or surface directions at all times. The plan has been revised to show signage and surface direction for traffic flow. The plan proposes a two-way drive aisle for the 90-degree angle parking areas and a one-way exit drive aisle along the parallel parking spaces at the western property boundary.
- 7. The parking plans should provide more information relative to off-site impacts, i.e., sight distances along Pepperrell Road, impact upon adjacent access points and intersections like Pepperell Terrace, turning movements of vehicles entering and existing the site, snow removal and the general condition and capacity of the public streets serving the development. The plans have been revised to show sight distances along Pepperrell Road and a note has been added to the plan for snow removal.
- 8. Per 16.8.8.1 Stormwater drainage, previously, there were two (2) storm drains existing in the north parking lot. Both drains have been covered up and don't appear to be functioning and/or existing. The plan should reflect stormwater drainage construction consistent with 16.8.8.1 Stormwater Drainage. Hydrologic analysis may be required. In addition, per 16.8.8.2 Post-construction stormwater management, a post stormwater management plan may be required and engineering review. The storm drains are found to be open and no new impervious surfaces are proposed. The Board of Appeals approved a miscellaneous parking variation of Section 16.8.9.4.K(3) to waive the requirements for additional storm water infrastructure.
- 9. Town Code allows off-site parking subject to approval by the Board of Appeals per 16.8.9.4.J. The applicant is not proposing off-site parking for their required parking space count.
- 10. Kittery Department of Public Works submitted two comments on the submitted plans: 1) that the applicant constructs ADA compliant sidewalks on either side of Pepperell Road along the property lines of the subject parcels and 2) that reflective markers be added to any protrusion into the public right-of-way from buildings or equipment along Bellamy Lane to aid in visibility to vehicles. The Department of Public Works requests the applicant construct ADA-compliant, raised sidewalks with granite curbs on Pepperell Road along each frontage of commercial property for the businesses (88 Pepperell Road) and parking lot (87 Pepperell Road). Any work within the Pepperell Road right-of-way will require coordination and permitting through Department of Public Works. The applicant has submitted a written waiver request to not install the sidewalk, per 16.7.4.1.

- 11. Archaeological/historical site to the north: Town code section 16.9.2.5.B. requires projects "involving structural development or soil disturbance" to submit to the Maine Historic Preservation Commission for review. Since this project does not involve structural development nor soil disturbance, there is no requirement for MHPC review. Town staff did reach out to MHPC to confirm there were no other issues related to parking in proximity to the Pepperell Tomb. **Staff has requested that the site engineer investigate the existence of unmarked remains buried beneath the parking lot to determine any impacts to the adjacent historic tomb.**
- 12. The parking at Town wharf at the end of Bellamy Lane features parking spaces open to the public and spaces reserved for Town residents. The Town Harbormaster has authority to enforce parking regulations at this location and has issued tickets for those that violate parking regulations. At the December 27, 2018 site walk, the applicant indicated they advise customers and employees not to park in these parking spaces but Staff emphasizes that there are parking spaces available to the general public.
- 13. The Kittery Fire Department has no comments on the parking lot as all portions of the site and businesses are accessible from a public way. The Kittery Fire Chief will continue to coordinate with Code Enforcement staff on necessary inspections to issue certificates of occupancy if the plan is approved and once the applicant has satisfied any applicable conditions.

Board of Appeals Meeting – Tuesday, January 8, 2019

A public hearing was held on Tuesday, January 8, 2019, by the Board of Appeals to hear the applicant's request for miscellaneous parking variation on certain parking lot standards contained in the code. The Board of Appeals voted on the following motions:

- Motion to grant request from 16.8.9.4.G. with condition that arborvitae plantings no shorter than 4' in height are installed on the eastern and western property lines of the parking lot located at 87 Pepperell Road. Passed 5-1
- Motion to grant request from 16.8.9.4.K.(2) with condition that the existing subgrade and compaction level are to be maintained. Passed 6-0
- Motion to grant request from 16.8.9.4.K.(3) Passed 6-0
- Motion to grant request from 16.8.9.4.K.(4) with condition that no light spill onto neighboring properties and that fixtures are shaded or screened. Passed 5-1
- Motion to grant request from 16.8.9.4.K.(5) with condition that existing pavement is to remain asis. Passed 6-0

<u>Staff Recommendation – *updated Thursday, January 10, 2019*</u>

Because the applicant has requested miscellaneous parking variations from the Board of Appeals on various parking lot design, landscaping, and lighting standards, staff is unable to recommend approval of the parking plan as submitted. The Board of Appeals will hear the applicant's request on Tuesday, January 8th at 6pm at Town Hall. Any decision rendered by the Board of Appeals will be reviewed by staff and presented as an update to this report at the Planning Board meeting on January 10th.

If the Planning Board were to approve of the plan as submitted, staff offers the following conditions of approval and provided on the final plan:

- 1. A split rail fence shall be installed along the length of the parking lot property line adjacent to Pepperell Terrace.
- 2. Curb stops must be in place for each parking space and securely anchored in place.
- 3. Parking signs shall be affixed to the split-rail fence to designate each space.
- 4. Any parking signs placed in the interior of the parking lot must be affixed to a wooden post—no metal sign posts are allowed.
- 5. The existing street light will be upgraded to an LED cut-off fixture.
- 6. Any new permanent lighting added will be LED cut-off fixtures with adequate shielding to direct light down and away from adjacent properties.
- 7. Food and beverage service for The Wharf will be restricted only to the area designated and approved by the Town for outdoor seating.
- 8. Restoration of the crushed seashell area to its previous limit must be performed to the satisfaction of Shoreland Resource Officer prior to the opening of the Wharf in the spring.

<u>Upon consideration of the Board of Appeals decisions and the comments from abutters at the public hearing on Tuesday, January 8, 2019, staff recommends approval of the plan as amended, with the following conditions provided on the final plan:</u>

- 1. A wooden split-rail fence shall be installed along the length of the parking lot property line adjacent to Pepperell Terrace.
- 2. Curb stops must be installed for each parking space and securely anchored in place.
- 3. Parking signs shall be affixed to the split-rail fence to designate each space.
- 4. The applicant shall construct ADA-compliant, raised sidewalks with granite curbs on Pepperell Road along each frontage of commercial property for the businesses (88 Pepperell Road) and parking lot (87 Pepperell Road), subject to review by the Department of Public Works.
- 5. Any parking signs placed in the interior of the parking lot must be affixed to a wooden post no metal sign posts are allowed.
- 6. The applicant shall work with CMP to install adequate screening or shielding on any existing street pole mounted lights utilized by the businesses. Any new permanent lighting added will be LED cut-off fixtures with adequate shielding to direct light down and away from adjacent properties.
- 7. <u>Food and beverage service for The Wharf is restricted only to the area designated and approved by the Town for outdoor seating.</u>
- 8. Restoration of the crushed seashell area to its previous limit must be performed to the satisfaction of Shoreland Resource Officer prior to the opening of the Wharf in the spring.
- 9. A parking attendant contracted from a professional parking management firm shall be in place from 12 noon to 9:00PM from May 15th to October 1st of each year.



Ann Grinnell Chairman, Planning Board Adam Causey, Planning Director Jamie Steffen, Town Planner P.O. Box 808 Kittery, Maine 03904 January 10, 2019 Project No. C054-18

RE: Waiver Request

The Bistro, The View, Provisions, Frisbees Wharf

88 Pepperrell Road

Dear Chair Grinnell, Mr. Causey and Mr. Steffen;

Section 16.7.4.1 of the Kittery Town Code, Title 16 "Land Use and Development" allows the Planning Board to grant waivers when conditions "substantially meet the objectives of the requirements so waived or modified".

Section 16.8.4.13.A specifies "Where required, sidewalks must be installed to meet the minimum requirements as specified in Table 1 of Chapter 16.8. Section 16.8.4.13.B notes that "The position of any sidewalks within the street ROW in relation to pavement surface is to be determined by the Planning Board."

David Rich, Director of DPW has reviewed the Parking Plan for the referenced project and has suggested elevated sidewalks along the northerly and southerly sides of Pepperrell Road along the parcel's frontage and restriping a crosswalk (See the sketch, attached). Currently a concrete sidewalk exists along the northerly side of Pepperrell Road in front of adjacent parcels.

I am respectfully requesting a waiver to install sidewalks along the project's frontage; installing the sidewalk sections as suggested and proposing pavement striping in these areas. The crosswalk will be installed with tactile warning pads as suggested by Mr. Rich. Installing the sidewalk sections will result in 5 different sections with ADA curb ramps; pedestrians accessing the 88 Pepperrell Road venues would then need to ramp up and down 4 times. Also, the addition of these sidewalk sections will result in a hazard to snow plowing operations as they directly abut 2 open parking areas.

Thank you for your consideration; we look forward to discussing this item at the next Planning Board meeting.

Sincerely,

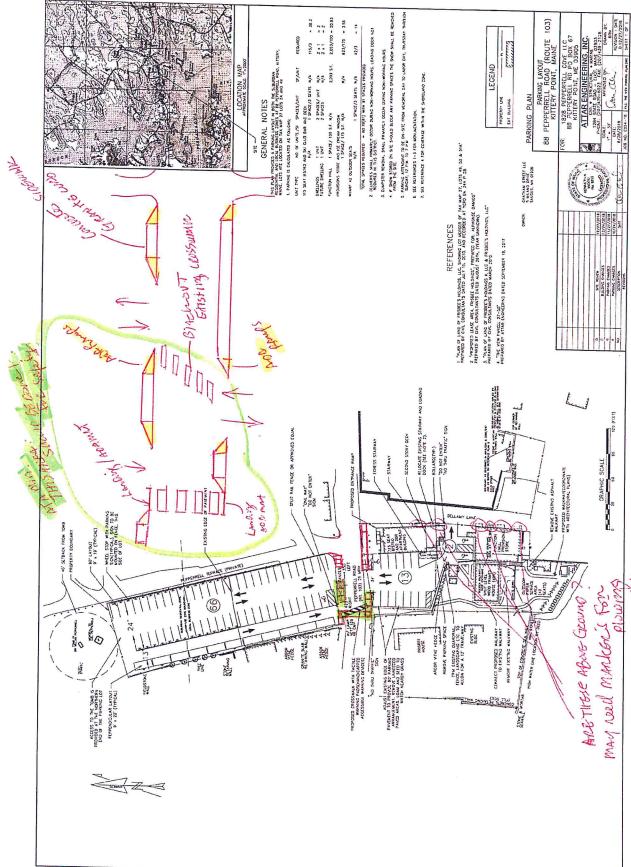
Kenneth A. Wood, P.E.

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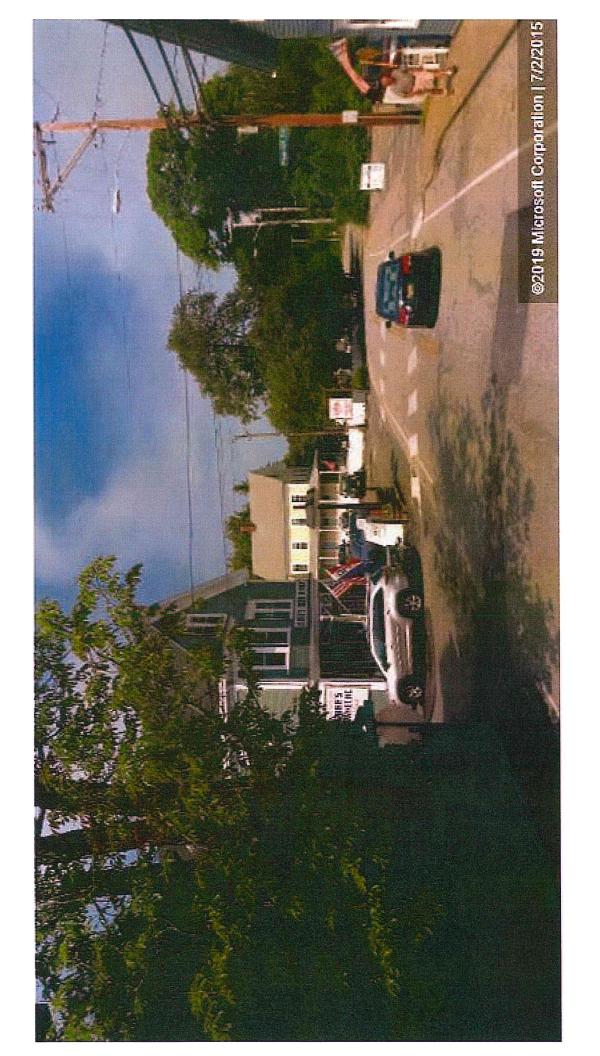
President

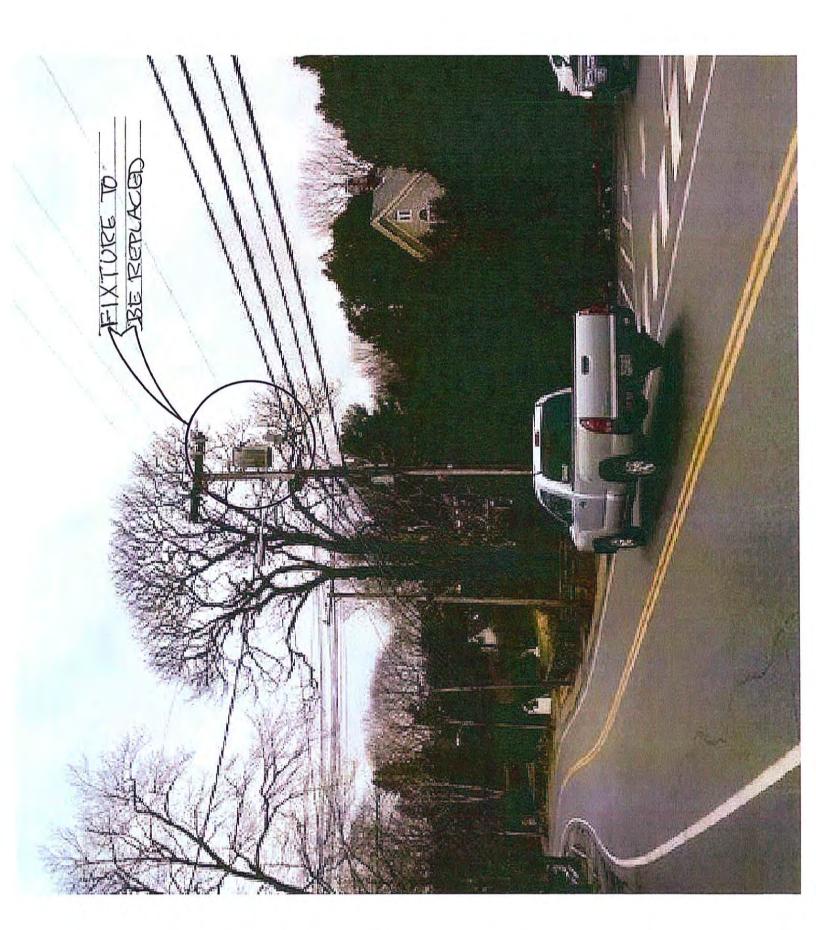
cc: Donna Ryan, Carla Goodknight The View C054-18 PBoard

The view Cos4-10 i Board



to see at night.







LED STREET LIGHT

LED Street Light - 240W - Outdoor LED Luminaire Slip Fitter Mount

These lights are the top of the line in quality and price. With LUMILEDs and a Meanwell Driver, the fixtures are guaranteed up to 5 years. The lights produce over 140 lumens per watt and start from 150 watts and can go up to 300 watts. The lights also have adjustable mounting functions which consist of a shoebox, yoke, slip fitter, and typical street light horizontal mount.

Suitable for use in the following locations:

Ambient Temp: -4°F to 113°F Wet Locations

WARRANTY

This product has a warranty for a period of 5 years from the date of purchase. The warranty is invalid in the case of improper installation, tampering, or removal of the Q.C. date label. Installation in an improper working environment or installation not according to the current edition of the National Electric Code also invalidates the warranty. Should this product fail during the warranty period, it will be replaced free of charge, subject to correct installation and return of the faulty unit. Greentek Energy Systems does not accept responsibility for any installation costs associated with the replacement of this product. This warranty is in addition to the statutory rights in the country of purchase. Greentek Energy Systems reserves the right to alter specifications without prior notice.



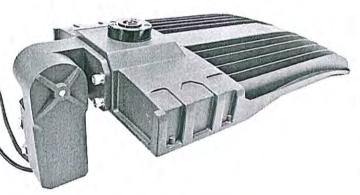


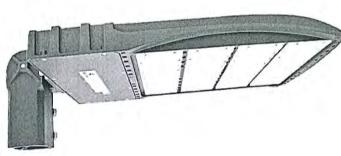


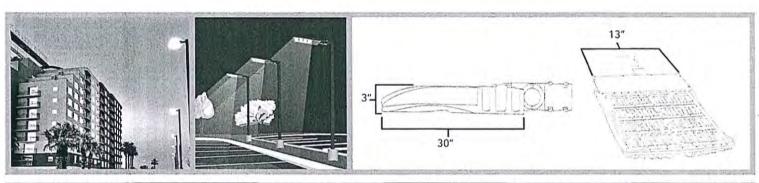












SKU	GT-S240WAT3AMA1	Color	4000K, 5700K	Lifespein	50,000 hours
Certification:	UL (E479499), DLC, CE, FCC	CRI	>72	Weight	20 lbs
Weitic	240W	picirioliudini	Туре III	Warranty	5 years
Lumens	34,000 LM (140 lm/w)	Input Voltage	100-277	Power Factor (PP)	>0.9



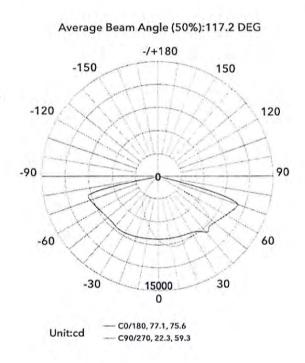
LED STREET LIGHT

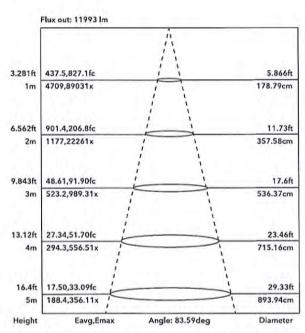
LED Street Light - 240W - Outdoor LED Luminaire Slip Fitter Mount

PRODUCT SPECIFICATIONS

Driver	HLG-320H-48B (1-10Vdc Dimmer) - Meanwell Driver	Operating Temperature	-4°F to 113°F
LED Type	LUXEON 3030 2D (1.5W)	Replaces	up to 1000W MH/HPS
LED	PHILIPS LUMILEDS	Dimension	30" x 13" x 3"
Housing	Aluminum Alloy	IP Grate	IP65
Efficacy (Lm/W)	140lm/w	Pole Diameter	2' 3/8"

LUMINOUS INTENSITY DISTRIBUTION DIAGRAM: PHOTOMETRICS





Note: The Curves indicate the illuminated area and the average ilumination when the luminaire is at different distance.



Click image to open expanded view

- 1 Ultra Bright White LED. Last up to 100,000 hours. Pre-installed Rechargeable AA Battery, Last up to 2 Years Before Replacing.
- Automatic Sensor Activates at Dusk with NEW and IMPROVED Solar Panel for Superior Charging Performance
- Weatherproof Designed to Protect the Lights from Natural Elements. Easy to Install. No Wiring Required. All Fence Post Attachments and Parts are Included.
- Dimensions: 5.75" (L) x 5.75" (W) x 4.5" (H). Base Dimensions: 4" (L) x 4" (W).
- 3-13/16". These Post Caps are NOT designed for Plastic, Vinyl, or PVC posts. (Tips: Please Measure your Posts before Post Size Fitting: For Wood Posts (Nominal 4" x 4") or Composite Posts ONLY. The Post Size Must Be SMALLER Than 3-13/16" Square. The Bottom Opening of the Post Cap which Fits over the Top of the Post is Exactly 3-13/16" x Purchase

