



**Town of Windham
Planning Department**

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MEMO

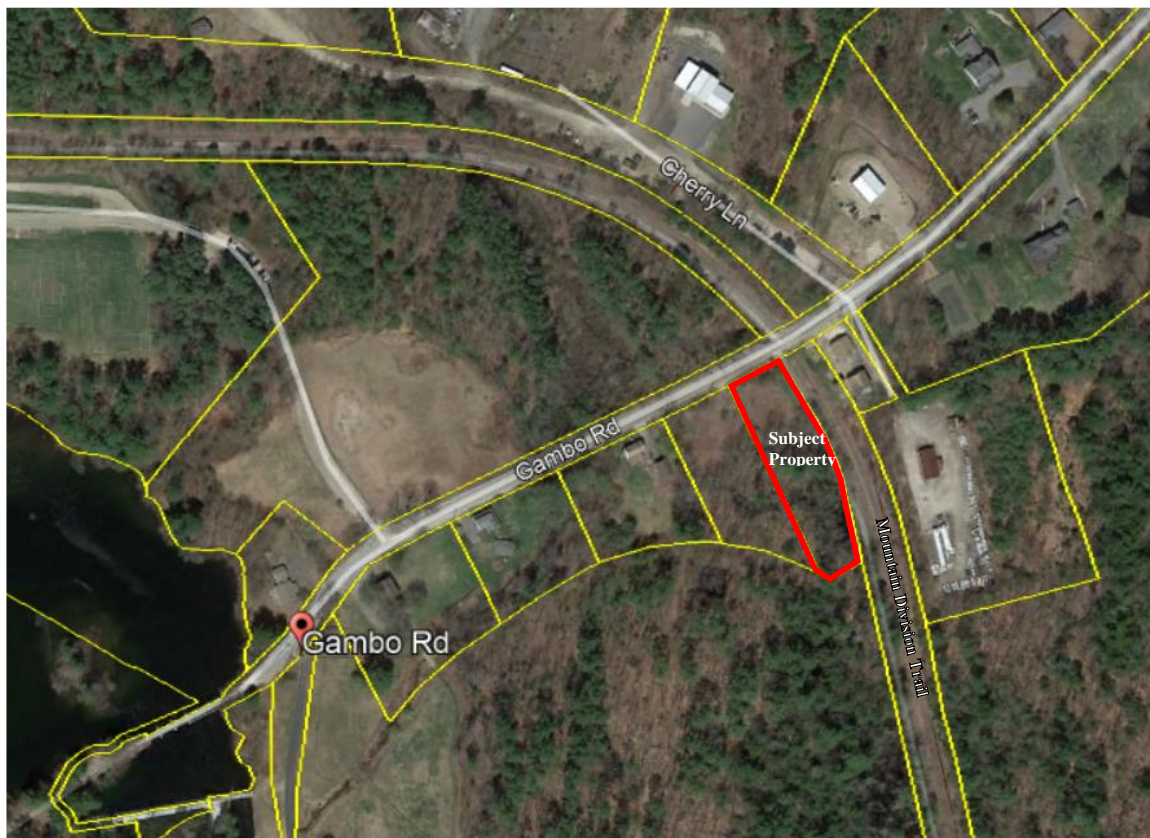
DATE: June 24, 2021

TO: Windham Planning Board
FROM: Steve Puleo, Town Planner
Cc: Amanda Lessard, Planning Director
Nancy St. Clair, PE, St. Clair Associates
Development Review Team

RE: 21-08 – Gambo Road Tier 3 Cultivation Facility: Major Site Plan, Final Plan Review
Planning Board Meeting and Public Hearing: June 28, 2021

Overview –

S&N Investment, LLC is requesting a major site plan approval to develop a Tier 3 Marijuana Cultivation Facility located on 24 Gambo Road. The application is to construct a new 7,488 square foot single-story building with an associated parking area on a 1.07-acre vacant lot fronting Gambo Road, adjacent to the Mountain Division Trail. Tax Map: 41; Lot: 4. Zone: Industrial (I).



PROJECT CHRONOLOGY

Per Section 807.E., a Sketch Plan was reviewed by the Planning Board at the meeting on May 10, 2021.

A Final Plan was submitted to the Planning Department on June 7, 2021, per Section 807.F.3., at least 21 days prior to a Planning Board meeting.

The applicant is storing the building on site. The building materials were delivered to the site on Monday, June 21, 2021. The applicant is the deeded owner of the property and is not proposing any clearing or site disturbance by storing the building material on the lot. The Code Enforcement Office does not require any permitting to store materials on site.

Applicant's response to staff comments dated June 16 and 17, 2021 was received June 22, 2021.

A Site Walk review by the Planning Board is scheduled for June 28, 2021, per Section 807.D. 2.

SITE PLAN REVIEW

Staff Comments:

1. Jurisdiction: The proposed project includes a new 7,488 square feet building is subject to Site Plan Review. Due to the size of the proposed development (five thousand (5,000) or more square feet of gross nonresidential floor area), the project is classified as a Major Development, which the Planning Board is authorized to review and act on by Section 803.A. of the Town of Windham Land Use Ordinance.
2. Title, Right or Interest: The applicant submitted a Quitclaim Deed (CCRD Book 37582 Page 73) dated December 10, 2020 from Sea Coast Mechanical, LLC to S&N Investments, LLC for the property at 24 Gambo Road (Map 41 Lot 4), per Section 811.B.1.(c)(4). The applicant has submitted evidence from the Maine Secretary of State's Office indicating that it is a Maine Limited Liability Company in good standing in Maine.
3. Waivers:
 - a. The applicant submitted a waiver request from the Stormwater Management performance standard 812.E.1.(f)

812.E.1.(f) requires the designed stormwater management systems for major site plans to comply with Section 4C(2) and Section 4C(3) of the General Standards of the DEP Chapter 500 Stormwater Management, as amended.

The applicant is requesting the waiver to treat a reduced percentage of the total impervious area under Chapter 500 Stormwater rules from 95% to 90% and of the developed areas from 80% to 75%. The states that due to the flat nature of the site and minimizing the wetland impacts, there are no other opportunities to add traditional stormwater Best Management Practices (BMPs) to increase the treatment percentage on the site.

The staff finds the waiver request reasonable and supported by the Town Engineer.

4. Complete Application: Staff find the application complete regarding the submission requirements, based on the application checklist.

The staff finds the application complete for a Planning Board public hearing.

MOTION: The application for project number 21-08 Gambo Road Tier 3 Cultivation Facility is found complete in regard to the submission requirements based on the application checklist, but the Planning Board retains the right to request more information where review criteria are not fully addressed.

5. Public Hearing: A public hearing is scheduled for the Planning Board Meeting to be held June 28, 2021.
6. Site Walk: A site walk is scheduled for the Planning Board was held on June 28, 2021

Findings of Fact and conclusions for the

Windham Planning Board,

MOTION: The Site Plan application for 21-08 Gambo Road Cultivation Facility on Tax Map: 41, Lot 4 is to be (**approved with conditions/denied**) with the following findings of fact and conclusions.

FINDINGS OF FACT

Utilization of the Site

- The subject parcel is approximately 1.07 acres and is currently undeveloped. The site is relatively flat and abuts the Mountain Division Trail.
- Wetlands or other natural resources are shown on the Existing Condition Survey (Sheet 2).
- The site is in the Presumpscot River watershed.
- The applicant is proposing to construct a new 7,488 SF 24' 8" single-story building for a Tier 3 Marijuana Cultivation Facility, associated parking and Fire Lane, stormwater facility, and landscaping.
- The Planning Board inquired during the Sketch Plan Review of locating the Tier 3 Marijuana Cultivation Facility constructed next to the Mountain Division Trail. Mountain Division Trail is not specified in the Town's Ordinance as a setback from a marijuana business, per Section 537. The applicant states that retail sales on the site and consumption are prohibited.

Vehicular and Pedestrian Traffic

- The subject parcel has approximately 100 feet of frontage on Gambo Road, per Section 400.5.(b).
- A 24' wide entrance is shown on the final plan. Per Section 522.B.2.(b), the maximum curb cut allowed by the ordinance is forty (40) feet in width.
- A driveway entrance permit from Public Works will be required prior to construction per Section 522.C.3.

- On the final plans dated June 7, 2021, the applicant shows a total of six (6) parking spaces - five (5) regular spaces and one (1) handicap-accessible space (see Sheet 3). The ordinance does not have a minimum number of parking spaces. The applicant anticipates no more than three (3) employees at the site during the week, therefore the number of spaces onsite exceeds the needs of the proposed use on the property, per Section 812.C.2.(a).
- Section 812.C.(1)(d) requires 30% of the parking spaces must measure 10' x 20'. The applicant will install a 2.5-foot-tall pressure-treated wood guardrail to separate the sidewalk from the parking spaces in front of the new building.
- The final plan submission states that the facility is anticipated to have a total of four (4) employees during the operating hours from 7:30 AM to 4:30 PM, Monday to Friday, and on Saturday from 9:00 AM to 2:00 PM.
- The final plan submission states that one small truck visits the site periodically, up to once a week during normal business hours.
- Section 811.B.2.(h) requires a traffic impact study is required for the project generating fifty (50) more trips during the AM or PM peak hour. The applicant states that the cultivation facility will not exceed fifty (50) more trips during the AM or PM peak hour. Therefore, a traffic impact study is not required. The applicant estimates the traffic generation for the four employees will be four (4) AM peak hour and four (4) PM peak hour trips, meeting Section 812.B.(b).
- A 5-foot-wide gravel walkway will be located on the north side of the building.
- The applicant is providing a 14-foot wide fire lane, along the westerly wall of the new building, per the Fire Chief's request. The access lane will have a "Fire Lane, Do Not Block, No Parking" sign mounted in front of the access drive. The access drive will provide access to three (3) sides of the new building. Fire apparatus will not access the property from the Mountain Division Trail.

Sewage Disposal, Water Quality and Groundwater Impacts

- As required in Section 812.H.1.(a), the Gambo Road does not have public sewage collection or treatment system. The project will be served by a private subsurface wastewater disposal system and is design for adequate capacity to handle the waste generated by the cultivation facility.
- Test pit soil analysis and test pit location is shown on the final plan (see Sheet 3).
- The proposed septic design is for five (5) employees with a shower at 20 GPD per employee for a total of 100 GPD. Therefore, a groundwater impact analysis is not required for this project, per Section 812.J.
- The applicant provided an HHE-200 prepared by Site Evaluator, Mark Hampton Associates, June 4, 2021, with the final plan application materials. It states that the disposal tank will be 1,000 gallon and the disposal field 500 SF consisting of loam and seed over a 8"-12' of clean fill, filter fabric, and 4" diameter leech pipe 12' of stone, within the required minimum distances for the properties boundaries.

Stormwater Management

- Per Section 812.E., a stormwater plan needs to be submitted that meets the standards MeDEP Chapter 500 Stormwater Management.

- Any required Maine Department of Environmental Protection (DEP) permits must be submitted as part of the final plan. The project development is not subject to MeDEP stormwater or site law permits since the disturbance is below the one (1) acre threshold.
- This project is in the NPDES (National Pollutant Discharge Elimination System) MS4 urbanized area as designated by the Environmental Protection Agency for the Town of Windham. As a result, there will be additional construction inspection requirements and ongoing requirements for reporting of stormwater infrastructure maintenance if is more than one (1) acre of development proposed. The development is not subjected to annual maintenance reporting because the total development area is 24,249 SF.
- The Town Engineer, Mark Arienti, P.E. reviewed the final plan submission and submitted comments on June 16, 2021 in the following areas:
 - The Land Use Ordinance requires a stormwater management plan that complies with Section 4C(2) and Section 4C(3) of the General Standards of DEP Chapter 500.
 - The applicant's proposed an underdrain soil filter (UDSF) and roof dripline filters as the treatment BMPs, only provides treatment for 90% of the impervious area.
 - They have asked for a waiver from this ordinance requirement based on site constraints.
- Stormwater Management Plan produced by St. Clair Associates, June 7, 2021, was submitted with the final application. The final plan and response to comments dated June 22, 2021 address proposed site development by locating the building at the highest point of the site.
 - The grading along the easterly side of the site to reduce the wetland impacts and provide screening of the building from the Mountain Division Trail. The applicant intends to use the wooded areas on the site to provide a level of natural stormwater treatment as the site runoff from the vegetated area and stabilized slope along the easterly side of the site flow through the natural buffer area to wetlands at the southerly end of the site.
 - The grading in the gravel parking area at the front of the building must be generally located near the finish floor of the building to provide access to the building. The parking area and entrance drive have been designed to generally drain toward the vegetated area in the northwest corner of the site, where a six-inch (6") deep Grassed Underdrained Soil Filter (Grassed UDSF) retention area is proposed to provide stormwater filtration and to provide storage of peak flow runoff prior to leaving the site. The Grassed UDSF is designed with a stabilized spillway to prevent damage to the basin during heavy storm events. The basin is intended to treat the entire front parking area and driveway of the site.
 - To address pre-treatment of the runoff before entering the Grassed UDSF, the applicant is proposing to add a 77' long seeded composted filter sock along the edge of the parking area and driveway. The filter sock is low impact BMP that will prevent sedimentation from entering the filter basin.
 - A 14-foot wide Fire Lane and the 3.5-foot wide roof dripline BMP along the westerly edge of the building will have a hammerhead turn around and a dumpster enclosure. The runoff will sheet flow west into the vegetative slope and the filter sock BMP, located at the toe of the slope. The runoff will drain through the filter sock which will slow the flow and increase the retention before entering the wetland area at the southern portion of the site. The filter sock BMPs allow vegetation to grow through the BMP but will need to be replaced every five years.

- The size of the Grassed UDSF meets MeDEP design criteria to treat the gravel parking in front of the new building and landscaped area, which represents 36% of the site's impervious cover. A small area of the driveway entrance will continue to flow along the gutter line of Gambo Road.
- The applicant is proposing to provide a Roof Dripline along the easterly and westerly side of the new building to treat 100% of the rooftop, which represents 54% of the impervious cover. The proposed BMPs will treat approximately 90% of the site's proposed new impervious cover.
- The applicant's stormwater modeling evaluated the pre-and post- developments peak flow rate of runoff at two Study Points using the MeDEP Chapter 500 Stormwater guidelines, as required in Section 812.E. The ordinance requires the applicant to demonstrate that during 2, 10 and 25-year storm event peak rates of stormwater leaving the site do not exceed pre-developed peak discharge rates leaving the site at the two study points. The applicant model shows a reduction in peak flow rates for Study Point 1 and Study Point 2 a slight increase in three storm events. Although, the applicant states the filter sock, foundation backfill, and the roof dripline underdrain filter were not included in the peak flow calculations.
- The shall provide a maintenance and operational plan for the stormwater management system BMPs.
- The final plan shows the mapped wetland areas on site. The largest wetland area is located at the southerly end of the site, just beyond the proposed lot improvements. There is a mapped wetland finger that projects into the building footprint on the westerly end of the site. The wetland impacts associated with the site development amount to approximately 4,200 SF, which is less than 4,300 SF exemption under the MDEP NRPA permitting process.
- In an email to the Town Planner dated June 23, 2021, the Town Engineer reviewed the applicant's response to his stormwater review comments and supports the applicant's waiver request of Section 812.E1.(f).

Erosion Control

- As required in Section 812.F, Erosion Control Measures are included in the Final Plan on Sheet 4 and 5. The application includes a narrative of the BMPs showing how to protect the wetland areas from sedimentation during construction. Sheet 8 of the Final Plan provide construction details.
- The applicant is proposing to install a double row of silt fencing or silt fence and erosion control mix to the wetland areas in no disturbance zones.

Utilities, Solid Waste Management

- The Final Plans for the development will be served by underground utilities, per Section 812.I.
- The project will be served by public water, per Section 812.G. 1.
- As required by Section 812. G.2., the applicant has written statement with Final Plans from the Portland Water District indicating that there is adequate water supply to service the use. Robert Bartels, PE at the Portland Water District supplied an "Ability to Serve" letter dated June 3, 2021.
- The project will require a road opening permit from the Town where public right of way is disturbed as required in Section 522.C.3.

- Portland Water District states the nearest fire hydrant is located approximately 750' of the site on Gambo Road.
- Based on the size of the proposed new building (less than 7,500 SF), a sprinkler system is not required. The building does require a fully addressable alarm system.
- The applicant anticipates that the trash will be collected on a weekly basis by a commercial waste hauler. The employee will wheel out the totes, from a secured enclosure located at the rear of the new building, at a scheduled time for trash pick-up, per Section 812.O. and 812.T.2.

Technical and Financial Capacity

- The final application included a cost estimate for the project, estimating a total cost of approximately \$924,507.00
- In compliance with Section 812.N.1., the applicant submitted with the final application a letter from Tim Michalak, Vice President of Commercial Lending, dated June 1, 2021, as evidence of financial capacity. S&N Investments has provided tax statements, brokerage information, and bank statements to complete proposed improvements for the Gambo Road site.
- As part of the final application submission, the applicant has retained the services of qualified professionals to design the project, apply for permits, and prepare the application, per Section 812.N.2.

Landscape Plan

- The landscaping plan included in the final plan shows 15 Arborvitae trees planted 7.5' on center along the northeast corner, adjacent to Mountain Division Trail, from Gambo Road property boundary line to the remaining tree line. On the western property boundary, the applicant is showing eight (8) Arborvitae trees plant 7.5' on center from the Gambo Road property boundary line to the parking area. The landscape plan shows eight (8) Arborvitae trees, four (4) trees on the east side of the drive, and four (4) trees on the west side.

Conformity with Local Plans and Ordinances

1. Land Use
 - The proposed use is a Marijuana Cultivation Facility which is allowed as a Permitted Use in the Industrial (I) District. Cultivation facilities may be of the following types: Tier 1, Tier 2, and Tier 3. The proposed use is defined as Tier 3 (not more than 7,000 square feet of plant canopy) as shown on the Grow Facility Floor Plan dated November 5, 2020.
 - This project meets the minimum lot size requirements and minimum lot frontage requirements of the I zoning district.
 - All non-residential uses in the I zoning district must provide two (2) square feet of open space for everyone one (1) square foot of floor area. The applicant should quantify the floor area and open space on the property. The final plan does not have the open space noted. The Planning Staff shall verify, prior to the signing of the site plan by the Planning Board, that the quantity of the open space property in square footage meets the required ratio, per Section 400.I.6.(c) and is specified in the General note section of the Final Plan (Sheet 3).
 - Marijuana Businesses Performance Standards, Section 537

- The Marijuana Business is not be located within 1,000 feet of a public or private school.
 - The business shall not have any odor of marijuana detectable beyond the area controlled by the business.
 - As provided in the final submission, the applicant is proposing to control odor from the cultivation facility by the using “6K Air Filtration System” from CLEANLEAF. The CL 1100-HE media filtration system uses a four-stage system passing 1,100 cubic feet of air per minute through a pre-HEPA filter, a HEPA filter, eight (8) odor-absorbing carbon canisters, and a post HEPA filter to prevent odor detection outside the building.
 - Marijuana shall be grown indoors only.
 - The development is subject to the following Section 1200 Impacts Fees, to be paid at with the issuance of a building permit: Public Safety Impact Fee, and Municipal Office Impact Fee.
2. Comprehensive Plan
- This project meets the goals and objectives of the 2017 Comprehensive Plan.
3. Others:
- Chapter 160 Marijuana Business Licensing Ordinance: A Marijuana Business shall not begin operations unless it has received and is in possession of a license issued pursuant to this Ordinance.
 - The development is located within 1,000 feet of the Mountain Division Trail and the Gambo Road youth soccer fields which were designated as drug free safe zones under Title 17A MRSA Section 1101, subsection 23 by the Town Council on February 14, 2006. The Town Attorney’s opinion is that marijuana cultivation will not be a violation of the safe zone statutes as the cultivation is authorized by the medical marijuana and adult use statutes. Maine Office of Marijuana Policy confirmed in a conversation with the Code Enforcement Director that the safe zone restriction would only be enforced if it was clearly specified in a local ordinance as a setback from a marijuana business.
 - The Planning Staff shall verify, prior to the signing of the site plan by the Planning Board, that all approved waiver requests and conditions of approvals are shown on the plan.

Impacts to Adjacent/Neighboring Properties

- Site lighting plan included in the final application submission referenced in Note 9 of the Site Plan Sheet 3, and details of fixtures indicated for the employee security two (2) building-mounted 450-watt equivalent outdoor LED wall packs.
- The applicant is not proposing any pole-mounted lighting fixtures. The building lighting fixtures will have a dawn to dusk control and include shielding to direct downcasting of the light and meet the Town’s Land Use Ordinance provision referenced in 812.R.1.(a) & (b).

CONCLUSIONS

1. The plan for development **reflects** the natural capacities of the site to support development.

2. Buildings, lots, and support facilities **will** be clustered in those portions of the site that have the most suitable conditions for development.
3. Environmentally sensitive areas, including but not limited to, wetlands; steep slopes; flood plains; significant wildlife habitats, fisheries, and scenic areas; habitat for rare and endangered plants and animals; unique natural communities and natural areas; and, sand and gravel aquifers **will** be maintained and protected to the maximum extent.
4. The proposed site plan **has** sufficient water available for the reasonably foreseeable needs of the site plan.
5. The proposed site plan **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.
6. The proposed use and layout **will** be of such a nature that it will make vehicular or pedestrian traffic no more hazardous than is normal for the area involved.
7. The proposed site plan **will** provide for adequate sewage waste disposal.
8. The proposed site plan **conforms** to a duly adopted site plan regulation or ordinance, comprehensive plan, development plan, or land use plan.
9. The developer **has** adequate financial capacity to meet the standards of this section.
10. The proposed site plan **will not** alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water.
11. The proposed site plan **will** provide for adequate storm water management.
12. The proposed location and height of buildings or structure walls and fences, parking, loading and landscaping shall be such that it **will not** interfere or discourage the appropriate development in the use of land adjacent to the proposed site or unreasonable affect its value.
13. On-site landscaping **does** provide adequate protection to neighboring properties from detrimental features of the development that could be avoided by adequate landscaping.

CONDITIONS OF APPROVAL

1. Approval is dependent upon, and limited to, the proposals and plans contained in the application dated June 7, 2021, amended June 22, 2021 and supporting documents and oral representations submitted and affirmed by the applicant, and conditions, if any, imposed by the Staff Review Committee, and any variation from such plans, proposals and supporting documents and representations are subject to review and approval by the Staff Review Committee or the Town Planner in accordance with Section 814.G. of the Land Use Ordinance.