

MEMO

TO: Devens Enterprise Commission
FROM: Peter Lowitt, FAICP Director/Land Use Administrator
Date: April 5, 2022
RE: Determination of Use request for 57 Jackson Amenity Building

King Street Properties (KSP) Devens through their legal counsel, Goulston&Storrs (Peter Tamm and Pat Gallagher) have requested a determination of use from the Commission for the proposed Amenity Building at 57 Jackson Road, part of the KSP Pathways Campus. The Commission should be familiar with the proposed amenity building as it has been discussed as part of the KSP Devens Master Plan in the past. They write: *We understand that the potential uses of the Amenity Building include the types of amenities typically associated with suburban lab/R&D/office complexes, including:*

- *a café or similar food and beverage service, potentially including a tap room,*
- *a multi-purpose space for fitness and other activities, and*
- *conference rooms and similar amenities*

There are two definitions in the DEC Rules and Regulations which are relevant to our consideration of this request for a determination that the proposed amenity building is an allowed use:

1. The Definition of Accessory Use in our Rules and Regulations:
Accessory Use: A use incidental to, meaning less than 50% (unless another percentage is specified in the By-Laws or Regulations) of the area of, and on the same lot as, a principal use.
2. The Definition of Small Scale Retail:
Small-scale retail as an accessory use is any use of a purely retail nature which is wholly contained within an office or other building primarily devoted to a non-retail use. Day care operations may be allowed as an accessory use in all commercial districts except for convenience retail.

Staff met with our legal counsel, James Lampke of Lampke and Lampke and discussed the applicant's request for a determination of use. We came to the following conclusions:

1. Multiple buildings can be allowed on one lot, thus an amenity building is authorized as long it complies with the second finding.
2. The amenity building must have less than 50% of its area designated for small scale retail, if they intend to have small scale retail as a use. The typical shared building program elements (restrooms, storage, utility rooms, common areas) that support both Accessory and Small Retail uses are not assigned exclusively to the Small scale retail, nor should they be proportioned. Thus, for example, if the amenity building is 8000sf, the proposed café/beverage area must be less than 4000 square feet.
3. The Determination of less than 50% is with respect to the building only, and exempts application of the 50% zoning provision for the outdoor use component of the facility. Specifically, seasonal outdoor seating and adjacent public open space may be used by the Small-scale retail and Accessory uses without restriction or application of the zoning noted in the recommendation.

Staff recommends that the Commission make a finding that the proposed amenity building uses are allowed in the Innovation Technology Business Zoning District if the building is on the same lot as 57 Jackson subject to the applicant establishing that and maintaining the small scale retail components of the building are less than 50% of the amenity building area.

If the Applicant is successful in attracting a Farm Pour tap room to the site, the Commission will address that piece (limited to the café retail area) when the applicant seeks a license from the Commission and the ABCC in the future.