



## MADBURY PLANNING BOARD

13 Town Hall Road, Madbury NH 03823

Tel: 603 742-5131 • Fax: 603 742-2502

**Approved**

### OFFICIAL BUSINESS

**Minutes of:** January 19th, 2021

**Meeting Convened:** 7:00 pm

#### **Members in Attendance:**

Mark Avery - Chair  
Tom Burbank  
Michael Card  
Fritz Green - ex officio  
Marcia Goodnow  
Doug Hoff  
Casey Jordan

#### **Support Staff:**

Elizabeth Durfee - Contract Planner  
Eric Fiegenbaum - Town Administrator

#### **1. Seating of Alternatives**

None

#### **2. Approval of Minutes**

The minutes from 12/11/2021 were reviewed. **Motion** made by Member Green to accept the minutes as amended. **Seconded** by member Hoff. **All eye except** member Jordan abstained. **Motion approved.**

The minutes from 12/15/2021 were reviewed. **Motion** made by Member Jordan to accept the minutes as drafted. **Seconded** by Member Goodnow. **All aye. Motion approved.**

#### **3. Correspondence**

Chair Avery presented the newest addition of "Town and City" to the board.

#### **4. Site Plan Public Hearing - LandCare Associates Inc., 282 and 284 Knox Marsh Rd. (Tax Map 9, Lots 3 and 4)**

- Daniel Gordon, Owner
- Christopher Berry, Berry Surveying and Engineering, Representative

This hearing was a continuation of the LandCare Associates hearing from the December 11<sup>th</sup>, 2021.

Christopher Berry reviewed Consultant Durfee's memo, and after researching, he is looking for some details from the board. Mr. Berry presented the site plan with colored lines to show the overlay boundaries along with 25' and 75' setback lines. He also reviewed the various protection zones to show

the areas of impact and is looking for board interpretation of ordinances to find out if he needs to apply for conditional use permits (CUP) or zoning variances.

Mr. Berry noted his definition of water impoundment as any natural or manmade storage of water. Examples included dams, berms, and swales. Member Green asked if the amount of water stored has anything to do with whether or not the storage is determined to be an impoundment. Mr. Berry noted that catch basins, wildlife ponds, and stormwater rock gardens all hold water and would be considered impoundments. Member Green then asked why there is no NHDES definition and why is this such a general term? Consultant Durfee noted that one reason the definition may not be present, is because it's such a general term. Administrator Fiegenbaum noted that his interpretation of water impoundment is whether the water is for wildlife/habitat and the water supply or stormwater mitigation and the treatment of water. Mr. Berry noted the reason for this discussion is to clarify whether he needs a CUP or not for the gravel impoundment. He noted that this system removes nitrogen and total suspended solids before the water is returned. Consultant Durfee noted that the board needs to determine if impoundment includes stormwater management.

The board discussed the difference between this impoundment vs. a natural one, whether we have ever distinguished between the two, and how do the overlay and protected areas impact this project. Member Jordan noted that this case seems to be one of the intended uses, and it seems this impoundment would make a meaningful improvement in the water quality.

Member Hoff noted that we have taken information from different places in the past and wanted to know in what circumstance was this language provided. He also reminded the board that we still haven't heard from the Conservation Committee and Water Board.

Consultant Durfee noted that we should be focusing on the intent of the article and that we should review the purpose statement. Member Green noted that we are here to interpret and not define water impoundment. Chair Avery summarized the board's thoughts while noting that we will be waiting for the thoughts from the conservation commission and water board.

Mr. Berry's next item for board guidance is the disturbance in wet areas. Consultant Durfee reviewed the ordinance permitted, prohibited, and limited regulated uses. She noted the board can only give a CUP for limited regulated uses.

Mr. Berry clarified the areas he is requesting relief from and showed the wetland buffers on the site plan. Member Jordan clarified the performance standard and described the difference between the need for a driveway vs parking or a walking path. He noted that the applicant can apply for a CUP, but it doesn't mean the board will grant it and a variance may be needed. Chair Avery reviewed the categories of uses, and section 5A and 4C of the ordinance. He then noted that Mr. Berry would have to prove there would be no adverse impact on the wetland and prove that the disturbance is not prohibited. Member Casey added that a major alteration of land seems like a prohibited use.

Member Hoff asked the board if we have the jurisdiction to review this site plan as presented. He noted that the past site plan has 1 lot where only an office is approved, and there was no retail sales approved.

He noted the need to clearly state if this area is for retail vs. wholesale and that the applicant is now starting at ground zero. Chair Avery noted the need for the applicant to explicitly say they are amending the prior site plan and the need to specify plans for each lot. Daniel Gordon of Landcare asked about what the prior site plan was approved for. Chair Avery reviewed the site plan from 12/15/1999.

Consultant Durfee reviewed her interpretation of the ordinance and the past practices of the board. The board discussed their thoughts about the wetland buffer and whether the applicant should focus on CUPs or variances. After some discussion the opinion of the board is that a variance would make the most sense.

Chair Avery clarified Article 9A as the applicant will need a CUP since they are exceeding 15% and the lot is greater than .38 acres.

Mr. Berry's next area for clarification was Article 10 items along the Bellamy River that are permitted vs. prohibited within 100 feet of the river. Consultant Durfee reviewed section 4B, and the prohibited uses. Structures are not allowed except what is explicitly listed. The board then discussed whether storage bins are considered structures. The board determined that bins should be considered structures.

Then the board discussed the gravel road and the gravel off of the roadway. After discussion Chair Avery noted that if it's more than a road, a variance would be required.

Mr. Berry's last item for the board was Article 21 - Flood Hazard Overlay District. Again the discussion of whether or not the storage bins are considered structures was discussed. Chair Avery found one definition noting that a structure impedes the flow of water.

He then asked Mr. Berry if the chop shop would be located in the Floodplain. Mr. Berry confirmed that the current plan for the chop shop would be in the Floodplain. Member Hoff noted prohibited uses including filling in the floodplain citing section 6 D and E. Member Jordan said that in accordance with sections B and C that the bins could be prohibited.

Mr. Berry then spoke on whether or not an empty bin would impede the flow of water and what possible contents would be used. Chair Avery noted that a variance would be helpful so that when the contents of a bin changes a possible new CUP wouldn't need to be issued. Consultant Durfee asked the applicant if they would consider moving the bins out of the floodplain. Mr. Berry said he may consider this.

He then agreed to extend the completion of the application past the 60 day deadline.

**Motion** made by Member Hoff to continue the site plan application to February 16th 2022. **Seconded** by Member Goodnow. **All Aye. Motion approved.**

##### **5. Review/Approval - Proposed Warrant Article for Addition of Condominium Language to Zoning Ordinances**

Chair Avery presented the article. The consensus of the board is that the article looks ready to be submitted.

**6. Review/Approval - Planning Board Report for Town's Annual Report**

The board reviewed and critiqued the report. The consensus of the board is that the report is ready to be submitted.

**7. Other New Business**

Chair Avery informed the board that he will be running for town Selectman.

**8. Other Old Business**

None.

Meeting Adjourned at 9:50

**Meeting Attendees**

Chris Berry - Berry Engineering

Daniel Gordon - LandCare

Dan Moynatum - LandCare

Respectfully submitted by Michael Card