



MADBURY PLANNING BOARD

13 Town Hall Road, Madbury, NH 03823

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Approved

OFFICIAL BUSINESS

Minutes of: October 5th, 2022

Meeting Convened: 7:01 pm

Members in Attendance:

Douglas Hoff - Vice Chair
Mark Avery-Ex Officio
Michael Card - Secretary
Thomas Burbank
Casey Jordan

Support Staff:

Elizabeth Durfee - Contract Planner
Daphne Chevalier - Recording Secretary

Meeting Attendees:

Zeland Schwartz, 14 Huckins Rd
Josh Lanzetta, Esq., 601 Central Ave, Dover
Steve Haight - CivilWorks
Jase Gregoire, Civil Works
Damon Burt, Fraggie Rock Environmental
Andrew Losee, 16 Huckins Rd
Bill Taylor, 242 Littleworth Rd, Madbury
Eric Fiegenbaum, 6 Moharimet Dr

1. Seating of Alternates

Discussion of this issue was moved to the New Business part of the agenda.

2. Approval of Minutes

Motion made by Member Avery to accept the September 21st, 2022 minutes as amended.

Seconded by Member Burbank. **Motion passed (4 aye - 0 nay - 1 abstention)**

3. Correspondence

Vice Chair Hoff asked members of the board if they would like paper copies of the state planning board regulations. All declined, opting to access the regulations online.

4. Subdivision and Conditional Use Permit Public Hearing, cont'd from September 7, 2022: 14 Huckins Road (Tax Map 1, Lot 16)

Mr. Gregoire, representative for Schwartz, introduces himself and updates the board on the applicant's progress. Updated documents, including two copies of the homeowner's document were delivered to the town.

Member Jordan suggests going through Ms. Durfee's memo and the applicant's responses. Regarding her memo dated 9/30, Ms. Durfee reviewed the new material and included comments on the bigger picture items from the last meeting, a few outstanding items, and some recommendations for the board that pertain to coordinating with other boards.

Ms. Durfee reviewed the changes and believes every outstanding item she flagged has been addressed by the applicant, including an attachment that includes information about the drip edge and gutters and updated deed language per the Board's request to more clearly reflect the stormwater requirements. Ms. Durfee recommends the Board review these items with the building inspector. Regarding the salt application issue, the language proposed includes language about restricting the use of salt, and best management requirements for applying salt are included in the homeowner's packet. Regarding her previous memo seeking clarification of the total wetland and buffer impacts, including the square footage, she states it sounds like the updated material has been brought to this meeting.

Ms. Durfee states the letter from the wetland scientist must be evaluated by the planning board, per Zoning Ordinance Article 9 Section 8, to determine if it meets the requirements of that ordinance.

Regarding the shed and three season porch, Ms. Durfee suggests the planning board review the driveway location with the road agent to ensure there is no confusion when future applications come in. The applicant is having some difficulty coordinating with the fire chief. The Board may need to solicit the assistance of the Selectmen to get help resolving that issue.

Ms. Durfee recommends that should the board approve the application, the board should be clear about the finding of facts. Ms. Durfee has some language to propose to that effect.

Mr. Haight, representative from CivilWorks for Schwartz, clarifies that the wetland buffers are now shown on sheet 7 of the map set. The wetland impact plan and wetland impact exhibit are also on sheet 7 of the map set.

Fraggle Rock Environment representative Damon Burt introduces himself to the Board. He explains they reviewed the permit and regarding the wetland crossing assessment, came to the final conclusion that they don't believe it will impact a lot of the wetlands on the site. He asks the Board if they have any questions.

Member Jordan makes note of the language "low wetland function and value" in the letter and would like more information regarding one of the particular wetlands that has higher functions. Mr. Burt states Wetland B is where the impact will be. There is a difference in the wetlands themselves, including the road and existing driveways, both of which are considerations when looking at function and value. There is some ditching that seems to have existed on the site for a while. Given the historic ditch, the water is aided by that ditch and may not have gone there previously. The ditch itself doesn't have much hydrology. Mr. Burt wants to keep the connection with the existing culverts. Member Jordan clarifies his concern is more about the larger section of wetland B and abutters' concerns about that area expanding and contracting with the seasons.

Mr. Burt says the crossing at the narrow section will allow drainage. He says much of the area has been altered previously to cause impacts to the property. Mr. Burt also states Fraggie Rock coordinated with Fish and Game, who agreed with the culvert and signed off regarding the species impacts. The buffer zone will aid in protecting the wetland as well. The larger wetland that goes to the reservoir is protected. Member Jordan says the feedback they received is that all the wetland areas go to the reservoir. Burt agrees it's all connected, but says it's all about where you draw the line, as that site has been altered over the years. Below wetland B, there has been less alteration heading out to the reservoir. He doesn't expect a change in the hydrology in the area.

Vice Chair Hoff asks if Mr. Gregoire if there is anything else he would like to present to the Board. Mr. Gregoire explains the difficulty he's had getting in touch with the fire chief. Mr. Gregoire states he has tried to reach the fire chief via email, phone, and in-person and has not heard back from him. He also informs the Board that, at the request of Fish and Game, a different culvert pipe will be used for the benefit of the turtles in the area.

Vice Chair Hoff calls for public comment at 7:29 p.m. No members of the public speak in favor of or in opposition to the application. Mr. Losee speaks with general comments. He points out a discrepancy between the applicant's documents in the proposed culvert pipe. Mr. Gregoire says this is a Scribner error.

Vice Chair Hoff closes the public hearing at 7:30 p.m.

Member Card asks about the shed. Vice Chair Hoff asks Ms. Durfee if the Board could approve the application with conditions, and Ms. Durfee confirms that as a possibility.

Member Avery states the Selectmen have not met with the lawyer yet. He recommends the Board not make the shed and porch a condition, as Portsmouth has an interest in it as well. If the applicant wants to move the shed on her own, she may do so.

Mr. Haight says this is a building permit issue. He states Ms. Schwartz is talking with the building inspector about how to resolve the issue regarding the three-season porch, explaining Ms. Schwartz didn't get a permit because there previously was a porch in that spot and she built the porch on the same footprint. Mr. Haight says this is a building permit issue and they are asking for approval on the subdivision knowing Ms. Schwartz has to resolve the issue.

Zealand Schwartz states she is working to resolve the issue as quickly as she can.

Member Avery says without clear knowledge as to whether or not it would be legal to do so, he recommends the Board not vote on the condition regarding the zoning violation. Member Burbank doesn't feel the application should be predicated on this issue.

The Board discusses conditions for approval on the application.

Member Avery would like to have added to placards that use of fertilizer is prohibited. Mr. Haight agrees. Member Avery also would like to see any future development of the remaining lot have no wetland impact.

Motion made by Member Avery to approve the conditional use permit for wetland crossing for the application before the Board. **Seconded** by Member Burbank.

Vice Chair Hoff calls for discussion on this motion. Ms. Durfee reads the conditional use criteria under zoning ordinance Article 9 Section 8(a) and (b) to ensure finding of facts; criteria includes evidence by a wetland scientist and input from the Water Board. Member Avery states the Water Board has already addressed the issue. The other condition is met with Mr. Burt's attendance at today's meeting. Vice Chair Hoff calls for a vote on the motions. **Motion passed (4 aye - 1 nay).**

Regarding the conditional approval application, Member Avery asks that the language in the informational packet says northern conditions rather than Florida lawns.

The Board discusses whether an additional condition of approval should include Ms. Schwartz taking the land out of current use. Mr. Fiegenbaum says Ms. Schwartz does not have to take the land out of current use until she sells the property; taking the land out of current use doesn't need to be a condition of the subdivision. He explains the land use change tax is sent to the person who owns the lot at the time of the disqualification and becomes a negotiable item in the purchase and sale of a property.

The Board discusses contacting the fire chief and will assist the applicant in getting feedback from Fire Chief Perley. Mr. Haight requests a time limit be placed on receiving feedback from the Chief.

The Board outlines the following conditions for approval:

1. Future property owners be provided a copy of the *Homeowner's Informational Packet*, revised September 2022 and prepared by CivilWorks New England.
2. The *Homeowner's Informational Packet* be updated to include Northern grasses.
3. No cut/no disturbance placards, which include the prohibition of fertilizer use, be installed at the 25-foot wetland buffer mark.
4. Any change of proposed driveway locations be reviewed and approved by the Planning Board.
5. All necessary state and local permits be secured.
6. The deed be updated to reflect all of the current information that has been provided.
7. The shared driveway currently in use is not used for construction access.
8. Any future development of the remaining lot has no wetland impact.
9. A letter from the Town Fire Chief or designee regarding fire safety issues be received. If the letter is not received within 30 days, the Board authorizes the Chair or designee to waive this requirement.

Motion by Member Avery to approve the application with the outlined conditions. **Seconded** by Member Burbank. **Motion passes unanimously.**

5. Other Old Business

No old business.

6. New Business

The Selectboard made a final decision on Mr. Losee's application for alternate member of the Planning Board. Per Member Ketel's request, she will move into the position of alternate. Therefore, Mr. Losee will be appointed to the Planning Board. Member Avery shares he will be leaving the Planning Board and Select Person Green will take Member Avery's position. Member Avery believes the next meeting will be his last.

The subcommittee looking at the floodplain ordinance met on Monday. The folks from UNH Cooperative Extension want to come in and present some draft changes to the Board. They would like to come in November. Vice Chair Hoff said they could be on the agenda for the second meeting in November and asks how much time they will need. Ms. Durfee thinks they will need only a half hour. Vice Chair Hoff will schedule them for the beginning of the meeting.

Member Burbank asks if the Board can discuss LandCare at today's meeting given the email correspondence the board members received. Vice Chair Hoff indicates that applicants should not email all Board members. Ms. Durfee said the Board cannot discuss LandCare this evening, as it isn't a public forum on the issue. After some discussion on how to address the email, Ms. Durfee says The Board could email items of concern to her individually and she could compile them, but she doesn't recommend that. The Board determines they should not talk about LandCare, as LandCare is on the agenda for the next meeting. Member Hoff thinks it might be good for the Board to discuss how to handle situations like this where the applicant emails the entire Board.

Motion by Member Jordan to adjourn. **Seconded** by Hoff. **Motion passes unanimously.**

Meeting adjourned: 8:11 p.m.

Respectfully submitted by Daphne Chevalier.