



MADBURY PLANNING BOARD

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DRAFT

OFFICIAL BUSINESS

Minutes of: October 19th, 2022

Meeting Convened: 7:01 pm

Members in Attendance:

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

Support Staff:

Elizabeth Durfee - Contract Planner
Daphne Chevalier - Recording Secretary

Meeting Attendees:

Daniel Gordon, 175 Packers Falls Rd, Durham
Peter Doyle, 127 Parrott Ave, Portsmouth, NH
Chris Berry, 335 Second Crown Point Road, Barrington

1. Seating of Alternates

Vice Chair Hoff welcomes Member Losee to the Board as a full time member.

2. Approval of Minutes

Motion made by Member Jordan to accept the minutes as amended for October 5th, 2022.

Seconded by Member Burbank. **Motion passes unanimously.**

3. Correspondence

Vice Chair Hoff mentions that the *Town and City* is available and asks the Board to let him know if anyone is interested in a copy.

4. Site Plan Public Hearing: LandCare Associates Inc., 282 and 284 Knox Marsh Road (Tax Map 9, Lots 3 and 4)

Vice Chair Hoff reopens the public hearing at 7:07 pm.

Christopher Berry of Berry Surveying and Engineering recaps what has taken place in the last 35 days or so. He states Kevin Poulin made the revisions requested and submitted updated plans to the town on October 3rd. Mr Ballestero has written to indicate the applicant has made the recommended changes and the state has accepted their application as complete. Mr. Berry commends Mrs. Durfee on her recent letter outlining the proposed conditions.

Vice Chair Hoff calls for comments from the Board.

Hearing none, Vice Chair Hoff calls for public comment.

Hearing none, Vice Chair Hoff closes the public portion of the public hearing at 7:11 pm.

Vice Chair Hoff invites the Board and Mrs. Durfee to discuss considerations for the applicant's waiver request. Mrs. Durfee states she noticed some of the area included in the shoreline overlay district seems to be changed. She asks that the calculations be changed to show the full area in the shoreline zone. Mr. Berry says they've added the disturbances together in that total zone and kept the breakdown as well. Mrs. Durfee says one of the items flagged for discussion by the Board was the oil tank and to where the applicant proposes to move it. Mr. Berry states he added a note to the site plan that it be moved only a couple of feet to be on the applicant's property. Mrs. Durfee asks about the Notice of Intent (NOI). Mr. Berry states an NOI with the EPA is not required until the applicant is ready to begin construction, at which time they will submit the NOI.

Mrs. Durfee asks if anyone on the Board has spoken with the attorney on the issue of the variance. At this time, no one on the Board has spoken with the attorney.

Mrs. Durfee asks about the revisions the DOT suggested. She asks if Mr. Berry can run through what those revisions were. Mr. Berry clarifies that the revisions were to the application, not the plans; DOT wanted one application instead of two. The mailbox is currently made of stone. The applicant was asked to change the material type on the mailbox.

Mrs. Durfee asks if Mr. Ballestero could check some of the plan modifications. Mr. Berry reports that Mr. Ballestero responded and said the applicant made the necessary changes based on his recommendations.

Mrs. Durfee could only find the drainage binder dated August 29th. She asks if there is a new version and asks Mr. Berry to submit an updated binder.

Mr. Berry says they updated the plans to 4" caliber trees. Member Losee asks about the landscaping and what kind of landscaping is over the leach field. He says it appears there currently are patio pavers. Mr. Berry states landscaping at the front of the site isn't required by the town so is at the discretion of the Board. He explains the septic is below grade and there are patio blocks over that area. The site has an advanced EnviroSeptic System which vents back into the building and out and doesn't require the system to be open to the air. Mr. Berry says the applicant will add to the plans the permit that was issued after the application.

Member Losee asks if any other changes have occurred between the application and now. Mr. Berry says the gravel encroachment has been moved back as part of this process.

The Board discusses the list of draft conditions. Mrs. Durfee says the building inspector doesn't approve the sign for the site, but the planning Board would want to make sure the sign is brought into compliance with the town ordinances. Mr. Berry says the applicant could bring the final sign before the Board if so desired. The sign is being relocated in the westerly direction and away from the road to ensure compliance.

Vice Chair Hoff reads the waiver request for Article VII, Section 3(C).

Motion made by Member Jordan to waive Article VII, Section 3(C) for the purposes of the existing driveway on the eastern side of the landcare property.

Seconded by Member Burbank. **Motion passes unanimously.**

Vice Chair Hoff asks the pleasure of the Board regarding the application and will defer to Mrs. Durfee on the issue of the oil tank, who recommends the Board make it a condition of approval.

Member Avery asks about the conditional use permit for Article IX-A, Section 5(c). Mr. Berry says this is specific to proving that the applicant is dealing with the stone water appropriately and the bulk of their application proves that.

Motion made by Member Avery to approve the conditional use permit Article IX-A, Section 5(c). **Seconded** by Member Jordan. **Motion passes unanimously.**

Regarding the request for conditional use permits Article XXI, Section 7(c) Flood Hazard Overlay District, Mr. Berry says this requires the site be net equal or increases flood storage on the property, which the applicant has done.

Motion made by Member Jordan to grant conditional use permit for Article XXI, Section 7(c) Flood Hazard Overlay District, as the applicant has demonstrated conditions to meet.

Seconded by Member Burbank. Mrs. Durfee says Sections 8 - 13 Cause of the Floodplain ordinance need to be met. **Motion passes unanimously.**

Vice Chair Hoff calls for discussion on the application.

Mr. Berry asks to discuss a few comments with the Board. Mr. Berry expresses concerns with the phrase "Any future changes" and wants to ensure that the wording of the condition for uses doesn't limit the change from like business to like business. The applicant would also like to know who the 3rd party reviewer is. He would also like to have the Board define "spill." Additionally, Mr. Berry states the existing state law allows for 24 months not 12 to demonstrate active and substantial development. Mr. Berry asks that the completion of grading be removed from the list of conditions due to the time it will take to remove the items, install gravel wetlands, return items, which will require more than 12 months given the time of year and supply chain issues. Mr. Berry wants to ensure the applicant has adequate time to complete the project properly.

Vice Chair Hoff asks if the Board is at a place where they can begin to list conditions of approval and begins review of the draft recommended conditions presented by Mrs. Durfee in her October 11th document.

Regarding the Board's draft recommended conditions regarding changes to proposed business activity, Attorney Peter Doyle (standing in for Attorney Baum) says some towns require a one-page form to be completed for a proposed change in business activity and asks if that is

what would be required or if someone would need to come before the Board. Vice Chair Hoff says the condition would necessitate the applicant email the Board regarding the proposed change. The Board Chair would then bring the proposed change to the Board during the correspondence agenda item, and the Board would decide if the change is within the bounds of the approval or if the proposed change is so large the applicant would need to come before the Board. Vice Chair Hoff says the Board is trying to prevent any enforcement issues in the future.

Regarding condition 4, Member Avery says the Board is trying to ensure that if the property changes hands, any proposed changes are brought before the Board for consideration. Mr. Doyle expresses concern around the use of the word “changes,” as it is too broad. Mrs. Durfee says the intent is to be broad to ensure the Board maintains an updated plan. Mr. Doyle would like to avoid a situation where the applicant is wrestling with whether small changes are within the scope. Member Burbank suggests adding the language “site plan amendment or ownership changes.” Member Jordan expresses concern about previously made incremental changes on the property leading to encroachment and wants language to ensure that doesn’t happen again. Mr. Doyle would like to see language so the insignificant is ignored. Vice Chair Hoff stresses the Planning Board’s intention is to keep abreast of what is occurring on the lot. Member Avery points out the potential for problems if the property changes hands. Mrs. Durfee reads out part of the site plan regulations to indicate this issue falls within the scope of the Planning Board’s purview. Vice Chair Hoff asks about the use of that language and asks the Board to vote on it. Mrs. Durfee recommends adding the language of the regulation “changes to the site plan.” The Board makes the changes to the language of the condition.

Regarding the Stormwater System condition, Member Losee asks if there are any easements across property lines. Mr. Berry says easements would be addressed at the point of sale should the applicant sell the property in the future.

Mr. Doyle suggests the language around “spills” be changed to “any reportable spill.” Mrs. Durfee says the submitted site plan states 25 gallon spills require notification to DES. Member Jordan recommends amending the condition to state “any spills of hazardous substances that are deemed reported to state or federal authorities or are 25 gallons or more shall be reported to the selectmen in 72 hours.”

In discussion around the condition of active and substantial development, Mrs. Durfee says the town doesn’t have any of this terminology within its regulations, so the Board can define what constitutes substantial development. She states if one year isn’t reasonable, the Board could make the condition be for a longer time. Vice Chair Hoff says with the language as written, the applicant essentially has two years; the applicant has twelve months and can request an additional year if needed. Mr. Berry says state law prescribes two years with the ability to request a twelve-month extension if needed. Mr. Berry would like to see the condition listed as twenty-four months, as completion of the fine grading won’t be done as part of the active and substantial completion. Member Avery asks if the other items are appropriate and if this condition is the only the applicant has concerns about. Mr. Berry replies, “yes.” Mr. Doyle says state law permits twenty-four months, so he doesn’t want to cut the applicant short. He would like some recognition that it is not commensurate with other items and states the applicant’s

intention is to get started right away. Mr. Doyle thinks it will take one and half to two years to complete the task. Member Burbank asks if some of the more detrimental items, for example covering the salt, can be prioritized. Mr. Berry says they must be by virtue of how it has to be rebuilt. Mrs. Durfee is not opposed to taking the grading off of the list. Member Avery asks if the language could be changed to “completion of initial grading.” Mrs. Durfee doesn’t believe there is a limit on the extension period. Mr. Berry says he’s been in cases where an applicant was given an extension and was not granted any additional extensions beyond the initial twelve month extension. Vice Chair Hoff says the purpose of the time limitation is to push for immediate action. He is comfortable with the current proposed time limitations and the change to the language proposed by Member Avery regarding the grading. Mr. Doyle says the applicant is willing to cap any potential for extending the development beyond one twelve month extension with an initial twenty-four month period and one twelve month application for extension. Mrs. Durfee reads the RSA in question and asks what the anticipated time frame is for completing the work. Daniel Gordon asks to speak and says the intent is for the work to be completed within thirty-six months due to the time it will take to move items on the site. The grading and items for the wetlands should be completed within the initial twenty-four months. Mr. Gordon’s worry is with the seasonality of the business and the busy season, supply chain issues, and winter. Member Jordan says the applicant would have signed contracts or bids to show the applicant is doing his due diligence. Mr. Doyle would like the Board to stick with the state statute. Member Jordan says towns may choose to be more restrictive to make sure the project keeps moving forward. Mr. Doyle proposes a middle ground: that the applicant submit a report to the Board by month twelve to ensure progress has been made. Member Card suggests changing the initial time constraint to eighteen months to account for the constraints the applicant will be up against. Mrs. Durfee asks about a final completion date of three years with the applicant submitting to a compliance hearing in twelve months to report on progress. Member Burbank likes the idea of having the compliance report submitted. Mrs. Durfee asks if there are any interim measures the Board would want to see completed and prioritized. Mr. Berry says the salt is currently covered. Mrs. Durfee says she thought it was being moved into new storage bins. Mr. Berry clarifies the bins are moving.

Vice Chair Hoff suggests amending the condition to twenty-four months with a progress review on month twelve. He expresses concern as to what would happen if the twelve month review shows that no progress on the plan has been made. Member Jordan expresses the same concern. Mr. Doyle says the applicant has the most to benefit from getting the work done as quickly as possible. Mrs. Durfee says the statute does give the Board the ability to create their own conditions. If there are things the Board would like to see completed earlier, the Board can specify that; it’s good to identify what constitutes substantial development.

Mr. Berry says he foresees a condition where they may not hear back from DOT for months, so he would like to say the clock begins running on final approval. The Board workshops language for an additional condition around final completion of the site plan.

Vice Chair Hoff reviews Mrs. Durfee’s memo from October 18th for additional conditions. Member Avery suggests changing the word “should” to “may,” as that is what the variance states.

Mr. Gordon says Chief Purley sent a communication stating he approves of the plan.

The Board completes discussion on the Precedent Conditions and begins review of Subsequent Conditions.

Member Card points out Mr. Berry was asking for clarification about who the third-party reviewer will be. Member Avery says we can't guarantee who that will be. Mr. Berry asks if the intention is for that to be Mr. Ballestero and Member Avery responds that is the intent.

Member Avery recommends carving out the subsequent condition that "the Town of Madbury reserves the right to enter the property to physically inspect the stormwater system and ground wetlands for proper maintenance and operation and to ensure there is no encroachment on setbacks and buffers. The Town shall give notice of intent to inspect at least twenty-four hours before an inspection."

After discussion, the Board arrives at the following draft conditions:

Conditions Precedent

Conditions precedent are conditions that must be fulfilled before the planning board may give final approval to an application, such as receiving state permits, obtaining bonds for construction, and making revisions to the plans (Source: NH Planning Board Handbook).

1. Plan Corrections:

- a. Change note #19 on Sheet L-01 to read "Trees to be a minimum of 4" caliper at planting"
- b. Delete "Planting Notes" #6 on Sheet L-01 as it conflicts with "Notes" #19 on Sheet L-01, which calls for 4" of mulch. Four (4) inches is preferable to three (3) inches of mulch.
- c. Add the following note to Sheet L-01 specifying that "Only low phosphate, slow-release nitrogen fertilizer should be applied. No fertilizer may be applied within 25 feet of wetlands or waterbodies."
- d. Add dimensions of the shed to Sheets 2 and 6.
- e. Add stamp of Michael Parson, CWS, to all applicable sheets.
- f. Correct the calculations of existing and proposed impacts, as needed.
Calculations for the area of land within the 50/75 ft wetland setback should be inclusive of the area within the 25 ft area of no disturbance. Similarly, the area within the 100ft Shoreland Zone is inclusive of the 50ft natural vegetation buffer.
- g. The oil tank infringing on Map 9 Lot 2 shall be relocated to a site solely located on Map 9 Lot 3. The final plan set shall show the location.
- h. Add the existing porch overhang to existing conditions Sheet 2.

2. Drainage Binder Corrections

- a. Section 5.0 of the Design and Maintenance of Subsurface Gravel Wetlands (page 147 of the pdf) should reference the operation and maintenance guidelines and checklist in Attachment B (not Attachment A).
- b. All references to the "Madbury Public Works Department" shall be replaced with "Madbury Planning Board" or designee.

3. The applicant shall provide evidence that proposed signage is in compliance with Zoning Ordinance Article VII, Section 2. The sign shall be fully located on Map 9 Lot 3 and shall be a minimum of fifteen (15) feet from the street and side lot line. Written approval from the Building Inspector confirming that the Building Inspector has no concerns with the safety, size, placement, and relation to neighboring industries or buildings shall be provided to the Planning Board.
4. Receipt of a copy of an approved driveway permit from NH Department of Transportation.
5. Receipt of a copy of four (4) approved Shoreland Protection permits from NH Department of Environmental Services.
6. Written confirmation from the Fire Chief, or his designee, that the Madbury Fire Department has no concerns with the plan as proposed.
7. Written confirmation from the property owners Charles Street Holding LLC and 284 Knox Marsh LLC that authorizes and agrees to the site plan application as proposed by the applicant, LandCare Associates, Inc.

Conditions Subsequent

Conditions subsequent are conditions that appear on the final plat and deal with restrictions on the use of property or safeguards that must be observed during development of the parcel or once the project is in use. Such issues might include the location of a road, preservation of vegetation and stone walls, or hours of operation and details of security protection for a commercial use (Source: NH Planning Board Handbook).

1. The Site Plan approval is for Map 9 Lot 3 and Map 9 Lot 4. Any proposed changes from the existing, approved site plan to one or both lots shall be subject to review by the Planning Board.
2. Any future changes to the proposed business activity or use of the site, including that of any tenants, shall be subject to review by the Planning Board. The Planning Board shall determine whether the proposed changes warrant a full site plan review at the time the changes are proposed.
3. No additional encroachment on water resources, including protective buffers and setbacks of wetlands and the Bellamy River, shall be permitted without review.
4. A visual and sound buffer shall be maintained between Map 9 Lot 3 and Map 9 Lot 2.
5. The applicant shall coordinate with the Building Inspector and Third-party reviewer prior to, during, and post-construction to schedule inspections of site grading, sediment and erosion control, and stormwater system. Inspection reports shall be submitted to the Building Inspector and the Planning Board.
6. The Stormwater System: Inspection and Maintenance Manual, the Inspection & Maintenance Manual Log form, and the Deicing Log Form, all of which are included in the LandCare Associates Drainage Binder, shall be updated on a regular basis. All documents shall be submitted on an annual basis by November 30, beginning in 2023, to the Planning Board or designee.
7. The subsurface gravel wetland shall be maintained in good working order in accordance with the University of New Hampshire Stormwater Center guidance in Attachment B: Subsurface Gravel Wetland Inspection and Maintenance Guidance of the LandCare

Drainage Binder. A completed checklist shall be submitted on an annual basis by November 30, beginning in 2023, to the Planning Board or its designee.

8. Any spill of hazardous substances that is deemed reportable to any state or federal authority or is twenty-five (25) gallons or more shall be reported to the Selectmen within seventy-two (72) hours.
9. The applicant shall be responsible for obtaining all necessary local approvals.
10. Receipt of a copy of a Notice of Intent from US Environmental Protection Agency and a copy of an approved Construction General Permit.
11. Approval of this Site Plan shall lapse if active and substantial development has not begun within two (2) years (24 months) from the date the Site Plan was finally approved or if specific conditions of approval have not been met within one (1) year (12 months) from the date of approval by the Planning Board. The threshold levels of work that shall constitute active and substantial development (NH RSA 674:39) shall consist of the following:
 - a. Completion of all grading
 - b. Installation of the gravel wetland
 - c. Relocation of materials and bins out of the Shoreland Overlay District
 - d. Relocation of the oil tank infringing on Map 9 Lot 2
 - e. Signage is in compliance with Zoning Ordinance Article VII Section 2(C)-(F).The Approved site plans may, for reasonable cause, be extended once for a period of no more than one (1) year (12 months) by the Board on receipt of a written request for extension received at least thirty (30) days prior to the expiration date of the site plan approval following a public hearing upon the request.
12. The approved site plan shall be completed within three (3) years from the date of final approval by the Planning Board.
13. The applicant shall meet with the Planning Board one year (12 months) from the date of final approval to provide a report on progress and provide supporting documentation.
14. The Town of Madbury reserves the right to inspect the stormwater gravel wetland, encroachment on wetlands, waterbodies, and their protective buffers, and other features of the site plan. Twenty-four (24) hours' notice will be provided to the owner of LandCare prior to entering the site.

Motion by Member Jordan to approve the site plan as defined with the precedent and subsequent conditions as outlined. **Seconded** by Member Card. **Motion carries unanimously.**

5. Other New Business

Mrs. Durfee says the subcommittee scheduled to present on the Flood Plan, Sea Grant and Strafford Regional Planning Commission, is wondering if they could have more time to present to the Board. They are willing to start earlier if the Board doesn't want to take up standard Board time. Vice Chair Hoff approves additional time for the subcommittee's presentation. Vice Chair Hoff says Philbrook Generators on 155 have a big operation with a number of employees, so the Selectmen suggested they come in to talk with the Board. Member Avery reports on the history of that property; the businesses that were said to be there previously are questionable in terms of whether or not they are official businesses (lawn sale and someone doing odd job mechanics).

The Selectmen aren't asking the Board to fix the issue but would like the Board to go through the process as there is the question of whether or not they are truly a home business. Member Jordan says they will likely have recommended changes. Their goal is to have a fully written set of statues. Mrs. Durfee says maybe a note could go out in the Madbury Musings. Vice Chair Hoff asks if Member Jordan has a blurb they'd like to include in the Musings; if so, that would need to be sent pretty soon in order to be in the Madbury Musings.

6. Other Old Business

Member Card reports he received a notice regarding Garrish, so it looks like that issue will be coming up again. Vice Chair Hoff says he read they received final approval, but it was challenged.

Member Avery updates the Board on the Schwartz subdivision and the ordinance violations with the existing house. They met with Chris and lawyers will be writing letters. Portsmouth will also be dealing with this.

Vice Chair Hoff asks if Mrs. Durfee could begin a Findings of Facts section for LandCare. She says she will, but it needs to be based on what the Board concluded. She doesn't want to write something that's not part of the discussion from tonight, but she can begin putting something together. Vice Chair Hoff says it might be good to use Durham's example as a model for how Madbury reports on Findings of Fact.

Motion to adjourn made by Member Jordan. **Seconded** by Member Burbank. **Motion passes unanimously.**

Meeting adjourned: 9:35 p.m.

Respectfully submitted by Daphne Chevalier.