



MADBURY PLANNING BOARD

13 Town Hall Road, Madbury, NH 03823

Tel: 603 742-5131 • Fax: 603 742-2502

Approved

OFFICIAL BUSINESS

Minutes of: October 4, 2023

Meeting Convened: 7:00 pm

Members in Attendance:

Marcia Goodnow - Chair

Doug Hoff - Vice Chair

Tim Burt -Ex Officio

Tom Burbank

Andrew Losee

Bill Courtemanche - Alternate

Support Staff:

Elizabeth Durfee - Contract Planner

Daphne Chevalier - Recording Secretary

Meeting Attendees:

Peggy Wolcott, 98 Old Stage Road

Eric Fiegenbaum, 6 Moharimet Dr

Cory Laskersay, 27 Robert Road

Anne Dickerson, 255 Littleworth Rd

Eric Salovitch, Northam Survey

Greg Merrell, 102 Hayes Road

Kevin Baum, 127 Parrott Ave, Portsmouth

Chris Berry, 32 Shakespeare Road, Rochester

Amy Trafton, 175 Packers Falls Road, Durham

Daniel Gordon, 175 Packers Falls Road, Durham

1. Call to Order

Chair Goodnow called the meeting to order at 7:03 pm.

2. Seating of Alternates

Alternate Bill Courtemanche was seated in Member Card's absence.

3. Approval of Minutes

Motion by Member Burt to accept the minutes for 20 September, 2023 as amended.

Seconded by Member Courtemanche. **Motion passed unanimously.**

**4. Site Plan Review Public Hearing (and associated Conditional Use Permits)
Landcare**

Applicants: Daniel Gordon, Charles Street Holding LLC, and 264 Knox Marsh LLC

Purpose: Applicants seek an extension to the timeframe established in October, 2022, for completion of certain Conditions Precedent

Chair Goodnow presented a brief history of the lot, read the procedures for a public hearing, and read the notice for public hearing. She opened the public hearing at 7:10 pm.

Mr. Baum and Mr. Berry were present to represent the applicants. Mr. Baum stated there is still one open condition, the DOT permit. Since the applicants are asking for an extension on the DOT precedent condition, they decided to provide a status update on the project as well. He's advised that the applicant not make significant changes to the property until they have the site plan. They are looking for a 6 month extension to give them adequate time to get the DOT permit. Mr. Berry of Berry Surveying and Engineering stated they notified Madbury staff and members of the Planning Board that they have met all the other precedent conditions of approval and supplied to those people documentation of those conditions. Regarding the one outstanding precedent condition, Mr. Berry explained the traffic engineer they hired to do the project was unavailable for a while. That engineer stated a traffic survey should be done during the peak season at LandCare, which they completed in July to get the most accurate data. Currently, the applicants have supplied everything they need to to DOT, and Mr. Berry has been engaged in due diligence by corresponding frequently with the DOT to make sure they don't forget about the application.

Mr. Baum explained Mr. Gordon has sold the business to a company with a much better storage capacity outside of Madbury and has been able to reduce his storage on the property, thus pulling materials outside of the buffer. Mr. Berry requested that the board move the DOT permit to a subsequent condition so the applicant can begin construction without running the risk of needing further extensions.

Chair Goodnow asked what would happen if the driveway design is not approved or if a new design is requested. Mr. Berry stated he shared the design with the DOT, District 6 has done a review of the project and the design, and District 6 doesn't seem to have any issues with the design. The holdup on the permit is due to the number of vehicles going in and out of the business. Mr. Berry reported that because of the reduction of the amount of materials stored on site and the increase in off-site storage, there has been a significant decrease in the amount of traffic. His understanding is that District 6 doesn't believe turn lanes are warranted. The decrease in traffic was enough to move the needle, as previous traffic studies suggested a turning lane may have been needed.

No members of the public addressed the board on this issue.

Ms. Durfee asked if the applicants anticipate being able to meet subsequent conditions 11 and 12. Mr. Berry stated yes, which is why they are asking to move the condition from precedent to subsequent.

Chair Goodnow closed the public hearing at 7:26 pm.

Member Burt asked if there was an ETA for when DOT would realistically provide a response. Mr. Berry expressed he believed it would have come through by now, but he anticipates receiving a response within the year. He believes 6 months is adequate. If the board moves the condition to a subsequent condition, he can bring plans to the Town Hall to be signed in the next 10 days or so. Member Burt stated the Select Board asked that he pass on their position that the

Planning Board not grant the extension. The Select Board feels the delay is a result of a failure on the part of the applicants to meet the deadlines. Member Burt asked if the Planning Board can entertain Mr. Berry's new request to move the precedent condition to a subsequent condition if that proposal was not posted in the public hearing as part of the application.

Mr. Berry said the applicants are agreeable to not moving the condition from precedent to subsequent if the applicant is given permission to extend the precedent deadline and begin construction on the subsequent conditions. Vice Chair Hoff said he doesn't believe the board can entertain the start of work on subsequent conditions, as that wasn't noticed.

Mr. Baum stated the central purpose of tonight is to request a 6-month extension on the precedent condition. He explained the project was held up due to the limited number of traffic engineers and the one they went with who was familiar with the project was unavailable. Once the engineer came on board, he wanted to do the traffic study at peak, which in his professional opinion would give them the best results. As soon as the traffic study was ready, the applicants submitted for the DOT permit. Mr. Baum stated Mr. Berry has been diligent about staying on top of the DOT without annoying them and making things worse. Mr. Baum expressed concern that without the extension, this issue will only end up before the board again or unwind all the hard work that has been done on this application. Other than Mr. Berry sending emails to the DOT, there is nothing more the applicants can do on the permit issue.

Ms. Durfee answered Member Courtemanche's question about why the condition was precedent rather than subsequent, stating that construction shouldn't begin before the design is approved by the State. She asked when the updated data was submitted to the DOT. DOT regs state the permit should be issued or denied within 120 days from when they receive the data. Mr. Baum stated the request for additional information extends that time. Mr. Berry stated the additional data has been submitted to the DOT. Mr. Baum said their understanding is the only thing left is for the DOT to review the updated traffic study. If the DOT deadline gets close, the DOT can ask for more comments and extend the timeframe. He cautions the board against extending for only 120 days, as the DOT could potentially ask for more information. Mr. Berry stated according to Mr. Gordon, the information was provided to the DOT on August 25th.

Vice Chair Hoff said the request for the 6-month extension is to accommodate for the potential for the DOT to extend the 60-day deadline by requesting more information. Chair Goodnow stated that the applicants did reach out to the Board earlier to try to be on the agenda for the first September Board meeting, but there was already a full agenda. Vice Chair Hoff suggested the information not be sent to the Board via certified mail, as that tends to go much slower than hand delivering it. Mr. Baum said they could hand deliver or email the information to the Board.

Mr. Berry explained that the reduction of traffic at the site further increases the likelihood that DOT will approve the permit. The rest of the construction issues do not relate to the DOT permit.

Mr. Burt asked about the other conditions precedent and if any documentation has been submitted to prove those conditions have been met. He asked if the other conditions have been

accepted by the Board as met. He was under the impression the Board would only accept documentation for everything at once. Vice Chair Hoff said there was discussion about not submitting information to Chair Goodnow; instead, the applicants should come before the Board to present the information. Ms. Durfee confirmed this understanding. Mr. Baum said in reviewing the minutes he only sees mention that a status update be provided. Vice Chair Hoff stated in this case the Board decided to require the applicant to come before the board. Member Burt said that requirement is what gave the Select Board some angst about the deadlines, which is why LandCare received multiple communications to make sure that the DOT deadline was met. Mr. Berry stated he doesn't recall any communication that he should submit materials at all at once before the Board and apologized if he acted improperly. He stated he sent the information to the Board to illustrate that the applicants are making progress. He said if the Board wants them to come back for a meeting to go through all the conditions, they're happy to do that. Mr. Baum said if a decision was made by the Board when the applicants weren't present regarding a new expectation on how the conditions would be reviewed, the applicants absolutely need an extension, as the 12-month deadline will not be met.

Vice Chair Hoff said they could extend the public hearing to review everything at once. Mr. Baum said that would put them past the deadline, and if that were the case, that could put them in court, which is not ideal.

Mr. Burt asked about the most recent submission to the DOT and if they received a reply asking for additional information from the DOT, including the drainage report. Mr. Berry clarified Member Burt was reading an email from 2022 asking for information, which has already been supplied to and reviewed by the DOT.

Mr. Burt explained the Select Board is concerned that the applicants were saying only one item remained incomplete, but there is no sign off on the other items by the Planning Board. The Select Board would like to have this matter brought back before 6 months. If the Planning Board allots a 2-month extension, and the applicants need another extension, the Select Board would like the applicants to return before the Planning Board to request another extension.

Chair Goodnow would be comfortable adopting the State's 120 day timeframe, which would extend the permit deadline to February, 2024.

Motion by Member Courtemanche that the precedent conditions for LandCare Associates site plan be extended to February 21, 2024. **Seconded** by Vice Chair Hoff. **Motion passed (5 - 1), with Member Burt voting nay.**

Mr. Baum will reach out to the Board when the conditions are met to schedule the dates for the applicants to appear before the Board.

5. Public Hearing Lot Line Adjustment of 255 and 257 Littleworth Road (Tax Map 1, Lot 14 and Tax Map 1, Lot 14C)

Applicant: D. Anne Dickerson Revocable Trust

Purpose: Applicant seeks to adjust the lot line between 255 and 257 Littleworth Road (Tax Map 1, Lot 14 and Tax Map 1, Lot 14C). This proposal would reduce Lot 14C by 214,143 square feet (4.9158 acres) and increase Lot 14 by the same amount.

Chair Goodnow reminded the public that the same rules for public hearing apply and introduced the application for a lot line adjustment.

Chair Goodnow opened the public hearing at 8:17 pm.

Mr. Eric Salovich from Northam Survey explained the history of these lots, both owned by the applicant. The proposal is to move parcel A, as given current use tax regulations, the applicant will see a reduction in her taxes. There will be no impact to abutters and will involve installing a few new rods to indicate the new lot lines.

Ms. Durfee asked that the following edits be made to the plans: indicate the lots are in the aquifer district overlay, correct the date listed in note 4 to March 25, 2023, and indicate the type of monument to be set as an iron rod. Mr. Salovich stated if the ground isn't suitable for an iron rod, he would install a pipe instead, which is more suitable, and would indicate that on the plans as well.

Motion by Vice Chair Hoff to accept the plan for consideration. **Seconded** by Member Losee. **Motion passed unanimously.**

Ms. Durfee asked if the City of Portsmouth was notified as an abutter. Chair Goodnow stated she believes they were. Vice Chair Hoff said Portsmouth wasn't noticed as an abutter. Mr. Salovich said it appears to be a clerical error, as they are listed on one list but not on the other. Chair Goodnow said she and Mr. Fiengenbaum added a few missed abutters, but the City of Portsmouth was not one of them.

The public hearing was halted at 8:52 pm, as it was discovered that an abutter was not notified. The discussion on this application ceased until a new public notice can be posted, notices can be sent to all abutters, and a new hearing will be held on this matter.

Vice Chair Hoff stated his understanding is that the Board should always require the applicant to provide the list of abutters so responsibility falls on the applicants. Given that there is another way for applicants to get the tax map information, he asked if the Board can request that Mr. Green remove the link to Parcels on his unofficial town website that leads to the outdated tax maps.

6. Other Business

- a. Housing Survey Update: Ms. Durfee reported 132 people have taken the survey so far.
- b. Other: At the last Planning Board meeting, the members present held a vote on the request for a waiver, which they held as having passed (4-0-1); however, that was not a valid vote, as 5 votes are required to pass the request for a waiver. Vice Chair Hoff explained the vote actually failed but was reported as a passing vote. The Board

discussed how best to rectify the situation. Ms. Durfee volunteered to notify the applicant. Vice Chair Hoff reiterated the vote should be recorded as failed and was incorrectly recorded as having passed. Ms. Durfee will contact the municipal association and then reach out to the applicant. Vice Chair Hoff stated though the vote failed, the applicant could submit a new application requesting a waiver with new documentation.

- c. Member Burt reported that the Select Board asked the building inspector to rectify the culvert issue at the Huckins Road properties.
- d. Mr. Greg Merrell introduced himself to the Board as someone who is interested in putting his name forward to be an alternate.

7. Adjournment

Motion to adjourn by Vice Chair Hoff. **Seconded** by Member Losee. **Motion passed unanimously.**

Meeting adjourned: 9:42 p.m.

Respectfully submitted by Daphne Chevalier.