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January 17, 2022

Town of Madbury Planning Board
13 Town Hall Road
Madbury, NH 03823

RE: Response to Planner Review
Limited Respond to Conditional Use Permit Requests
Charles Street Holding, LLC & 284 Knox Marsh LLC
Madbury, NH
Tax Map 9, Lots 3 & 4

Mr. Avery and Members of the Madbury Planning Board,

Berry Surveying & Engineering (BS&E) is in receipt of Ms. Durfee's comment letter dated November 11, 2021. Since that time we have met with the Planning Board and all agreed that, after the initial presentation, both the Board and BS&E would conduct a site walk and further consider the requests for Conditional Use Permits (CUP). At the time of the initial meeting the Board also requested input from the Water Board and the Conservation Commission. The applicant has since met with the Water Board at its January 2022 meeting. At that time the Water Board determined it also required additional time to consider the requests. The Conservation Commission was also consulted, however there was no quorum for the meeting and therefore it was postponed.

This response letter only discusses the use of Conditional Use Permits as a mechanism for relief to the Madbury Zoning Ordinance as it relates to Article IX, Article IX-A, Article X, and Article XXI whereas the question of CUP vs. Variance request was discussed in the review, and further discussed by key members of the Water Board. We would request that Madbury Planning Board determine the mechanism for relief for each item, and at that point BS&E will further provide details to the merits of the CUP request or variance request as may be needed.

Water Impoundments: We are asking that the Board to determine the definition of Water Impoundment. In each of the four sections of the ordinance referenced above, under permitted uses, Water Impoundments is listed. BS&E has in the past, on this project and others in Madbury, interpreted this to mean to include storm water features that impound water. An opinion of one of the members of the Water Board is that storm water features are not one of the intended uses for water impoundments. We would point out, however, that there is no definition provided in the Madbury Zoning

that would describe water impoundment in any particular way as to not permit a device that attenuates and impounds storm water. We would point out that in Article XXI, Section 7, water impoundments are described beyond the other chapters noted to specifically include on-site detention of storm water runoff. It is our assessment that this section of the regulations further defines the general intent of water impoundments and the other sections lack of definition does not limit its use and scope and therefore it is our opinion that water impoundments (drainage structures included) are a permitted use within the districts.

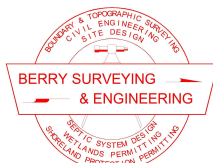
Article IX Wet Area Conservation District, Section 5 (A), disturbance of a 25' Buffer.

The proposed project has many cases of disturbances within the 25' buffer to wetlands. The two small pockets of wetlands are over 3,000 SF in size and therefore any disturbance within 25' of those and others falls within this overlay. Ms. Durfee's comment seems to imply that the proposed use of a walking path is permitted by CUP, however she explains in the next paragraph that Article IX does not include language that would allow for a CUP for any other disturbance infringing on the 25' buffer.

After review of the ordinance, we disagree with this interpretation. The ordinance, Section D discusses "Prohibited Uses" which includes "Alteration of the surface configuration of the land by the addition of fill or dredging....". However Section E, allows the Planning Board to approve CUP requests under subsection 1 "uses otherwise prohibited (e.g., driveway access or wetland crossing)". The section then lays out the criteria for which the CUP may be granted. Section 8 further lays out the criteria for which a CUP may be granted by the Planning Board. We would submit that since no section specifically discusses the uses which could be granted by a CUP, and Section E stating they can granted for "Uses otherwise permitted", that the applicant is free to request a CUP from the Planning Board for any non-permitted use found in Article IX, and a variance for various setbacks found within that section is not required.

With respect to the above, BS&E understands that further clarification is needed for each section (overlay zone) and CUP requested with areas and better defined impacts for the Board

Article IX-A, exceeding 15% within the Aquifer Protection District. The applicant has requested a CUP to this section and it seems that Ms. Durfee agrees with the approach. As discussed in the comment letter we will provide further details.



Article X, Shoreland Protection Overlay District, disturbance between 50-100' of the Bellamy River. The question of applicability remains with the proposed storm water system and it being an impoundment, which is specifically permitted within the zone. However, the bins and other disturbance (alteration of the surface) within the zone is listed under Prohibited Uses, assuming the Board finds that the bins are structures. It is our opinion, however, that Section 4. C 2 gives the authority to the Planning Board to grant CUP requests. 2.b then defines this ability with "Uses otherwise prohibited (e.g. driveway access and wetland crossing). Based on the fact that the bins and land disturbance is listed under prohibited uses, the Planning Board has the ability to grant the CUP request.

As noted in the review, further details need to be provided by BS&E for the Board to determine the merits of the CUP Request.

Article XXI Flood Hazard Overlay District. A CUP has been requested for minor re-grading of the site and movement / placement of bins within the flood zone. In addition the storm water system is located within the zone. The board is permitted to grant CUPs under Section 7, D, 8 where it discusses "undertaking of a use not otherwise permitted in the Flood Hazard Area Overlay District....". We believe Ms. Durfee agrees based on the comment letter. We understand that some information is needed for the Board to continue its review of the submitted CUP request.

At the January 19th Planning Board meeting we will have color coded plans available that show all of the overlays (multiple plans) so that it is easier to decipher the areas being discussed. It is our objective to receive guidance on the CUP requests being the mechanism for relief and the interpretation of water impoundment and its applicability within each overlay. After this meeting we would anticipate working towards getting the board additional information as discussed in Ms. Durfee's comment letter and working with the Madbury Water Board and Conservation Commission prior to returning to the Planning Board.

We look forward to discussing the particulars of this property, development, and design considerations involved.

Respectfully submitted,
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