



MADBURY PLANNING BOARD

13 Town Hall Road, Madbury NH 03823
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Notice of Decision

Tax Map 9 Lot 3 and Map 9 Lot 4

On 19 October 2022, at a properly noticed public hearing, the Madbury Planning Board **CONDITIONALLY APPROVED** the following:

Application for a Site Plan Amendment for LandCare Associates, Inc, located at Tax Map 9 Lot 3 and Tax Map 9 Lot 4, 282 Knox Marsh Road, Madbury, NH and 284 Knox Marsh Road, Madbury, NH, by Daniel Gordon, owner of LandCare Associates, Inc, represented by Christopher Berry of Berry Survey and Engineering and Kevin M. Baum of Hefle, Phoenix, Gormley & Roberts, PLCC. Tax Map 9 Lot 3 is owned by Charles Street Holding, LLC and Tax Map 9 Lot 4 is owned by Knox Marsh, LLC.

The Madbury Planning Board **APPROVED** the following associated applications:

Conditional Use Permit to allow greater than 15% impervious cover within the Aquifer and Wellhead Protection overlay district (Zoning Ordinance Article IX-A, Section 5(C)).

Conditional Use Permit to allow a water impoundment (subsurface gravel wetland) for the purpose of creating on-site detention of stormwater within the Flood Hazard Overlay District (Zoning Ordinance Article XXI, Section 7(C)).

The Madbury Planning Board **APPROVED** the following waiver request:

Waiver from Site Plan Review Regulations Article VII, Section 3(C) to allow an existing, paved driveway that is within twenty (20) feet of the eastern side of the property to continue to be used as a driveway.

The applicant received three (3) **Variances** with conditions from the Zoning Board of Adjustment on 22 August 2022 from:

Zoning Ordinance Article IX, Section 4(B)(3), for the alteration of the surface configuration of the land within the Wet Area buffer at the property located at 282 Knox Marsh Rd, Madbury, NH (as shown on Tax Map 9, Lot 3) and 284 Knox Marsh Rd, Madbury, NH (as shown on Tax Map 9, Lot 4).

Zoning Ordinance Article VII, Section 3(D), for the placement of a structure within the 25-foot setback. at the property located at 282 Knox Marsh Rd, Madbury, NH (as shown on Tax Map 9, Lot 3) and 284 Knox Marsh Rd, Madbury, NH (as shown on Tax Map 9, Lot 4).

Zoning Ordinance Article X, Section 4(B)(3), for the alteration of the surface configuration of the land within the Shoreland buffer at the property located at 282 Knox Marsh Rd, Madbury, NH (as shown on Tax Map 9, Lot 3) and 284 Knox Marsh Rd, Madbury, NH (as shown on Tax Map 9, Lot 4).

The **Site Plan Approval** was granted subject to the following **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.

Findings of fact: As part of this review and approval the Madbury Planning Board finds the following: A) The applicant submitted an application, supporting documents, and plans for the project; B) The Planning Board accepted the application as complete; C) The Planning Board held a public hearing on the application on November 17, 2021, January 19, 2022, February 16, 2022, March 16, 2022, April 20, 2022, April 26, 2022, May 4, 2022, June 1, 2022, August 17, 2022, September 21, 2022, and October 19, 2022, and conducted a site walk on December 4, 2021; D) The Planning Board and contracted staff reviewed the application in accordance with the Madbury Zoning Ordinance and the Madbury Site Plan Regulations and found that the application, with the three (3) approved variances meets all requirements; E) the Planning Board considered ordinance violations, issues of non-conformity with the previously approved Site Plan from 1999 and from the time LandCare has operated at the site (2008-present), encroachment on wetlands and the Bellamy River and their associated protective buffers and setbacks; F) The Planning Board worked with the applicant to maximize compliance with local regulations and minimize impacts on water resources; G) The Planning Board considered safety issues associated with heavy equipment, retail, and wholesale activity; H) The Planning Board determined that the approved Site Plan, which includes installation of a subsurface gravel wetland for managing stormwater, erosion and sedimentation control, relocation of material storage bins to a location farther from wetlands and shoreland areas, and revegetation of the shoreland zone will reduce the impact that the development and use of the site have on sensitive water resources; I) The Planning Board duly approved the application as stated herein, including the conditional uses.

Douglas Hoff

Douglas Hoff
Vice-Chair, Madbury Planning Board

10/20/2022

Date