

# Memorandum

To: Members of the Planning Board  
From: Liz Durfee, AICP, Planner  
Date: October 11, 2022

Type of Review: Amended Site Plan

Property Owner: Charles Street Holding, LLC and 284 Knox Marsh, LLC  
Applicant/Agent: Christopher Berry Surveying & Engineering  
Hoefle, Phoenix, Gormley and Roberts, P.A.

Property Address: 282 and 284 Knox Marsh Rd (NH Rt 155)  
Map and Lot #: Map 9 Lots 3 & 4  
Zoning District: Commercial and Light Industrial  
Overlays: Wet Areas Conservation, Aquifer and Wellhead Protection  
Overlay District, Flood Hazard Overlay, Shoreland Protection  
Overlay District

Waivers Requested: Site Plan Review Article VII Section 3(C)  
Other Planning Board Applications: Conditional Use Permit—Article IX-A, Section 5(c). Aquifer  
Protection District  
Conditional Use Permit—Article XXI, Section 7(c), Flood Hazard  
Overlay District

## Summary

The applicant proposes to amend an approved site plan for Landcare Stone, which is located on Tax Map 9 Lots 3 (2.65 ac) & 4 (5.57 ac). These lots are owned by Charles Street Holding LCC and 284 Knox Marsh LLC. Landcare is an existing business that has operated on the subject lots since 2008. The structure will serve retail and wholesale customers. Following discussions with the Planning Board on proposed activities within environmental overlay districts, the applicant has submitted a revised plan set last dated 10-3-22.

## Planner's Review

The following were reviewed:

- Plan titled "Non-Residential Site Plan Review for Charles Street Holding, LLC & 284 Knox Marsh, LLC, N.H. Route 155/ 282 & 284 Knox Marsh Road, Madbury, N.H. Tax Map 9, Lots 3 & 4" and dated October 18, 2021. Revised October 3, 2022.
- 20-083 Color Buffer Impact Plans 8-29-22.pdf, dated October 18, 2021. Revised October 3, 2022.
- 20-083 Transmittal Planning Board 10-3-22, dated October 3, 2022
- 20-083 Spill Prevention and Response Plan
- 20-083 Planning Response 9-19-22.pdf, dated September 19, 2022

## **Lot Size, Setbacks, and Frontage:**

Map 9 Lots 3 and 4 are existing lots of 2.65 acres and 5.57 acres. Lot 3 has an existing primary structure that meets the setback requirements of 50 feet in the front and 25 on the side. An existing, unpermitted shed that was built in 2020 is located approximately 2 feet from the property line and does not meet the setback requirement. The applicant received a variance from Article VII, Section 3.D for the placement of a structure within the 25-foot setback with the following condition: (1) A safety review and appropriate permits for the shed and all utilities shall be obtained through the Madbury Building Inspector and Fire Department.

### **Proposed Use:**

The existing use is a business known as Landcare Stone, which is a stone and landscaping supply wholesale store and permitted use in the Commercial and Light Industrial District. It is Landcare's intention to continue to utilize both parcels for the operation of its Landcare business. Additional businesses lease space within the primary structure. The existing primary structure is 6,076 sf in size. No changes to the structure are proposed. The structure is currently used for retail and wholesale but only approved for wholesale. The applicant has request to allow retail in addition to wholesale at the site. Half the business will be wholesale, half retail business according to discussion at the Planning Board on June 1, 2022.

A 32ft x 50 ft fabrication workshop, also referred to as a cut shop is proposed. This structure currently exists. No expansion is proposed.

The proposed LandCare hours are M-F 6am-4:30pm, Sat-Sun 7am-3pm with extended hours from Nov 1 to Apr 15 of 4am-6pm during snowstorms. There are 30 employees, 15 of which come to the site, enter a company vehicle, and leave on a daily basis.

According to the narrative/cover letter submitted April 26, 2022, and information in the plan set, there are two offices within the existing building that are leased to third parties: one is for landscaping/lawn care business and one is for guitar repair business. The Town's files contain no record for these businesses. These types of uses are permitted uses within the Commercial and Light Industrial District.

Note 32 on Sheet 6 of the plan set includes the nature and hours of these businesses:

- Lawn care business operates M-F 6am-6pm, Sat-Sun 7am-3pm, with 3 employees, which come to the site and then leave for the day.
- Guitar repair service shop, operating 3pm-12am, with 3 employees.

### **Overlay Districts**

- The lots are subject to the Wet Areas Conservation, Shoreland, Aquifer and Wellhead Protection, and Floodplain Overlay Districts.
- The applicant has submitted two Conditional Use Permit applications for the following:
  - Conditional Use Permit—Article IX-A, Section 5(c). Aquifer Protection District. The applicant proposes an increase in coverage over the maximum of 15%.
  - Conditional Use Permit—Article XXI, Section 7(c), Flood Hazard Overlay District. The applicant seeks to create a water impoundment for the purpose of creating on-site detention of stormwater runoff.
  - In addition to the CUP criteria of Article IX-A and XXI, the applicant must meet the criteria of Article IV Section 9 of the Zoning Ordinance.
- The applicant has received two Variances approvals from the Zoning Board for the following:

- Article IX, Section 4.B.3 for the alteration of the surface configuration of the land within the Wet Area buffer
  - Condition of approval: (1) The Subsurface Gravel Wetland Design is subject to approval by the Madbury Planning Board, incorporating suggestions from the third-party review by Tom Ballestero, dated July 20, 2022, as presented to the Madbury Zoning Board.
- Article X, Section 4.B.3 for the alteration of the surface configuration of the land within the Shoreland buffer
  - Conditions of approval: (1) The Subsurface Gravel Wetland Design is subject to approval by the Madbury Planning Board, incorporating suggestions from the third-party review by Tom Ballestero, dated July 20, 2022, as presented to the Madbury Zoning Board (2) Applicants shall obtain all applicable permits.

The Planner previously recommended that the Board seek legal counsel to confirm that the variances that the applicant received include all the necessary relief required from sections of the Zoning Ordinance.

CUPs and variances associated with existing and proposed uses within the overlay districts have been discussed at several meetings. The applicant has added calculations to the plan set summarizing the existing and proposed impervious area and total disturbance in the overlay zones. These have been consolidated in Table 1 below. 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. The Board should request clarification on these calculations and update the table as necessary. It is recommended that the Board also request that Table 1 be included on sheet 7 of the color set instead of the current list showing just the proposed impacts on one page and existing impacts on another. As shown in Table 1, there is an increase in the total area of disturbance of the wetland setback of 2,627 sf. All other proposed impacts are less than existing conditions.

**Table 1. Summary of existing and proposed impacts**

	Existing	Proposed	Change
<b>Wet Areas Conservation Overlay District</b>			
25 ft Area of no Disturbance			
Impervious area	6,474 sf	6,181 sf	-293 sf
Total disturbance	9,964 sf	8,980 sf	-984 sf
50 ft/75 ft Setback*			
Impervious area	36,363 sf	31,624 sf	-4,739 sf
Total disturbance	40,202 sf	42,829 sf	2,627 sf
<b>Shoreland Overlay District</b>			
50 ft Natural vegetation			
Impervious area	9,710 sf	0 sf	-9,710 sf
Total disturbance	11,395 sf	1,009 sf	-10,386 sf
100 ft Shoreland zone			
Impervious area	21,887 sf	0 sf	-21,887 sf
Total disturbance	22,110 sf	10,176 sf	-11,934 sf
<b>Flood Hazard Area Overlay District</b>			
Impervious area	53,440 sf	34,509 sf	-18,931 sf
Total disturbance	60,392 sf	47,678 sf	-12,714 sf
<b>Aquifer and Wellhead Protection Overlay District</b>			

	Existing	Proposed	Change
Impervious area Lot 3	84.9%	75.5%	-9.40%
Impervious area Lot 4	35.7%	26.0%	-9.70%
Total Site Plan	51.5%	42.0%	-9.50%
<b>Total Impervious Area</b>			
Impervious area Lot 3	97,800 sf	87,210 sf	-10,590 sf
Impervious area Lot 4	86,557 sf	63,010 sf	-23,547 sf
Total Site Plan	184,357 sf	150,220 sf	-34,137 sf

**Waivers Requested:**

The applicant has requested one waiver from:

- Article VII, Section 3(C): All parking spaces and aisles, as well as site driveways, drive-through lanes, fire lanes and other paved surfaces shall be situated not closer than 20 feet to a side or rear property line and not closer than 30 feet to a front property line.

The applicant seeks to continue to allow a vehicle drive land within 20 feet of the eastern side of the property.

**Signs**

One lit sign is proposed. ZO Article VII Section 2 permits one sign, located on the same lot as the business, and no closer than 15 feet from any street or side lot line. A smaller accessory sign less than 12 square feet is also permitted. The size, placement, and safety of the sign is approved by the Building Inspector. The proposed sign location is shown on the site plan and appears to be greater than the minimum 15 ft distance from the road as required in the Commercial and Light Industrial Zone.

**Summary of Outstanding Discussion Items**

- CUP approvals and action on the Site Plan application (approval, conditional approval, denial) is pending
- The Board should review and discuss any input from town counsel on the variance issue previously discussed. I.e. did the applicant seek and receive approval for all the items they need relief from?
- The applicant has proposed to move the oil tank from the adjacent lot. Where is the new location?
- NHDOT recommendations and revisions should be reviewed with the Board.
- The applicant should provide an update of the status of the NHDOT permit and EPA NOI.
- Any follow up comments from Tom Ballestero should be reviewed.

**Plan Corrections**

- Sheet L-01
  - Note #19 on Sheet L-01. Change to read “Trees to be a minimum of 3” caliper at planting”
  - Delete “Planting Notes” #6 on Sheet L-01 as it conflicts with “Notes” #19 on Sheet L-01, which calls for 4” of mulch.
  - Add Note to Sheet L-01 specifying that “Only low phosphate, slow release nitrogen fertilizer should be applied. No fertilizer should be applied within 25 feet of wetlands or waterbodies.”
- Add dimensions of the shed to Sheets 2 and 6
- Add stamp of Michael Parson, CWS, to all applicable sheets.

- Correct the calculations of existing and proposed impacts as needed, as noted above.

### **Drainage Binder Corrections**

- 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).
- Appendix C of Section 5.0 (beginning on page 165 of the pdf) appears to have pages of redundant information.

### **Draft Recommended Conditions**

- Any future changes to the proposed business activity or use of the site, including that of any tenants, is 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.
- No additional encroachment on water resources, including protective buffers and setbacks of wetlands and the Bellamy River, shall be permitted.
- A visual and sound buffer shall be maintained between Map 9 Lot 3 and Map 9 Lot 2.
- The Site Plan approval is for Map 9 Lot 3 and Map 9 Lot 4. Any proposed changes to one or both lots shall be subject to review by the Planning Board.
- The applicant shall coordinate with the building inspector and Third party reviewer prior to, during, and post-construction to schedule inspections. Inspection reports shall be submitted to the Planning Board.
- 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.
- 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.
- Any spills of hazardous substances shall be reported to the Selectmen within 72 hours.
- The applicant shall be responsible for obtaining all necessary local and state permits and approvals.
- Approval of this Site Plan shall lapse if active and substantial development has not begun within one year (12 months) from the date the Site Plan was approved or if specific conditions of approval have not been met within one 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:
  - Completion of all grading
  - Installation of the gravel wetland
  - Relocation of materials and bins out of the Shoreland Overlay District
  - Covering of all salt and sand storage
  - Relocation of the oil tank infringing on Map 9 Lot 2

The Approved site plans may, for reasonable cause, be extended once for a period of no more than one 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.