

Memorandum

To: Members of the Planning Board
From: Liz Durfee, AICP, Planner
Date: November 11, 2021

Type of Review: Amended Site Plan

Property Owner: Charles Street Holding, LLC and 284 Knox Marsh, LLC
Applicant/Agent: Christopher Berry Surveying & Engineering
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 Applications: Conditional Use Permit – Wetland buffer disturbance
Conditional Use Permit – Aquifer impervious surface cover
Conditional Use Permit – Shoreland buffer disturbance
Conditional Use Permit – Floodplain disturbance

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. The hours of operation are 7am-4:30 M-F and 8am-3pm Saturday.

Planner's Review

The following were reviewed:

- Amended Site Plan Application
- 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.
- 4 Conditional Use Permit Applications
- Waiver request for drive lane

*Existing site plan notice of decision will be reviewed prior to the PB meeting on 11/17/21

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 structure that meets the setback requirements of 50 feet in the front and 25 on the side. The frontage length is not shown on the plan for either lot. The Zoning Ordinance states that the minimum frontage requirement is 25 feet, however this is assumed to be a typo and the requirement is actually assumed to be 125 feet. The Board should confirm this. It does not appear that Lot 3 has 125 of frontage. The applicant has said that merging the lot is not an option.

Use:

The existing use is a business known as Landcare Stone, which is a permitted use in the Commercial and Light Industrial District. The existing primary structure is 6,076 sf in size. No changes to the structure are proposed. The structure will be used for retail and wholesale.

The applicant should explain the nature of the business and which aspects are being moved off site and which aspects of the business will continue to operate onsite.

Overlay Districts:

The lot is located within several overlay districts:

- Aquifer and Wellhead Protection Overlay District (updated version at [Zoning Ordinance Article IX-A](#))
- Shoreland Protection Overlay District
- Wet Areas Conservation Overlay District
- Flood Hazard Overlay District

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. The size and design of the sign should also be provided as part of the Site Plan application.

Conditional Use Permit Applications

1. Conditional Use Permit – Article IX Wet Area Conservation District, Section 5 (A), disturbance of 25 foot buffer
 - The applicant has requested a Conditional Use Permit (CUP) for impacts to the 25 foot area of no disturbance. Applicant proposes an 8 foot wide walking path. Applicant previously stated that this path

was for employees. Eight feet is wider than a standard sidewalk. The path is proposed to be porous and paved. Porous pavement and winter maintenance plans for this path should be provided. The stormwater infrastructure also infringes on the 25 foot no disturbance buffer. This should be considered a separate application. Section 4(C)(1) allows for a CUP for uses otherwise prohibited if the found to be consistent with the ordinance and if the use does not have an adverse impact as determined by a wetland scientist. This language is somewhat vague but the proposed uses (walking path and parking) are fairly similar to the examples provided in the ordinance.

- Section 5 of Article IX does not include language that would allow the applicant to seek a CUP for infringing on the 25 foot area of no disturbance. It is recommended that the Planning Board review and interpret Section 5 to determine whether the language allows a CUP for impacts to the area of no disturbance. If the Board finds that Section 5 does not offer this, a variance would be necessary.
- The wetland types as identified in Section 5 should be identified on the plan and the appropriate setbacks included. Because there are overlapping overlay districts with different provisions, all buffers and setbacks should be shown regardless of whether another overlay with a larger buffer is present. It does not appear that the building and septic setback is shown in full for all wetlands. It would be helpful for the symbology for wetland and shoreland buffers to be different.
- Wetland impacts in the building setback area are not clear. The Building and Septic Setback is described as “any construction altering the surface configuration of the land including the installation of a wastewater treatment system shall be setback from the reference line of the surface water or delineation of the wet area by the amount that includes the wet areas buffer by an amount between 50 to 75 feet depending on the type of wetland and soil type.” The applicant should clarify this setback on the plan and the Board should determine if the bins are located in the setback.
- The applicant should provide the existing and the proposed impacts, in addition to the combined impacts, so that the Planning Board can evaluate the proposed development.

2. Conditional Use Permit – Article IX-A Aquifer Protection District, Section 5 (C)(1)(b), exceedance of 15% impervious cover.

- The applicant has not provided much information to demonstrate that they meet the performance standards of Article 7. The Board should review all standards and request information from the applicant as appropriate. In particular, additional information on how fuel is stored, a detail of the secondary containment, how and by whom the fueling is used, and a spill plan should be provided.
- With regard to the information provided in support of the general CUP standards (Article 4)(9):
 - NHDOT review is required for changes to the driveway cuts.
 - The Fire Chief should sign off on the plan
 - The applicant should provide calculations demonstrating that managing stormwater in the floodplain will increase flood storage *during a precipitation event*.
 - The applicant should clarify what operations are being moved off-site
 - In determining potential impacts, it would be helpful to have more information on truck traffic, the types of machines that will be operating, and what activities occur inside vs outside.
 - The sign permit is approved by the building inspector but the sign information (design, location, size) does fall under the scope of the Planning Board’s review. More information on the sign and how it will be lit (internal, spotlight, etc) would be helpful in the Board’s consideration of potential safety issues.
 - A copy of the application and response to DHR should be provided for the file.

3. Conditional Use Permit – Article X Shoreland Protection Overlay District, disturbance within 50-100' of Bellamy River
 - Section 4(B)(1) prohibits structures from the Shoreland Overlay unless explicitly stated. A storage bin or similar use is not listed as a permitted use. The Planning Board should determine whether C(2)(b) is applicable or whether a variance is needed.
 - Section B(3) prohibits alteration of the surface by addition of fill or dredging except with BMPs for agriculture and forestry land drainage. The Planning Board should interpret whether this statement means that the only surface alteration that can occur is that which is associated with forestry or agriculture, with proper BMPs. If this is the case, a variance for the dredge and fill associated with the stormwater infrastructure would be necessary.
 - The local Shoreland regulations include a 100 foot buffer from the Bellamy River. This should be shown on the plan set.

4. Conditional Use Permit – Article XXI Flood Hazard Overlay District, Disturbance within floodplain
 - The applicant should provide evidence (calculations) that flood storage in the floodplain will increase during precipitation events when stormwater runoff is managed in a floodplain.
 - The floodplain should be shown on the plan.

Site Plan Review Article VII Standards

Section 1. Off-Site Impacts

- A traffic study was not submitted with the application. Modifications to the driveway would require approval from NHDOT.
- Erosion and stormwater management are proposed.
- The applicant states that there is arborvitae along the east side of the lot. This appears to be partially on the adjacent lot.
- No information is provided about mitigating noise. Is the fabrication workshop new? What was the previous use of that structure?
- Dust is managed as needed with water spray.
- The applicant should give an estimate of the range of hours the business could be open during storm events so that the Board and Town area aware of this. Police chief should be notified of this request and given the opportunity to highlight any potential safety concerns.
- Best practices for salt application on site are especially important.

Section 2. Landscaping

- No landscaping is shown/proposed for the front of the lot. Information about existing and proposed landscaping is needed.
- 7 red maple and 7 high blueberry shrubs are proposed to be installed between the proposed berm and existing tree line south of the bins. It is suggested that a minimum of two trees and two shrub species be planted.
- The plan depicts a retaining wall near NH 155. Is this an existing retaining wall?
- There is existing fencing on the east side of the lot. No changes are proposed.

- The landscaping maintenance guide is illegible.

Section 3. Parking

- There are 30 spaces located around the small wetland in the middle of Lot 4 and 8 spaces including 1 ADA compliant space are located at the front of the store. There should be 2 accessible spaces for a lot with between 26 and 50 parking spaces. Parking spaces infringe on the 25 foot no disturbance buffer.

Section 4. Loading

- The applicant has identified travel routes and storage locations for vehicles. No loading will occur off-site.

Section 5. Erosion and Sediment Control

- Erosion and sediment control is proposed during construction.
- Planner recommends that the Board obtain a third party review of the proposed stormwater and erosion and sediment control measures due to the sensitive nature of this location and the proposed activities, which involve storing loam, salt, and fuel.

Section 6. Stormwater Runoff

- Documentation of calculations used to design the stormwater system have not been provided.
- A stormwater operations and maintenance plan should be provided.
- The applicant should also provide calculations to support the statement that the stormwater retention pond will increase storage in the floodplain during a storm event even as it functions as storage for runoff from the site.
- Planner recommends that the Board obtain a third party review of the proposed stormwater and erosion and sediment control measures due to the sensitive nature of this location and the proposed activities, which involve storing loam, salt, and fuel.

Section 7. Nuisances

- Is any change to exterior lighting proposed?
- Is any noise or vibration discernible off site?

Section 8. Highway Access

The site is located on a State road and therefore requires a driveway permit from NHDOT. Applicant has been instructed to provide NHDOT a copy of the plan to determine if State review and approval is needed.

Section 9. Water and Sewage

- The site is served by private water and sewer.
- There are no proposed changes to the existing septic system.
- There is an existing private well located over 75 feet from the septic system on site. The wellhead will be sunk and a grate added.

Section 10. Utilities

- The site is served by overhead wires. The plan states that all utilities will be underground. No utilities plan was provided.

Section 11. Emergency Services

- The applicant should seek a written statement from the Fire Chief regarding the adequacy of fire lanes, emergency site access, and storage of fuel.

Section 12. Hazardous Materials

- The location and quantity of hazardous materials should be documented and a copy provided to the Fire Chief and the Planning Board.
- The plan set depicts an existing fuel storage and containment area near the east lot line that will be relocated to the west side of Lot 3. It will be housed in a pole barn, located on a concrete pad with secondary containment. The amount will not exceed 550 gallons. Detail for the fueling station and containment should be provided.

Development of Regional Impact:

- To be determined by Planning Board.

Additional Comments:

- As noted above, the buffers and setbacks need to be displayed more clearly. It would be helpful to use a different symbology for wetland vs shoreland. Also please show how the buffers overlap – there are different provisions for each of the overlays so it is necessary to see the full extent. Add the building and septic setbacks from the wetlands to the plan (not just the 25' undisturbed area). Shoreland Zone sheet needs to show the Town buffer (100ft) and or clearly state that this sheet pertains to the State's Shoreland regs.
- It would be helpful to have a table of existing (Nov 2021) and proposed conditions for: impervious cover and area of disturbance of within overlay districts (including structures (buildings, bins, etc), materials, stormwater management, vehicle storage, etc)
- Conservation Commission should be provided sufficient time to review and comment on this application.
- Two wetlands related recommendations include installing wetland boundary markers and prohibiting fertilizer.
- Were test pits witnessed?
- There should be no new fueling or salt storage in the aquifer overlay without seeking a variance.
- Lot 3 is a nonconforming lot due to insufficient frontage. Recommend merging. If lots are not merged, the Planning Board could add a condition that the approval is not valid for one lot on its own. Recommend seeking input from Town's Attorney on this issue if the lots are not merged.
- Applicant should provide an update on the NPDES NOI
- Recommend third party construction inspection
- Recommend third party review of stormwater plan
- Where are customers allowed? Will there be signage to direct the public?
- What is the extent of the proposed grading?
- Detail is provided for chain link, plan shows wood fence along ped path and wire and wood along east lot line. Proposed fencing should be confirmed.
- Location of solar lights to be confirmed. How is the sign currently lit?

- Any previous conditions of approval should be listed on the plan

Plan Note Corrections

Proposed Conditions Sheet

#5 - Zoning note on Wet Area Conservation Overlay should read >3,000 sf, not <3,000 sf

#5 - Add Flood Hazard Overlay District to list of overlays

#5 – The Shoreland Protection Overlay District should read 100 feet from the seasonal high water level of the Bellamy River

#19 – Madbury does not have an engineer. Suggest that Building Inspector and/or their designee (such as a third party engineer) be listed instead of “town engineer”.

#26 - Please clarify what the total disturbed area is

#29 update CUP list as needed

#7 on Sheet 11 references Dover and Rochester

#10(g) on Sheet 11 should say Madbury Planning Board, not department