



MADBURY PLANNING BOARD

13 Town Hall Road, Madbury, NH 03823

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Approved

OFFICIAL BUSINESS

Minutes of: June 5, 2024

Meeting Convened: 7:00 pm

Members in Attendance:

Casey Jordan - Vice Chair
Bill Courtemanche - Secretary
Mark Avery - Ex Officio
Andrew Losee
Doug Hoff
Michael Card
Greg Merrell

Support Staff:

Elizabeth Durfee - Contract Planner
Daphne Chevalier - Recording Secretary

Meeting Attendees:

Robert O'Donnell, 359 Durham Rd, Madbury
Jennifer O'Donnell, 359 Durham Rd, Madbury
Dave Garvey, PO Box 935, Durham
Ethan Ash, 1 Hemlock Fone St Dover
Eric Fiegenbaum, 6 Moharimet Dr, Madbury
Pam Kent, 5 Cherry Lane, Madbury
Marc Jacobs, PO Box 417, Greenland

1. Call to Order

Vice Chair Jordan called the meeting to order at 7:00 pm.

2. Seating of Alternates

Alternate Merrell arrived just after 7pm and was seated in Chair Goodnow's absence.

3. Public Hearing: Application for Conditional Use Permit: Tax Map 9, Lot 31A

Applicants and Owners: Robert O'Donnell, 359 Durham Rd, Madbury

Jennifer O'Donnell, 359 Durham Rd, Madbury

Representative: David Garvey

Proposal: Applicant seeks a Conditional Use Permit for Wetland Buffer impacts and for wetland crossings to get to the buildable portion of the land located at 359 Durham Road, Madbury NH.

Vice Chair Jordan read the procedures for public hearing.

Member Card recused himself from the Board as an abutter.

Vice Chair Jordan opened the public hearing at 7:02 pm and read the notice of public hearing. Selectperson Avery led the board through the checklist to determine if the application is complete.

Motion by Member Merrel to accept the application for consideration. **Seconded** by Selectperson Avery. **Motion passed unanimously.**

Mr. Garvey checked to be sure the Board received a copy of the wetlands application, then provided a summary of the application. The plan is for the property to be a single family house with a horse barn. The existing wetlands crossing culvert has been changed to a box culvert, which is substantially larger. The applicants worked to take the least impactful route to the buildable portion of the parcel. Mr. Jacobs, certified wetland scientist, certified soil scientist sediment and wetland control, stated the driveway from Route 108 involves four crossings. They have attempted to avoid wetland impacts by choosing the narrowest crossings and further minimize the impact by proposing retaining walls. He stated there will be 3518 square feet of permanent impact and 252 square feet of temporary impacts to establish the perimeter and work areas, which will be restored to as close to their original character, for a total of 5750 square feet total impact, just barely missing the State cutoff. The applicants are not proposing to retain or replace the existing culvert. An open bottom box culvert will be used. The fill in the existing culvert will be removed and the stream will be restored. The existing culvert plugs frequently, does not allow adequate flow, and does not allow fish passage. Mr. Jacobs stated the conservation commission expressed concerns about redbfin pickerel upstream; he believes this proposal is an improvement over the existing passage, allowing for fish passage. It will also allow for a foot or more of upland bank on each side of Gerrish Brook to allow for passage of upland species. The Natural Heritage Bureau was contacted, and they, along with Fish and Game, expressed they have no concerns over the application.

Vice Chair Jordan asked where the wetlands feed into. Mr. Jacobs said Gerrish Brook drains into Johnson Creek, which becomes tidal and flows into Great Bay. Member Losee asked if Mr. Jacobs had documentation from the Natural Heritage Bureau and Fish and Game to document their assessment of the applicants' proposal. Mr. Jacobs said it should be part of the package and provided the board with a copy. Selectperson Avery said Gerrish Brook is in the Shoreland Protection District and should be reflected as such in the plans. Mr. Jacobs said he will look into that and edit the plans as needed and get them back to the board. Ms. Durfee confirmed that the brook is on that map and the plans will need to be updated. The board confirmed with Mr. Fiegenbaum that the Conservation Commission has not submitted any feedback to the board. Mr. Garvey confirmed that the applicants did meet with the water board; the planning board has not received any feedback from the water board on this application.

Member Courtemanche asked about fire response. Mr. Garvey stated that the fire chief requested the applicants put in a cutout, which is what the applicants included in their proposal. Member Courtemanche asked what the 10' wide notation on the plans are. Mr. Garvey confirmed there is an additional 10' beyond the driveway edge per the fire chief's recommendation.

Vice Chair Jordan invited abutters in favor of the proposal to speak. Hearing none, he invited abutters opposed to the proposal to speak. Hearing none, he invited anyone else to speak on the application.

Eric Fiegenbaum, 6 Moharimet Drive, Chair of Conservation Commission, and member of the water board, stated the applicant has not come before those boards, but those meetings were before the applicants submitted their application; therefore, the conservation commission and water board have not reviewed the application as it was preliminary and not the information provided to the planning board. Mr. Fiegenbaum said the Conservation Commission wrote a letter to the Wetland Bureau at DES, from which he read a paragraph: regarding the 3 data sources in the IPAC list from US Fish and Game, US Fish and Game state that data is not for planning. An onsite survey would provide a more accurate report of what species are present. The three databases consulted do not have site specific data. The site is home to two endangered species: the redfin pickerel and blue sedge grass. The Conservation Commission's concerns come from not having any site specific data on the application. He shared a copy of the letter with the Board. Mr. Fiegenbaum spoke to the comment of the proposal being an improvement on the existing culverts, which he said begs the question as to whether or not it is adequate for fish passage. The Shoreland District includes Gerrish Brook, but he suggests the board may want to review the ordinances for that district to determine if the application is in line with those ordinances. He expressed concerns about further development given the driveway goes beyond the house site.

Mr. Jacobs stated the IPAC study and the other sources were used to perform a wetland functional analysis, which gauges the the level to which the wetlands that will be impacted are functioning. He said those resources are not intended to replace onsite investigations, which are time consuming and costly. The applicants chose not to do the surveys because they had corroboration from the two state agencies that they have no concerns. They did not feel additional site investigations were warranted. He then spoke to his use of the term vast improvement, explaining the 2 ft diameter culvert in the main channel and associated fill will be removed and replaced with the open bottom box culvert, which someone 5'10' should be able to walk under. They will leave a bench on either side for the passage of other wildlife. He said he will review the zoning ordinances regarding the shoreline district. Vice Chair Jordan read the performance standards for the district. Mr. Jacobs said they can address those standards in writing.

Mr. ODonnell introduced himself, his wife, and his children. The place they want to put their house is roughly the same distance from Rt. 108 as the other homes in the area. This is to ensure his children will be far enough away from the busy road. Because of wetland setbacks, there isn't room to put animals, but their goal is to have a barn behind the house and some pastureland there for horses. He explained the previous plans the church had for the property. Mr. Jacobs stated all the wetlands on the 38-acre property have been delineated so there will be no surprises in the future. There should be no need for any wetland crossings going forward.

Vice Chair Jordan closed the public comment period at 7:49 pm and the board moved to discussion.

Member Merrell asked if the applicants have everything they need from the state. Mr. Garvey explained the state process allows for the state to request more information, but they have

submitted all they have been asked to thus far. Vice Chair Jordan said if the state denies the permit, the applicants cannot move forward with the plan. He asked if there were any known negative impacts related to the proposed culvert. Member Coutremanche said his concern is that the Conservation Commission and Water Board haven't had a chance to review the application. Selectperson Avery agrees, stating there is no way to know what conditions those boards would want to put on the application.

Mr. Fiegenbaum stated the Conservation Commission meets tomorrow evening and the Water Board meets the last Tuesday of the month. The Conservation Commission has the wetland application but not what was provided to the town for the conditional use permit. Mr. Garvey said he left an extra copy with the town clerk for the Conservation Commission. Vice Chair Jordan asked if the Conservation Commission could add a review of the application to their agenda.

Ms. Durfee stated the applicants may need an additional conditional use permit application for shoreland protection to ensure they are conforming to the standards of that district, but it would need to be a separate permit application. She would like to see the wetland areas shaded on the plan maps. She stated the abutter list needs to be submitted within five (5) days of when the application goes to the town. Every time a new iteration of the application is submitted, it requires verification of the abutters list, as a public notice needs to go out.

Vice Chair Jordan read through the requirements for the wet area buffer in Article IX section 5 and 6, identifying the following areas in need of being labeled: buffer vs. setback, non-tidal wet areas setback, very poorly drained and poorly drained soils. Mr. Garvey asked if they can amend the current application to include the shoreland district overlay. Ms. Durfee stated they will need to submit a separate permit for the shoreland. Selectperson Avery said his concern is the need to notice the public that the board will be addressing the shoreland requirements. Ms. Durfee said standard conditional use permit requirements for Article IV section 9 apply to the shorelands protection overlay as well. Vice Chair Jordan reviewed the other conditions that need to be met under that section.

Selectperson Avery asked Mr Jacobs about the backup that is occurring currently on the property and what will happen to the properties downstream once that is opened up. Mr. Jacobs explained there is little infiltration taking place. There isn't a large impoundment there, so he believes the change should be nominal. Member Losee asked about the loss of the existing forests. Mr. Jacobs said the soils are such that the runoff rate is fairly high to begin with. There will be a change if trees are cut and impervious surfaces are placed, but it won't be so dramatic because the native soils and the impervious surfaces are not too dramatically different. It can be captured during the building permit process, which would be required for a barn, at which time mitigations could be put in place.

Mr. Garvey asked about the timeline. Vice Chair Jordan said if the board can get a quorum for July 3, the application could be added to the board agenda. Mr. Fiegenbaum said he's not sure the applicant could get something to the Conservation Commission for tomorrow regarding the

shoreland conditional use permit. The building permit process in Madbury does not address impervious surfaces.

Motion by Vice Chair Jordan to **continue** the public hearing to July 3, 2024 at 7 pm at the Town Hall. ***Seconded*** by Selectperson Avery. ***Motion passed unanimously.***

Mr. Garvey asked, regarding the shoreland performance standards and other pieces, will the existing report suffice for the conservation commission and water board needs. Mr. Fiengenbaum isn't sure, but he would think so. Mr. Garvey said he believes he left a thumb drive at the town hall, but he can email the report to Mr. Fiengenbaum.

4. Check-in on Housing Actions

Vice Chair Jordan asked if anyone has made progress on their housing topics. He proposed the board workshop the issues at the next meeting and start with ADUs and STRs.

Ms. Durfee reminded the board they need to have a public hearing on the housing chapter before the end of July. The Board decided to hold the public hearing at the second July meeting. Ms. Durfee will find out how much public notice is needed. She asked if anyone had input from the other boards. Vice Chair Jordan reported out on the board meetings he attended. Regarding the Conservation Commission and Water board, Mr. Fiengenbaum said it would be good if someone attended those meetings. Ms. Durfee will reach out to Chair Goodnow to see if she wants to attend those meetings. Selectperson Avery will talk with the Select Board.

5. Other Business

Selectperson Avery requested approval to respond to Mr. Kahr. Vice Chair Jordan stated he has planning board approval to respond to Mr. Kahr on the planning board's behalf.

Mr. Fiengenbaum shared that Mr. DiBerto needed to provide a right of way agreement to the board. He thinks a final plan has been provided, but someone from the planning board needs to sign it and check that any conditions have been met. Member Hoff said the letter of decision should be in the DiBerto file. Vice Chair Jordan will reach out to Chair Goodnow to ask who she would like to designate to sign the plans.

Vice Chair Jordan will follow up on the status of the LTR survey.

6. Adjournment

Motion to adjourn by Member Card. **Seconded** by Member Courtemanche. **Motion passed unanimously.**

Meeting adjourned: 8:49 p.m.

Respectfully submitted by Daphne Chevalier.