

Moultonborough Planning Board
P.O. Box 139
Moultonborough, NH 03254

Meeting Minutes

September 27, 2023

Present: Members: Peter Claypoole, Scott Bartlett, Brendan Connolly, John Annaian,
Kevin Quinlan (Selectmen's Representative)

Alternate: Allen Hoch

Excused: Members: Sandra Kelly, Norman Larson

Staff Present: Dari Sassan, Town Planner; Bonnie L. Whitney, Administrative Assistant

I. Call to Order: Vice Chairman Claypoole called the meeting to order at 7:00 PM.

II. Pledge of Allegiance: The Pledge of Allegiance was recited, led by Mr. Claypoole. The members and staff then introduced themselves to the public. The Vice-Chair appointed Allen Hoch to sit on the board with full voting privileges in place of Norman Larson.

III. Citizen's Forum – None

IV. Review/Approval of Minutes:

Motion: Mr. Bartlett made the motion to approve the Planning Board Minutes of September 13, 2023, as amended. Mr. Annaian Seconded. Motion carried with Mr. Quinlan and Mr. Hoch abstaining.

V. New Submissions:

1. Christopher J. and Dierdre Maroun (135 – 7 & 8) (Whittier Hwy)
Boundary Line Adjustment

Vice Chairman Claypoole stated that this was a request for a Boundary Line Adjustment (BLA). The proposal is to convey a 0.57-acre portion of Lot 7 to Lot 8. The applicant intends to merge the resultant Lot 8 with Lot 9 for use as a landscaping business. The applicant intends to use Lot 7 for office and storage space, as well as vehicle and equipment maintenance and repair.

As a first order of business, Mr. Claypoole asked if the proposal has the potential for regional impact. Staff recommends that the Board move to determine the proposal does not present a potential regional impact as defined in RSA 36:55.

Motion: Mr. Bartlett made the motion that the Board determines that the Application of Christopher J. and Dierdre Maroun (135 - 7 & 8) does not present the potential for regional impact as defined in RSA 36:55. Mr. Hoch Seconded. Motion carried unanimously.

Planner Sassan referred to his staff memo prepared September 20, 2023, specifically Section V. He noted the following:

1. *A groundwater quality analysis conducted in November of 2022 by Enviro North American Consulting, Inc. was submitted to DES early this year. The report documented exceedances of both arsenic and PFAS. In response to the report, DES has called for additional groundwater testing to occur this fall*

and in spring of 2024. Specifically, DES has called for testing of arsenic in one monitoring well, and for PFAS in three monitoring wells.

As plainly observed by commuters, the site is already more active than it was prior to the granting of the limited special exception. Inherently, increased activity comes with increased water usage. Increased well withdrawals may mobilize contaminants, potentially causing them to migrate. Staff recommends that the Board consider whether, at this juncture, the lot can be deemed suitable for the proposed use in accordance with Subdivision Section 7.1.3, which identifies public safety as a factor when determining the suitability of any proposal.

Although there may be reasonable disagreement as to whether a boundary line adjustment constitutes a "subdivision," Subdivision Section 5.1.2 establishes that boundary line adjustments are controlled by the Subdivision Regulations and the standards set forth in Section 7 apply to all applications made pursuant to the Regulations.

2. Lot 7 is currently allowed to operate in accordance with the terms of a temporary special exception granted by the ZBA on 4/5/2023, in which the applicant sought permission only to use the lot for dispatching landscaping crews and associated office use. During the course of conducting off-site visits and inspections of other properties, Land Use Staff have observed that employees regularly occupy the site throughout the workday, and that the garage bays are regularly in use. Regardless of the outcome of this application, site plan approval shall be obtained in order for activities other than what was covered in the ZBA approval to continue.

The Land Use Office typically does not recommend withholding approval for one proposal based upon noncompliance in another area, in part because it is common that additional approvals are needed to facilitate compliance. However, in this case, the boundary line adjustment will not facilitate compliance. In fact, additional Land Use approvals are likely to encourage further migration of activities onto this site. As such, the Land Use Office recommends that the Board obtain assurance that the site will be used in accordance with the parameters of the current ZBA approval. A condition of approval has been proposed reiterating the applicant's responsibility to comply with current approvals.

3. Staff has proposed a condition of approval requiring confirmation from NH DES that state subdivision approval is not required.
4. The applicant has shown on the plan the impervious coverage that will be removed so that the resultant lot 7 will not exceed 50% impervious cover. Staff recommends that the Board obtain assurance that the impervious area has been converted to pervious area. Staff recommends that removal of surface cover may not be sufficient to restore an area to "pervious," as compacted soils can be just as impervious as pavement.
5. I recently met with the applicant and his consultants, including Audra L. Klumb, and I was told that Ms. Klumb is a wetlands scientist, but not a soil scientist. She said she is qualified to determine whether soils are wetlands soils, but not qualified to further delineate soil types. Based on that information, I suggested that she seems qualified to certify that the soils are "Group 4 or better," and that we could base the lot size on the Group 4 category (60,000 SF).

Following that meeting, revised materials were submitted indicating that the soils on lot 7 are Group 3. If Ms. Klumb indicated that she is not qualified to delineate soil types beyond whether they are wetland or non-wetland, I do not understand how she is qualified to determine that the soils on the entire property are Group 3.

In 2019, David Dolan delineated the site and characterized the entirety of Lot 7 as being Group 3 soils, so it seems reasonable that the soils may be Group 3, however it is unclear how a wetlands scientist was able to verify that previous determination.

Staff recommends that the Board determine whether the information provided has been suitably produced prior to voting to approve or deny the request.

6. *Although traffic impacts are more appropriately reviewed during site plan review, this application presents an opportunity to reiterate that access between the site and the surrounding road system will be of primary concern. It is possible that the State will require a driveway permit application from the Town for increased traffic volumes entering the state road at the Playground Drive intersection. Traffic entering Whittier Highway directly from the site will be doing so in close proximity to the Moultonboro Neck Road intersection. Most likely multiple state driveway permits will be required in addition to a town driveway permit for the driveway entrance onto Playground Drive. Additionally, the Board may require a traffic study.*

Planner Sassan added pending new information revealed during the hearing, Staff recommends that the application be continued pursuant to Subdivision Section 7.1.3 because of the unresolved groundwater contamination issues on Lot 7, which may make the lot unsuitable for its intended purpose. In accordance with Subdivision Section 7.1.3, the Board requires additional investigation before making a final determination on the suitability of the lot.

Board members agreed that the comments noted by the Planner could be addressed during the public hearing where they could receive input from the applicant or his agent.

The Vice-Chair asked if there were any questions or comments from the Board as to the completeness of the application. Hearing none, he called for a motion to accept the application.

Motion: Mr. Bartlett made the motion to accept the application of Christopher J. and Dierdre Maroun (135 - 7 & 8) (376 Whittier Highway and 6 Playground Drive), and to schedule a hearing for this evening to be Boundary Line Adjustment #1. Mr. Connolly Seconded. Motion carried unanimously.

VI. Boundary Line Adjustments:

1. Christopher J. and Dierdre Maroun (135 – 7 & 8) (376 Whittier Hwy and 6 Playground Dr)
Boundary Line Adjustment

Eric Buck, Terrain Planning & Design, was present representing the Applicant Christopher Maroun. Also present in the audience were Hayden Maroun, John Malm, Operations Manager, Miracle Farms Landscaping (MFL), Mario Focareto, Brown Engineering and Jonathan Boutin, Esq, Boutin Lowman, PLLC.

Mr. Hayden Maroun was present, representing Chris and Deedee Maroun. He gave a brief overview of the overall intent of the property. They were requesting approval for the merger of two existing properties and the adjustment of the boundary line between Lots 7 and 8. The reasoning behind the applications is so that they may construct a maintenance facility and dispatch office for Miracle Farms Landscaping to operate out of as they have outgrown their existing space where they are currently located.

Mr. Maroun noted that they have received a limited special exception for a temporary use permit to use the property located at 376 Whittier Highway (TM 135-7). They have recently started to use the property in the past few weeks and realize that they need to make a few adjustments based on that approval in order to comply with temporary special exception. They are in the process of making sure that they do comply.

Mr. Buck stated that this was a request for a boundary line adjustment (BLA) for the lots located at 376 Whittier Highway and 362 Whittier Highway. The proposal is to convey a 0.57-acre portion of Lot 7 to Lot 8. The applicant intends to merge the resultant Lot 8 with Lot 9 for use as a landscaping business. The applicant intends to use Lot 7 for office and storage space, as well as vehicle and equipment maintenance and repair.

Mr. Buck noted that they have received NHDES state subdivision approval (eSA2023062905). A High Intensity Soil Survey was conducted by A&D Klumb Environmental, LLC on September 14, 2023. The Unit Density for proposed Lot 7 is 1.01 units, and for proposed Lot 8 (after merger with Lot 9) is 2.16 units. The intent is to relocate the boundary line between Lots 7 & 8, and then merge the resultant Lot 8 with Lot 9. Mr. Buck acknowledged the need for site plan review when they move forward in the process of developing the building design and site design for the larger lot once the lot merger has been approved.

Attorney Jonathan Boutin noted the application has been supplemented prior to the distribution of the staff memo, and reserved the right to deal with any points on the staff memo that still are an issue for the town, if there are any, and comment then.

Planner Sassan again referred to his staff memo as noted in the acceptance of the application for the boundary line adjustment, questioning if these issues would be better addressed at the site plan review. He noted that ultimately it was the decision of the board if they wished to proceed forward with the application as submitted.

Members commented that what is before the board this evening is a boundary line adjustment and voluntary merger. These are the two applications the applicant is requesting approval for this evening. The other concerns are immaterial at this time and should be addressed at the site plan review.

Mr. Boutin briefly spoke about the ground water issue and noted that they have prepared a traffic impact study that will be submitted as part of the site plan review process for the new merged lots. They have already begun the technical review process and will be back with a plan that will flush out any problems with the newly merged lot with the town.

Mr. Claypoole opened the public hearing for public input.

Anni Jakobsen, Conservation Commission, noted she had concerns with compliance of the limited special exception for temporary use that was granted by the zoning board on April 25, 2023. MFL has exceeded the limits of that approval. Her concern is that landscaping companies continue to disrespect approvals on the site and in town, and in this case the temporary use permit.

Mr. Claypoole asked for the consensus of the board as to how they wished to proceed. There have been issues that have been raised and seem appropriate to be brought up during site plan review. He asked if there was any reason not to move forward with the boundary line adjustment, and the subsequent voluntary merger. There being no further comments or questions from the Board, he called for a motion.

Motion: Mr. Quinlan moved to approve the Boundary Line Adjustment for Christopher J. and Dierdre Maroun to convey a 0.57-acre portion of Lot 135/7 to Lot 135/8, subject to compliance with the following conditions:

Conditions precedent, to be completed prior to signature of final plans by the Planning Board Chairman. No site improvements or approved uses shall commence, and no building permit shall be issued until a site plan is signed and recorded:

1. Add the following plan notes/revisions prior to submission of final plan for Planning Board signature:
 - a. All pins to be set and identified on plan.
 - b. Update plan to show that necessary areas of impervious cover have been removed and converted to pervious area.
 - c. All conditions subsequent shall be incorporated as plan notes.
2. All required federal, state, and local approvals shall be obtained, to include DES subdivision approval or confirmation from DES that such approval is not required.
3. All lots shall not exceed 50% impervious cover in accordance with Zoning Article 6.6.3.
4. Conditions precedent shall be completed, and necessary documents shall be recorded in accordance with Subdivision Section 5.4.

Conditions subsequent, to be continually complied with:

5. Approved uses: Lots may undertake uses permitted in Commercial Zone A, subject to applicable application and permitting requirements. Until additional approvals are obtained, Lot 7 shall be used only in accordance with the 4/5/2023 ZBA approval of a temporary special exception.
6. All uses of both lots shall perpetually comply with Groundwater Protection Overlay District requirements.
7. All uses of both lots shall perpetually comply with Wetlands Ordinance requirements, as any exemptions per Zoning Article 9.1.5 shall no longer apply because this boundary line adjustment represents the “creation” of lots after 1/3/2008.
8. All representations made by the applicant and applicant’s agent shall be incorporated as a condition of approval.

Mr. Bartlett Seconded. Motion carried unanimously.

VII. Hearings: – None

VIII. Other Business/Correspondence:

1. Voluntary Merger – Christopher & Deirdre Maroun (135- 8 & 9) (6 Playground Dr & 362 Whittier Highway)

Mr. Claypoole noted that the Board was in receipt of an Application for and Notice of Voluntary Merger of Tax Map 135 Lots 8 and 9, as submitted by Christopher & Deirdre Maroun.

Planner Sassan referred to his staff memo prepared September 25, 2023, noting his comments and recommendation. He stated that the merger is Lot 9 and Lot 8 that resulted in boundary line adjustment that was just approved and is contingent upon the final approval and signature of the boundary line adjustment plan. Mr. Sassan commented that there is a dwelling unit on one of the lots and believes that the plan is to have zero dwelling units on the merged lot (lots 7 & 8). Staff recommends that following a vote on regional impact, approving the merger with the conditions as proposed.

Mr. Boutin clarified for the record that the applicant had obtained a variance for mixed use so that they may continue to keep the residence on Lot 8. The location of the dwelling may be adjusted. Mr. Sassan replied that in prior discussions regarding the project someone had indicated that the residence would be removed and did not disagree with Mr. Boutin’s comment.

Motion: Mr. Connolly made the motion that the Board determines that the Application of Christopher J. and Dierdre Maroun (135 - 8 & 9) did not have the potential for regional impact. Mr. Bartlett Seconded. The Motion carried unanimously.

There were no further questions or comments from the board.

Motion: Mr. Quinlan moved to accept the application of Christopher J. Maroun and Dierdre Maroun for the merger of Tax Map 135 Lots 8 and 9, as requested. Mr. Connolly Seconded. The Motion carried unanimously.

Members briefly discussed the suggested conditions of approval, asking if there should be language included with the merger being contingent upon the boundary line adjustment? Mr. Sassan agreed with that suggestion. It's been recognized that the board intends for the Land Use Office and the applicant to work together to finalize the boundary line adjustment and then merge the two lots, Lot 8 and Lot 9.

Mr. Boutin commented that the conditions of the boundary line adjustment will all apply to Lot 8, and Lot 9 is being merged into Lot 8, therefore the Lot of record is where the conditions are. If the board would like a note added to the plan or a condition subsequent that the conditions from the BLA carry forward after the merger seems reasonable. Mr. Boutin stated that he did not believe that there was any legal significance to whether it is merged before the boundary line adjustment or after, but it defeats the purpose without the boundary line adjustment so there is no reason not to have a condition that the boundary line adjustment gets merged. The idea is to create a lot with larger frontage on Whittier Highway that has more acreage that will allow different development due to the size of the lot.

Motion: Mr. Quinlan moved to approve voluntary lot merger of Tax Map 135 Lots 8 and 9, as requested by Christopher J. Maroun and Dierdre Maroun, subject to the following conditions: 1) Applicant shall comply with all requirements of RSA 674:39-a. 2) No more than one unit suitable for use or occupancy as a dwelling unit shall exist on the lot unless necessary approvals are obtained. 3) All uses shall comply with Groundwater Protection Overlay District Requirements. 4) Subject to all conditions being met on the boundary line adjustment of Lot 7 to Lot 8 approved on September 27, 2023, and to inform the applicant that this merger will be regarded by the Land Use Office as an overt action on the part of the landowner to treat the entire area of the merged lots as a single lot, thus eliminating the possibility of performing a lot restoration pursuant to RSA 674:39-aa, as well that the resultant lot will be less than 5 acres, the lot will not be exempt from the Wetlands Ordinance because this merger represents the "creation" of a lot after 1/3/2008. Mr. Connolly Seconded. The Motion carried unanimously.

IX. Committee Reports:

1. Cristina Ashjian, Moultonborough Lakes Region Planning Commissioner, briefly updated the Board on the most recent LRPC Commissioners meeting held on September 25, 2023.

Ms. Ashjian read into the record a letter to the Commissioners dated September 26, 2023 from LRPC Executive Director Jeff Hayes. Ms. Ashjian noted the next Commissioners meeting will be held on October 23, 2023, at the Moultonborough Public Library from 6:00 PM – 8:00 PM, and will have information on Economic Development and Grant Writing & Source Water Protection.

There will be one additional Household Hazardous Waste collection day on October 7, 2023 at the Kenneth A Brett School, 881 Tamworth Road, Tamworth, NH.

2. Capital Improvement Program Committee – Mr. Sassan noted that the CIPC will be beginning their meetings for the upcoming budget season, with the first meeting tentatively scheduled for October 6, 2023.

3. Discussion of Zoning Amendments

Mr. Claypoole stated that he has asked a few of the senior members, who were on the Board when the overlay districts were developed, to help bring everyone to a common level of understanding about the history behind the formation of the districts and the outcomes that were envisioned.

Mr. Bartlett gave a brief overview of the Overlay Districts.

Moultonborough Overlay Districts Help Redefine the Route 25 Corridor

The “nodal concept” helps limit continued strip commercial development along Route 25.

- Concept first introduced by Planner Bruce Woodruff.
- Working towards four distinct nodes with limited uses between nodes.
 - Village Center Overlay District (Adopted 2017) (??? Please verify year.)
 - West Village Overlay District (Adopted 2019)
 - Greens Corner Overlay District (Future)
 - Airport Area Overlay District (Future)
 - Re-zone existing commercial corridors outside of nodes to preserve rural character and allow recreational and limited tourism used. (Future)
- Allows expansion of commercial and/or higher density residential in specific nodes.
- Helps preserve rural character of scenic views along Route 25.
- Provides consistency with Moultonborough’s Master Plan.
- **VCOD** provides expansion potential for the Village to sustain in its future
 - Increased density incentives
 - Stronger commercial development controls to preserve the character.
- **WVOD** provides development options and increases value for property owners
 - Encourage the development of businesses and housing with increased density incentives to help sustain Moultonborough’s future.
 - Encourage a variety of housing styles with an emphasis on cost effective, clustered, and multi-tenant structures that complement the adjoining areas.
 - Provide consistency with Moultonborough’s Master Plan.
 - Encourage development where sewer, power and communications already exist.

Discussion ensued regarding the hurdles that the town faces with the cost of expanding infrastructure along Route 25 that may or may not include water and sewer which is pivotable in the future planning and development in Moultonborough.

Mr. Claypoole thanked Mr. Bartlett for providing a brief history, adding that he learned a great deal from the update.

Mr. Sassan gave a brief update on the progress of the proposed Zoning Amendments. He noted the two zoning amendments, and the subdivision amendment were “semi” approved at a prior meeting. He has reached out to counsel and obtained approval for those. They are ready to be brought forward to a public hearing on a future date to be identified.

Mr. Sassan spoke with Chief Bengtson and Building Inspector Dvorak regarding the certificate of occupancy (CO) process. Member Connolly had questions regarding what instances are going to require a CO? Planner Sassan agreed more definition is required.

Mr. Sassan will be meeting with the Selectboard regarding driveway permits on Thursday 9/28.

Mr. Sassan noted that Mr. Larson had provided him with some valuable information via email about accessory dwelling units. It would be appropriate to wait to discuss it at an upcoming meeting when Mr. Larson is present.

Mr. Bartlett noted the upcoming Land Use Law Conference, Saturday October 14th (9:00 am – 3:00 pm) for Planning Board and Saturday October 21st (9:00 am – 3:00 pm) for Zoning Board that NHMA is holding. Registration link here [2023 Land Use Law Conference \(cognitofirms.com\)](https://cognitofirms.com)

X. Project Updates: – None

XI. Adjournment: Mr. Quinlan made the motion to adjourn. Mr. Hoch Seconded. The Motion carried unanimously, and the Board adjourned at 8:28.

Respectfully Submitted,
Bonnie L. Whitney
Administrative Assistant