



***Town of Moultonborough
Planning Board***

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Notice of Decision
Site Plan Review Permit, Conditional Use Permit and
Subdivision (Condominium form of Ownership)
Koss Construction, LLC
Tax Map 140 Lot 16 & Tax Map 170 Lot 12

February 22, 2023

Applicant: Koss Construction, LLC
172 Carli Boulevard
Colchester, CT 06415

Location: Bean Road (Tax Map 140 Lot 16 & Tax Map 170 Lot 12)

Owner of Record: Mark and Jackie Koss

On November 11, 2021 the Planning Board of the Town of Moultonborough opened a public hearing on the application of Koss Construction, LLC, 172 Cari Boulevard, Colchester, CT 06415 (hereinafter referred to as the "Applicant" and/or "Owner") to allow for a proposed 60-unit condominium development, with a Boundary Line Adjustment to site all the dwelling units onto a single lot, with subdivision and site plan review, and associated site improvements, for the lots located in the Residential/Agricultural district and Commercial Zone A, within the West Village Overlay District (hereinafter referred to as the WVOD) and the Ground Water Protection Overlay District.

On November 11, 2021, prior to acceptance of the application as being complete, the Planning Board voted six (6) in favor (Bartlett, Larson, Kelly, Quinlan, Claypoole, Hoch) that the proposal did present a potential regional impact because of the relatively large number of dwelling units that were proposed in comparison to existing stock, because of the very close proximity to the Town of Center Harbor, and because of the potential impact to existing transportation networks.

The public hearing was continued to December 8, 2021, January 26, 2022, February 9, 2022, March 9, 2022, March 23, 2022, April 13, 2022, April 27, 2022, June 8, 2022, July 13, 2022, August 10, 2022, September 14, 2022, November 9, 2022, December 14, 2022, January 11, 2023, January 25, 2023, February 8, 2023, and closed on February 22, 2023.

At the regularly scheduled Planning Board meeting on February 22, 2023, the Board discussed the request for a **Conditional Use Permit (CUP)**, to Article 9.1.7.1 of the Moultonborough Zoning Ordinance and noted the following Findings of Fact:

- a) As designed, this is a reasonable request for the applicant's use of his land for the stated purpose.
- b) The total area of Wetland impact for the Box culvert is approximately 448 sf. for dredge and fill.

- c) The Storm water management and mitigation design enhances the absorption on the entire site.
- d) Moultonborough has granted CUPs to allow driveways to cross wetlands on numerous prior applications.
- e) The Con Com found no issue with this request provided best practices are observed.

The Board then voted by a vote of seven (7) in favor (Larson, Bartlett, Kelly, Annaian, Connolly, Quinlan, Hoch) and none opposed to **approve** the Conditional Use Permit pursuant to Article 9.1.7.1 of the Moultonborough Zoning Ordinance for the construction of roads/driveways within the 50-ft Wetlands buffer subject to the following conditions:

- 1. Construction within the Wetlands buffer shall be limited to improvements presented on the plan entitled "Conditional Use Permit" (CUP 1 of 1), dated 9/28/2021 and site plan dated 1/31/2023.
- 2. Soil disturbance and other detrimental impact shall be minimized to only that which is necessary for construction and operation.
- 3. Following construction, the buffer shall be restored as nearly as possible to its pre-disturbance condition.
- 4. Habitat for rare, threatened, or endangered species, as determined by the NH Natural Heritage Bureau, shall not be disturbed.
- 5. Applicant shall comply with all conditions of DES AoT approval.

The Board discussed the request for the Condominium Subdivision and noted the following Findings of Fact:

- a) Condominium use for this property is a reasonable productive use.
- b) The multi-family use is an approved use in the WVOD (MZO 9.3)
- c) The use supports the goals of our Master Plan for increased housing density.
- d) The public sewer connection to the Bay District Sewer Commission allows increased density.
- e) In establishing the WVOD, the voters of Moultonborough voted that the density would be greater, being four times as dense with connection to Bay District Sewer with 10,000 square feet versus 40,000 square feet.
- f) The setbacks were also reduced from other ordinances to promote greater density.
- g) Besides the Bay District Sewer, there are two association wells, fire protection provided by the cistern system and storm water management plan per the plan set.

The Board voted by a vote of seven (7) in favor (Larson, Bartlett, Kelly, Annaian, Connolly, Quinlan, Hoch) and none opposed to **approve** the revised application for a 21 building/42 unit Condominium Subdivision of Lots 140-16 and 170-12, which shall be merged, subject to the following conditions:

Conditions precedent; to be completed prior to signature of condominium plan by the Planning Board Chair:

- 1. Add the following plan notes/revisions prior to submission of condominium subdivision plan for Planning Board signature.
- 2. All condominium instruments shall be subject to review and approval by Town Counsel, and any deletions, additions, or revisions recommended by Town Counsel shall be incorporated into the final condominium instruments prior to final Town approval, Planning Board Chair signature, and County recording.
- 3. All third-party review costs, including legal review shall be paid in full.
- 4. All required federal, state, and local approvals shall be obtained.
- 5. Approval is contingent upon the recording of the merger of the two lots.
- 6. Conditions precedent to be completed by 2/22/2025.

Conditions subsequent; to be continually complied with:

7. All construction phases and permanent drainage structures and stormwater management facilities shall be maintained to perform as represented and intended.
8. All representations made by the applicant and applicant's agent shall be incorporated as a condition of approval.
9. Minimum short-term rentals to be 30 days.

The Board discussed the request for Site Plan Review and noted the following Findings of Fact:

- a) The project supports the goals of our Master Plan for increased housing density in appropriate areas.
- b) Condominium use is a reasonable productive use for the property in this mixed use neighborhood.
- c) This multi-family use is an approved use in the WVOD, as adopted by the voters.
- d) The stormwater management and mitigation design has been verified by a third party engineer.
- e) The Moultonborough Conservation Commission found no issue with this project provided best practices are observed.
- f) The public sewer connection to the Bay Sewer District Commission can support this increased density.
- g) DES will have the final say in the creation and operation of a community water system for this project.
- h) The applicant has complied with all our ordinances.

The Board voted by a vote of six (6) in favor (Larson, Bartlett, Kelly, Connolly, Quinlan, Hoch) and one (1) opposed (Annaian) to **approve** the application for Site Plan Review for a multi-family, 42-unit condominium subdivision, subject to the following conditions:

Conditions precedent; to be completed prior to signature of final plans by the Planning Board Chairman:

1. Add the following plan notes/revisions prior to submission of final plan for Planning Board Chair's signature.
 - a. Revise note 16 under Dimensional Standards to 42 units (multiple pages)
 - b. Update phasing notes to reflect new number of units (Sheet 8).
 - c. All conditions subsequent shall be added as plan notes.
 - d. Site density calculations shall be provided on drawing OV-1.
2. All federal, state, and local permits shall be obtained, including necessary approvals for the sewer and water systems.
3. Approval is contingent upon the recording of the merger of the two subject parcels.
4. The applicant, or his successors or assigns, shall file security with the Town of Moultonborough Land Use Office with surety conditions satisfactory in an amount to be determined by the Town's Consultant Engineer to guarantee completion of the utilities and roadway construction for the subdivision namely; the finish course of paving for the street and all stormwater and utility infrastructure, including infrastructure necessary for provision of water, sewer, and electric supply, as well as security to provide for all necessary inspections and tests to be conducted by the Clerk of the Works. Said security shall be in the form of a surety bond issued by a surety company authorized to do business in New Hampshire, cash, or savings bank passbook properly endorsed to the Town, or a Letter of Credit in a form acceptable to the Town. The Planning Board may from time to time, at their discretion, and upon request by the applicant, its successors or assigns, reduce the amount of such security to an amount sufficient to ensure that any and all remaining utility or roadway construction shall be able to be completed by the Town in the event that the developer does not complete the improvements. The security shall be approved by the Planning Board and submitted

to the Town of Moultonborough prior to the commencement of any construction activities on the project site.

5. Any remaining recommendations and revisions previously provided by the Town Engineer shall be addressed to the Engineer's satisfaction, and all utility and infrastructure systems shall obtain final approval of the Town Engineer.

6. Conditions precedent to be completed by 2/22/2025.

Conditions subsequent; to be continually complied with:

7. The site developer contractor for the drainage and stormwater protection systems shall meet on-site with the Town's Consultant Engineer prior to commencing any work.

8. All construction shall conform to the Design Standards, Guidelines and Principles of the WVOD Ordinance to include appropriate building construction standards and multi-modal transportation accommodations.

9. All lighting shall comply with the requirements of the Moultonborough Zoning Ordinance Section 6.6.5.

10. Annual stormwater operation and maintenance inspection report shall be submitted to the Land Use Department July 1st annually and shall be an on-going approval of this site plan approval.

11. All construction-phase and permanent drainage structures and stormwater management facilities shall be maintained to perform as represented and intended.

12. Neighboring properties shall be allowed to attach to the community water system at their own expense, provided the system has the capacity to serve the additional properties.

13. Conformance with Plan Work shall conform with the plans entitled, "Site Plan – Harbor Landing (Tax Map 140-16 & 170-12)", prepared by Brown Engineering, dated September 28, 2021, and revised January 31, 2023.

14. Amendments

Any modification to the approved plans and any modification of any condition of this approval, together with previous approvals unless otherwise specified in this decision, must receive the prior approval of the Planning Board, unless deemed insignificant by the Town Planner. In such case the applicant shall submit to the Planner the requested changes who shall seek Board approval of the changes. The applicant will not proceed unless the Planner first provides written approval of the requested insignificant changes.

15. Endorsement of Plan

Following the vote of approval by the Planning Board, the satisfaction of all conditions precedent, and the statutory thirty (30) day appeal period in accordance with RSA 677:15, the Planning Board Chairman shall sign the approved site plan, subject to conditions of this approval. The conditions of approval of this site plan review shall be placed on the final plans, and this decision shall be recorded at the Carroll County Registry of Deeds, in accordance with RSA 676:3 (I), within ninety (90) days of signing of the plans by the Planning Board Chair and prior to any construction commencing.

16. Construction Practices

All construction shall be carried out in accordance with Town of Moultonborough ordinances and the Site Plan Regulations, as well as all other pertinent rules and regulations. Additionally, all staging of materials and equipment shall be on-site, and no equipment or materials not directly used in the construction of the site shall be located on site.

17. Construction Requirements

- a. All construction will occur on site; no construction will occur or be staged within Moultonborough, Center Harbor or State of New Hampshire rights of way.
- b. Any roadways, driveways, or sidewalks damaged during construction shall be restored to their original condition by the Owner at the end of construction.
- c. All construction shall occur between the hours of 6:00 am and 9:00 pm as required by the Town of Moultonborough Unnecessary Noise Ordinance (Section 10.2(6)).
- d. The applicant shall clean construction vehicles before they exit the construction site, and clean and sweep all streets affected by their construction truck traffic as necessary.

18. Site Plan Regulations

The Site shall be constructed in accordance with the requirements of the Site Plan Regulations and any other applicable rules and regulations as affected by this decision.

19. Subdivision Regulations

All construction shall be in accordance with the requirements of the Subdivision Regulations and any other applicable rules and regulations as affected by this decision.

20. Fire Department

All work shall comply with the requirements of the Moultonborough Fire Department as affected by this decision.

21. Office of the Building Inspector

All work shall comply with the requirements of the office of the Moultonborough Building Inspector as affected by this decision.

22. Utilities

Any utility installation shall be reviewed and approved by the Moultonborough Building Inspector prior to the issuance of a Building Permit.

23. Lighting

All lighting shall be in conformance with the Town of Moultonborough Zoning Ordinance and Site Plan Regulations.

24. Flagging of Wetlands

Flagging of the 50-foot buffer shall be required before and during any construction.

25. Wetlands Impacts

- a. Soil disturbance will be minimum necessary for construction and operation through the use of BMPs.
- b. Detrimental impacts will be minimized.
- c. Temporary barriers shall be placed between wetlands and buildings to reduce litter and construction materials from entering wetlands. Barriers to be removed upon completion.
- d. Restoration activities will leave site as nearly as possible in its pre-disturbance condition.
- e. Construction work will not disturb habitat for rare, threatened or endangered species as determined by the NH Natural Heritage Bureau.
- f. All work shall be in conformance with NH DES Permits.

26. Best Management Practices

Applicable industry Best Management Practices shall be employed for all construction activities on the site.

27. Maintenance

A signed Maintenance Agreement shall be submitted to the Land Use Office for acceptance prior to endorsement of the plans. Said Maintenance Agreement shall include schedules for cleaning of all drainage infrastructure and other similar infrastructure maintenance items to ensure their proper functioning and shall include the following:

- a. Refuse removal, ground maintenance and snow removal shall be the responsibility of the applicant.
- b. Winter snow in excess of snow storage areas on the site shall be removed off site.
- c. Paved areas shall be swept at least twice a year to remove sand and debris. Said sand and debris shall be removed off site and properly disposed of.
- d. Where necessary, and in compliance with wetland buffer requirements, vegetation on the site shall be trimmed and maintained to ensure visibility of all signs and to ensure proper functioning of stormwater structures.
- e. Garbage and litter shall be removed in and around wetlands twice a year.
- f. Invasive species shall be removed in and around wetlands twice a year.
- g. Only native species shall be planted per Mr. Koss 1/11/2023.
- h. A schedule for cleaning of catch basins, culverts, and other stormwater infrastructure for the site.

28. Signage

Any proposed signage shall be in compliance with the Town of Moultonborough Zoning Ordinance, Article 5, and shall be reviewed and approved by the Code Enforcement Officer prior to the issuance of the Certificate of Occupancy for the site.

29. E-911 Numbering

The site shall conform with the Town of Moultonborough Building Numbering System Ordinance (Section 20), prior to the issuance of a Certificate of Occupancy for the site.

30. As-Built Plans

As-Built plans, stamped by a NH Licensed Professional Engineer, shall be submitted to the Land Use Department and the Road Agent prior to the issuance of a Certificate of Occupancy for each unit.

31. Testimony and Representation at Public Meetings

All testimony and representations made by the applicant or their representatives during the Public Hearing(s) and Public Meeting(s) shall be incorporated into this approval and are part of the Notice of Decision.

32. Right to Amend Decision

The Planning Board reserves the right to modify or amend this approval on application of the owner, lessee, or mortgagee of the premises, or upon its own motion, as permitted by the Town of Moultonborough Site Plan Regulations, Section 6, and RSA 676:4.

33. Violations

Violations of any condition of this decision shall result in placement of a Stop-Work Order or a Cease and Desist Order, as appropriate, on the property by the Building Inspector and/or the Select Board, unless the violation of such condition is cured within fourteen (14) days or waived by a majority vote of the Select Board. Outstanding violations of the approved plans or conditions of approval may result in the revocation of this approval by the Planning Board under RSA 676:4-a.

34. Legal Fees for Review

The applicant shall pay all legal fees for the review of project documents during the permitting process, as detailed in invoices from the Town's legal counsel prior to the issuance of any residential Building Permits for the site.

35. Clerk of the Works

The services of a consultant to serve as a Clerk of the Works shall be provided by the Town, at the applicant's, or his successor's or assign's, expense, to review the remaining infrastructure work. All previous inspections of infrastructure shall be detailed in written inspection forms and shall be turned in to the Town for the use of the Clerk of the Works prior to any further infrastructure work being done. In the event that the previous inspection reports are not sufficient, the Clerk of the Works may order any necessary tests to be conducted, at the applicant's expense, to verify previous work.

36. Inspections

The developer shall pay all costs associated with periodic on-site inspections by the Town's Consultant Engineer during the construction phase of all drainage and stormwater protection systems prior to any unit being occupied. See RSA 676:4-b, II.

37. Unit Owners Association

All roadway rights-of-way and utility infrastructure shall be owned by the Unit Owners Association for the subdivision. It shall be the responsibility of the Unit Owners Association to maintain these areas and infrastructure. All internal roads will remain private unless accepted as public, and the Town of Moultonborough is not responsible for maintaining these roads.

38. Right to Enter

The Town of Moultonborough, its employees, agents, or representatives shall have the right to enter all common areas for the purpose of providing emergency services, including, but not limited to police, fire, and ambulance service to unit owners and for the purpose of inspection of the installation, maintenance, repair, and replacement of the water supply, sewerage, and drainage systems and any other utilities servicing the condominium, together with the inspection of all structures and other improvements on the land.

39. No Site Work or Logging

No site work or logging can occur until all necessary State and Federal approvals are obtained, including but not limited to DES approval of the two proposed community wells.

40. Condominium Documents should include provision for abutters experiencing new well contamination to tie into the community well for the first seven (7) years of operation of the community well. Expense of this tie-in shall be shared 50/50 between the abutter and the condominium association. A surety in an amount determined by the Town Engineer, shall be maintained for seven (7) years. Community water system shall be designed to serve a minimum of six (6) abutters in addition to all units on site.

This decision shall not take effect until thirty (30) days have elapsed and no appeal has been filed or that if such appeal has been filed, and it has been dismissed or denied, it is recorded in the Carroll County Registry of Deeds, in accordance with RSA 677:15.

Allen Hoch
Chairman

cc.

- o Ethan Wood, (by email only at ewood@nco-law.com)
- o Mario Focareto (by email only at mario@brownengineeringllc.com)
- o Scott Dvorak (by email only at sdvorak@moultonboroughnh.gov)
- o Tom Hughes, Town Assessor (by email only at thughes@moultonboroughnh.gov)
- o Map Lot Document File