



CITY OF CONCORD
New Hampshire's Main Street™
Community Development Department
Planning Division

Staff Report for Planning Board

Meeting on February 19, 2025
Project Summary – Conditional Use Permit

Project: Foundation Drain Encroachment into Wetland Buffer (2025-007)
Property Owner: Reardon Property Services, LLC
Applicant: Reardon Property Services, LLC
Project Address: 563 Mountain Road
Tax Map Lot: 03Z 1/1

Determination of Completeness:

Per Section 34.05 of the Site Plan Regulations, a completed application for a conditional use permit without a companion site plan application will contain the required information listed in Section 14.02 *Design Review Phase* of the Site Plan Regulations and will be legible and competently prepared.

In making a determination of completeness, the Board shall consider the written recommendation of the Planning Division, as well as any written communications from the applicant, abutters, and parties of interest; **however, no hearing shall be opened nor shall testimony be received on a determination of completeness. If the application is determined complete, the Board shall then open the public hearing.**

Section 36.14(1) *Determination of Completeness* of the Site Plan Regulations provides additional language regarding the determination of completeness, and states that a completed application shall contain all required information for each stage of the application process; shall be legible and properly prepared; shall accurately portray existing conditions; shall be accompanied by copies of special investigative studies; and shall contain sufficient information and detail for a full review and action by the Board.

The Planning Division reviewed the application for completeness based upon the criteria of the Site Plan Regulations and concludes that all criteria for completeness have been met, and that the application contains sufficient information and detail for a full review and action by the Board.

Based upon the Planning Division's review of the application, the Planning Division recommends that the Board move to:

- **Determine that the application is complete;**
- **State that the project does not meet the criteria for a development of regional impact per New Hampshire RSA 36:55; and,**
- **Open the public hearing.**

If the Board chooses to deem the application incomplete, the Board would move to:

- Determine the application incomplete;
- State the reasons why and list the items needed for a complete determination; and,
- Continue the completeness determination and public hearing to a date certain of the next Board meeting.

The Board has 65 days within which to consider and act on the application once the application is determined complete, per New Hampshire RSA 676:4(I)(c). The 65-day period shall commence upon the date of the regular meeting of the Board at which the application was accepted as complete on February 19, 2025 and end on **April 25, 2025**. If the applicant has not demonstrated compliance with the Site Plan Regulations by the end of the statutory timeline (**April 25, 2025**), the applicant may request a postponement or the Board may approve, approve conditionally, or deny the application based on the information provided.

Project Description:

The applicant is proposing impacts to wetland buffer for the construction of a foundation drain related to the construction of a single-family dwelling. The proposed disturbance area will be put back to its natural state with no evidence of the encroachment into the buffer area. The lot upon which the work is taking place has an address of 563 Mountain Road in the Medium Density Residential (RM) District.

Compliance:

The following analysis of compliance with the Zoning Ordinance and Site Plan Regulations is based on a 1-page narrative, dated January 6, 2025; and, a 1-sheet site plan titled “Advanced Enviro-Septic System Design” dated January 2, 2025, prepared by F. Webster Stout.

1. Project Details and Zoning Ordinance Compliance:

Zoning District:	Medium Density Residential (RM) District
Existing Use:	Vacant
Proposed Use:	Single Family Dwelling
Overlay Districts:	
Flood Hazard (FH) District	Yes
Shoreland Protection (SP) District	Yes
Historic (HI) District	None
Penacook Lake Watershed (WS) District	None
Aquifer Protection (AP) District	None

- 1.1 The Planning Division conducted a zoning compliance review of the project on January 28, 2025, and determined that the project as submitted is compliant with the Zoning Ordinance.

2. Site Plan Regulations Compliance and Comments:

- 2.1 Staff notes that, per Section 6.01(4) *Conformity with Zoning*, for an application to be determined complete, the proposed application must be in conformity with the Zoning Ordinance at the time the notices are mailed to the abutters notifying of the Board’s consideration of completeness. To be determined complete where a variance is being requested from the Zoning Board of Adjustment, the site plan application must either be in compliance with the Zoning Ordinance, or the applicant must have obtained favorable approval of the required variances prior to the time the notices are mailed to the abutters notifying of the Board’s consideration of completeness. The Planning Division determined that the application conforms with the Zoning Ordinance, and that determination was made prior to the abutter notifications being mailed on February 4, 2025.

- 2.2 Per Section 34.04 *Independent Application*, where no subdivision or site plan approval would otherwise be required, the application and review procedure for conditional use permits shall be in accordance with the requirements of the Site Plan Regulations for a minor site plan application with respect to the requirements for the submittal of abutters notices, public notice, determination of completeness, public hearings, and timing of decisions by the Planning Board. Section 34.05 *Application Requirements* immediately follows and provides the requirements for a complete application, stating that the requirements contained in Section 14.02 *Design Review Phase* shall be used to determine if conditional use permit applications without a companion site plan application are complete. Accordingly, staff utilized the procedures for a minor site plan application in the processing of the stand-alone conditional use permit applications and items from Section 14.02 *Design Review Phase* in the review for determining completeness.
- 2.3 Staff notes that Section 34.05(4) authorizes the Clerk to determine that certain requirements of Section 14.02 may not be relevant for the particular circumstances of the site or proposed use, for which a conditional use permit is requested. Unless otherwise noted below that an item is missing from the application and required, the Clerk has determined that certain requirements of Section 14.02 have either been provided, or are not relevant for the particular proposed site or use.

The following items from the Site Plan Regulations appear to be missing from the application, all of which are minimum components necessary to determine the application complete.

- 2.4 Section 12.02(1)(b) requires the title block of the plan to contain the name and address of the owner and applicant. The name of the owner and applicant is on the title block, but the owner address is missing and shall be added to the title block.
- 2.5 Section 12.02(2) *Scale* requires a scale to be provided on all plans. The plan provided does not accurately scale at 1" = 20' as indicated on the plan and shall be revised to scale accurately with the listed scale.
- 2.6 Section 12.06 (1) *Certificate of Ownership* requires a certificate of ownership identifying which property is owned by which owner, and a deed citation for each deed from the Merrimack County Registry of Deeds. As part of the application materials, the applicant provided the warranty deed for the subject property, but shall also add a note clearly referencing the owner of the parcel and the book and page on file with the Merrimack County Registry of Deeds.
- 2.7 Section 13.01(6) *State and Federal Permits* requires a copy of any application made to a State or Federal agency required for the approval of this site plan, including those required for the development of off-site improvements. The application notes state that NHWSPCD App. No. ECA 2024032611 has received State approval, but a copy of the approved permit was not included with the application materials as required, and shall be provided to the City to accompany the application materials.
- 2.8 Section 27.09 *Erosion Control* requires all disturbed areas shall be revegetated and all sediment shall be retained on site. Article 28-4-3(b) *Natural Conditions to be Maintained Within Buffers* of the Zoning Ordinance requires where a wetland buffer disturbance is allowed pursuant to a state or federal permit, or a conditional use permit, revegetation of the disturbed area with native species is required. The plan shall show both the temporary erosion control devices and the revegetation materials to be used for the disturbances to the wetland buffer.
- 2.9 Please provide the Planning Board approval block on the site plan. Staff can provide a template as a .pdf, .dwg, or .jpg if requested.



- 2.10 The Engineering Division performed a review of this application and commented on the following:
- a) The project may require the following state and/or federal permit(s) associated with the site design:
 - NHDES for Drinking Water, Wetlands and Subsurface
 - NHDOT for Driveway
 - b) The following permit(s) will need to be obtained from the Engineering Division prior to the start of construction:
 - Driveway Permit
 - Other permits deemed necessary by the City Engineer
 - c) Pursuant to Site Plan Regulation 36.24, the applicant is responsible for paying engineering permit inspection fees to ensure work is consistent with City standards and the approved plans.
 - The applicant shall apply for the required Engineering permits listed above and provide an estimate of the anticipated number of inspections for review by Engineering. The applicant shall provide a project schedule when applying for the required permits.
 - d) NHDES Fact Sheet DWGB- 21-1 requires any “surface water/swamp” to be more than 50’ from a private drinking water well. Since the water well is closer than 50 feet from the surface water of the wetland, setback-reduction approval will be needed from NHDES Drinking Water Bureau.
- 2.11 The Fire Department performed a review of this application and had no additional comment.
- 2.12 The General Services Department performed a review of this application and had no additional comment.
- 2.13 The Assessing Department performed a review of this application and had no additional comment.
- 3. Variances:**
- 3.1 No variances are requested.
- 4. Waivers:**
- 4.1 No waivers are requested.
- 5. Conditional Use Permits:**
- 5.1 The applicant requests approval for a conditional use permit in accordance with Article 28-4-3(d) *Conditional Use Permits Required for Certain Disturbance of Wetland Buffers* of the Zoning Ordinance to allow for the disturbance of the wetland buffer. The applicant provided a narrative addressing the criteria of approval.

Staff reviewed the narrative, found the criteria satisfactorily addressed, and supports granting the conditional use permit for disturbance to wetland buffer.

6. Architectural Design Review:

6.1 No architectural design review is required.

7. Conservation Commission:

7.1 The applicant appeared before the Conservation Commission on February 12, 2025.

8. Recommendations:

8.1 Staff recommends that the Planning Board discuss and adopt the findings of fact, which include: information provided in staff reports; the applicant's submission materials; testimony provided during the public hearing; and/or, other documents or materials provided in the public hearing

Based on the adopted findings of fact, staff recommends that the Planning Board make the motion outlined below:

8.2 **Grant the conditional use permit** from Article 28-4-3(d) *Conditional Use Permits Required for Certain Disturbance of Wetland Buffers*, to allow for temporary and permanent disturbance of the wetland buffer at 563 Mountain Road, subject to the following precedent and subsequent conditions:

(a) **Precedent Conditions** – to be fulfilled within one year and prior to signature of the final plans by the Planning Board Chair and Clerk, unless otherwise specified:

1. For compliance with the Site Plan Regulations, revise the plans as follows:
 - a. Per Section 12.02(1)(b), the owner address shall be included in the title block, in addition to the already-included owner name.
 - b. Per Section 12.02(2) *Scale*, the plan does not scale accurately at 1" = 20' and shall be corrected to accurately scale at the depicted scale.
 - c. Per Section 12.06 (1) *Certificate of Ownership*, a note shall be added on the plan which clearly references the owner of the parcel and the book and page on file with the Merrimack County Registry of Deeds.
 - d. Per Section 13.01(6) *State and Federal Permits*, a copy of any State or Federal permit shall be submitted prior to final approval. The approved NHDOT Driveway Permit and State Permit NHWSPCD App. No. ECA 2024032611 shall be submitted to the City to accompany the application materials.
 - e. Per Section 27.09 *Erosion Control*, the plan shall be revised to clearly show both the temporary erosion control devices and the revegetation materials to be used for the disturbances to the wetland buffer.
 - f. The Planning Board Approval Block shall be added to the site plan.
 - g. Per NHDES Fact Sheet DWGB-21-1, the water well shall not be closer than 50-feet from the surface water of the wetland. A copy of a setback-reduction approval from NHDES Drinking Water Bureau shall be submitted to the City, or the well shall be relocated to be 50 feet from surface water of any wetlands.
2. The plans submitted for final approval shall contain the signature and seal of the appropriate licensed professional responsible for preparing the plans as outlined in Section 12.03(1) through (6), as applicable.
3. A note shall be added to the plan annotating the Planning Board's subsequent conditions of approval.
4. Upon notification from the Planning Division that the final plan set complies with

Planning Board conditions, Zoning Ordinance requirements, and the Site Plan Regulations, the applicant shall deliver to the Planning Division three plan sets (two full-size and one 11x17) for endorsement by the Planning Board Chair and Clerk.

(b) **Subsequent Conditions** – to be fulfilled as specified:

1. This approval notwithstanding, the applicant is responsible for full knowledge of, and compliance with, the municipal code, Site Plan Regulations, and Concord Construction Standards and Details for the project, unless a variance, waiver, or conditional use permit is granted.
2. Erosion control measures shall be installed and maintained in accordance with Section 27.09 of the Site Plan Regulations.
3. Per Section 36.19 of the Site Plan Regulations, it shall be the duty of the Clerk to enforce the regulations and to bring any violations or lack of compliance herewith, to the attention of the City Solicitor and Code Administrator.
4. In accordance with Section 36.28 of the Site Plan Regulations, wetland buffers shall be clearly and permanently marked before, during, and after construction. Permanent markers used shall either be the marker discs available for purchase from the Planning Department, or match the marker discs available from the Planning Department and be subject to the Clerk's approval prior to placement.
5. In accordance with Article 28-9-4(b)(7) *Expiration of a Conditional Use Permit*, if the use or construction so authorized by granting a conditional use permit has not commenced within a two-year period from the date of the decision of the Planning Board, then the conditional use permit shall be deemed to have expired and the Planning Board's decision shall be considered null and void.
6. Prior to the start of construction, or the issuance of a building permit, whichever comes first, the applicant shall receive a City of Concord Driveway Permit, and any other permit deemed necessary by the City Engineer. Permit applications shall include the following: A project schedule; an estimate of the anticipated number of inspections, subject to review by City Engineering; and, paying applicable permit inspection fees in accordance with Section 36.24 *Inspections* of the Site Plan Regulations.

Prepared by: ATB