



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

Staff Report for Planning Board

Meeting on August 20, 2025

Project Summary – Conditional Use Permit

Project: Disturbance of Wetland Buffer for Driveway Installation (2025-091)
Property Owner: Liberty Utilities
Applicant: Ryan Taber, Eastern Development, and Richard D. Bartlett & Associates, LLC
Project Address: Unaddressed Sewalls Falls Road
Tax Map Lot: 202Z 21

Determination of Completeness:

To determine completeness of a conditional use permit application without a companion site plan or subdivision application, the Board shall consider the requirements of Sections 14.02 and 36.14(1) of the Site Plan Regulations, the written recommendation of the Planning Division, and 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 it is determined that the application is complete, the Board shall then open the public hearing on said application. An application which is determined to be incomplete may be revised and resubmitted to a subsequent meeting of the Board for another determination of completeness.

The Planning Division reviewed the application for completeness based upon the criteria of the Site Plan Regulations and concluded that, even though the criteria for completeness are not totally met, 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 the application complete;**
- **State that the project does not meet the criteria for a development of regional impact per RSA 36:55; and**
- **Open the public hearing.**

Project Description:

The site is unaddressed, undeveloped, and fronts Sewalls Falls Road. Almost the entire lot is in the Single-Family Residential (RS) District, with a very narrow strip along the easterly border and northerly border being in the Open Space Residential (RO) District. Disturbances to wetland buffer are proposed for the installation of a residential driveway and municipal and nonmunicipal utilities for future construction of an allowed residential use. The future residential structure will be constructed in the middle of the lot because of the large wetland complex that extends across the front portion of the lot. The siting of the residential structure in this location avoids wetland disturbance. However, disturbance to the wetland buffer is necessary for installation of the driveway and utilities to serve that future residential structure that is outside of both the wetland and the wetland buffer.

Compliance:

The following analysis of compliance with the Zoning Ordinance and Site Plan Regulations is based on a 1-page narrative, submitted July 16, 2025; and, a 1-sheet site plan titled “Conditional Use Permit Plat on the land of Liberty Utilities” dated June 2025, prepared by Richard D. Bartlett & Associates, LLC.

1. Project Details and Zoning Ordinance Compliance:

Zoning District: Single-Family Residential (RS) District
Open Space Residential (RO) District

Existing Use: Vacant

Proposed Use: Wetland buffer disturbance for installation of driveway and municipal and nonmunicipal utilities

Overlay Districts:

Flood Hazard (FH) District None

Shoreland Protection (SP) District None (Per City GIS)

Historic (HI) District None (Per City GIS)

Penacook Lake Watershed (WS) District None (Per City GIS)

Aquifer Protection (AP) District None (Per City GIS)

Wetland: Yes

Wetland Buffers: Yes

Zoning Code Item	Required (RS)	Existing
Minimum Total Area	12,500 square feet	3.11 acres
Minimum Buildable Land	6,250 square feet	Not provided
Minimum Lot Frontage	100 feet	320.61 feet
Minimum Front Yard	25 feet	No existing structures
Minimum Rear Yard	25 feet	No existing structures
Minimum Side Yard	15 feet	No existing structures
Maximum Lot Coverage	40%	No existing structures
Maximum Building Height	35 feet	No existing structures

- 1.1 The Planning Division conducted a zoning compliance review of the submittal and determined that the conditional use permit application for disturbance to wetland buffers for the installation of a residential driveway and utilities is compliant with the Zoning Ordinance.

2. General Comments:

- 2.1 Section 6.01(4) *Conformity with Zoning* requires compliance with the Zoning Ordinance at the time the abutter notifications were mailed. Staff was unaware of any nonconformities with the Zoning Ordinance at the time of the mailing related to the topic of this application, which is wetland buffer disturbance for the installation of a driveway and utilities.
- 2.2 Section 34.02 *Minimum Information* requires the fee, application, and narrative addressing the specific criteria for the use permit requested, as well as the general criteria for the issuance of a conditional use permit. The fee and application were submitted as required, and both the specific and general criteria for approval are addressed in Item 6 of this staff report.
- 2.3 Section 34.04 *Independent Application* states that where no subdivision or site plan approval would otherwise be required, the application and review procedure for conditional use permit applications 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 application and requirements contained in Section 14.02 *Design Review Phase* in the review for determining completeness.

- 2.4 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. There are a number of items missing from the site plan. However, given that the application is only for a conditional use permit to disturb wetland buffer for the installation of driveways and utilities, most of the required information is irrelevant. The irrelevant items are noted below.

- Section 12.01(1)(b) *Title Block* address of owner and name and address of applicant
- Section 12.04(9) *Location Plan* zoning district boundaries
- Section 12.05 *Vicinity Plan* scale
- Section 14.02(3)(a)(iii), (iv), (v), (viii), (x), and (xiii) both on and adjacent to the site
- Section 14.02(3)(a)(vi), (vii), and (viii) both on and adjacent to the site
- Section 14.02(3)(b)(iii) adjacent to the site
- Section 14.02(3)(b)(i), (iv), (v), (vi), (vii), (ix), (x), (xi) both on and adjacent to the site
- Section 14.02(3)(c), (d), (e), and (f)
- Section 14.02(4)(d) proposed size of residential building

- 2.5 The Assessing Department, Fire Department, and General Services Department reviewed the application and had no general comments.

- 2.6 The Engineering Services Division reviewed the application and noted that the address for a single-family detached dwelling on the lot will be 184 Sewalls Falls Rd.

3. Site Plan Regulations Determination of Completeness:

The items below are missing from the submittal and **the Site Plan Regulations REQUIRE the items for the application to be deemed complete (unless a waiver from the requirement is otherwise approved).**

- 3.1 The required information is present, partially present enough for review, or not relevant to the application as noted in Item 2.4 above, thus allowing for the application to be deemed complete.

Site Plan Regulations Compliance:

The submittal was found to be compliant with all other sections of the Site Plan Regulations except as listed below, noting that the items below are missing as required for full compliance but are **not required for the determination of completeness.**

- 3.2 Section 12.03(5) *Plan Certification* and Section 12.07 *Wetland Delineations* require that when wetland boundaries are required to be delineated, the delineation shall be performed by a New Hampshire certified wetland scientist who shall sign and seal the plan and shall include the date of the delineation on the plan. Sections 14.02(3)(a)(xi) *Wetland Delineation*, (xii) *Wetland*

Buffers, and 34.05(5) *Application Requirements* require a wetland delineation for applications involving disturbances to wetland buffers. Since the wetland delineation is required, such delineation must be performed by the required professional who must also note the date of the delineation, and sign and seal the plan showing the delineation. The plan shows the wetland delineation and wetland buffer with Note 8 stating “wetland delineation by others,” but the plan is missing the date of the delineation, along with the required certification. An accurate delineation of the wetland by a certified wetland scientist is necessary to determine and verify the accurate boundary of the wetland buffer. Staff notes that the application is a conditional use permit application for disturbance of wetland buffer, so it is key to final approval to have the required delineation certified by the certified wetland scientist.

- 3.4 Section 14.02(3)(b) requires certain information to be shown on the site plan, both on and adjacent to the site. All required information is present, or has been determined by the Clerk to not be relevant as noted in Item 2.4 above, except the following:

14.02(3)(b)(viii) Requires showing driveways and curb cuts. While the proposed driveway location is shown, existing driveways/curb cuts on the adjacent properties are missing from the site plan, as well as distances between existing driveways and the proposed driveway (measured near edge to near edge at the right-of-way line), and sight distance for the proposed driveway. Given that the application is for a conditional use permit to disturb wetland buffer for the installation of a driveway and utilities, the additional information is necessary prior to final approval to ensure separation and sight distance requirements are being met.

- 3.5 The site plan inaccurately shows the zoning district boundary line between the RS District and the RO District as being the subject site’s northerly property line. However, a narrow strip of the northerly portion of the property, as well as a narrow strip of the easterly portion of the property, is in the RO District. As a matter of accuracy, the zoning district boundary line needs to be corrected.

- 3.6 Section 36.28 *Wetland Buffer Markings* provides for the clear and permanent marked of wetland buffers. The conditional use permit plat gives no indication of placement of the required markers or when such placement will take place.

- 3.6 The Assessing Department, Fire Department, and General Services Department reviewed the application and had no compliance requirements.

- 3.7 The Engineering Services Division reviewed the application and had the following compliance requirements:

- a. A driveway permit application must be submitted, along with a driveway plan that shows compliance with the Construction Standards and Details. No portion of driveway installation shall occur without the required driveway permit.

4 Variances:

- 4.1 No variances are requested for the installation of a driveway and utilities.

5 Waivers:

- 5.1 No waivers are requested.

6 Conditional Use Permits:

- 6.1 The applicant requests approval for a conditional use permit pursuant to Section 28-4-3(d) *Conditional Use Permits Required for Certain Disturbance of Wetland Buffers* and Section 28-9-4(b) *Conditional Use Permits* of the Zoning Ordinance to allow for disturbance of the wetland buffer for installation of a driveway and utilities.

The applicant addressed the required criteria for Section 28-9-4(b) *Conditional Use Permits* as follows:

- A. The use is specifically authorized in this ordinance as a conditional use;

Review: The applicant states: “Section 28-4-3(d) permits a conditional use permit to disturb a wetland buffer for access to a parcel.” **Staff notes that Section 28-4-3(d) allows for granting of a conditional use permit allowing the disturbance of a buffer in conjunction with construction or installation of roads and utilities.**

- B. If completed as proposed by the applicant, the development in its proposed location will comply with the requirements of this article, and with the specific conditions of standards established in this ordinance for the particular use;

Review: The applicant states: “The applicant proposes to construct a residential building, which is permitted by right. The building and a majority of the driveway will comply with the requirements of the ordinance.” **Staff notes that the development proposed by this application is installation of a driveway and utilities. The location of the proposed driveway and utilities is compliant with the requirements of the Zoning Ordinance, provided the conditional use permit approval is granted to allow the disturbance of the wetland buffer.**

- C. The use will not materially endanger the public health or safety;

Review: The applicant states: “Since the use is permitted by right there will be no material danger to the public health or safety.” **Staff is unaware of any public health or safety dangers by the proposed disturbance to the wetland buffer for the uses proposed by this application, which are installation of a driveway and utilities.**

- D. The use will be compatible with the neighborhood and with adjoining or abutting uses in the area in which it is to be located;

Review: The applicant states: “The proposed residential use is compatible with the neighborhood.” **Staff notes that the site is adjacent to the RO District to the north and east and the RS District to the south and west. While not adjacent, farther to the southwest is the RM District. The RO, RS, and RM Districts are all residential districts with existing residential uses. While the applicant has not specified the type of residential use, the only residential use allowed in the RO and RS Districts is a single-family detached dwelling. Regardless, the use proposed by this application is a driveway and utilities, both of which are compatible with the neighborhood since all properties require driveways and utilities.**

- E. The use will not have an adverse effect on highway or pedestrian safety;

Review: The applicant states: “The residential use will not have an adverse impact on highway and pedestrian safety.” **Staff is unaware of any adverse impacts to highway and pedestrian safety that will occur as the result of the installation of the proposed driveway and utilities.**

- F. The use will not have an adverse effect on the natural, environmental, and historic resources of the City;

Review: The applicant states: “The permitted use will not have an adverse impact on the natural, environmental or historic resources of the City.” **Staff is unaware of any natural, environmental, or historic resources of the City upon which the buffer disturbance for driveway and utilities installation would adversely impact. Disturbance of the buffer, in fact, provides the path for no disturbance or permanent encroachment into the wetland itself, which would be an adverse impact to the natural resource on the property.**

- G. The use will be adequately serviced by necessary public utilities and by community facilities and services of a sufficient capacity to ensure the proper operation of the proposed use, and will not necessitate excessive public expenditures to provide facilities and services with sufficient additional capacity.

Review: The applicant states: “Sewalls Falls Road has municipal water and sanitary sewer as well as non-municipal utilities.” **Staff notes that municipal water and sanitary sewer lines are present in Sewalls Falls Road.**

The applicant addressed the required criteria for Section 28-4-3(d) *Conditional Use Permits Required for Certain Disturbance of Wetland Buffers* as follows:

- A. The disturbance of the buffer is necessary to the establishment of an allowable principal or accessory use on the buildable land area of the lot;

Review: The applicant states: “The parcel has a wetland located across the front portion of the property. Given the wetland buffer and front yard setback the proposed residential use needs to be located at the center of the parcel. Without impact to the wetland buffer, there would be no access to the buildable portion of the parcel.” **Staff notes the applicant demonstrated in the site plan an effort to minimize the disturbance to the wetland buffer to be able to access the buildable portion of the parcel.**

- B. The proposed disturbance to the buffer cannot practicably be located otherwise on the lot to eliminate or reduce the impact to the buffer and represents the minimum extent of disturbance necessary to achieve the reasonable use of those portions of the lot consisting of buildable land;

Review: The applicant states: “The disturbance is located in an area which would cause the minimum amount of impact to the buffer.” **Staff notes that the plan clearly depicts the location of the proposed driveway and utilities as having no impact to the wetland itself, with the least amount of impact to the wetland buffer as possible.**

- C. The proposed disturbance to the buffer minimizes the environmental impact to the abutting wetland, and to downstream property and hydrologically connected water and wetland resources;

Review: The applicant states: “The wetland associated with the impacted buffer is not hydrologically connected to another wetland, the proposed driveway is proposed to minimize the environmental impact.” **Staff has no evidence or information to confirm the accuracy or inaccuracy of the statement.**

- D. Where applicable, wetland permit(s) have been received or are obtained from the NHDES and USACOE; and

Review: The applicant states: “There are no permits required from the NHDES or USACOE.” **Staff notes that the conditional use permit plat states in Note 9 that no state or federal permits are required. If at any point during the project any state or federal permits are required, copies of such are required to be submitted to the Planning Division.**

- E. Where applicable, permits or proof of compliance with all other state and/or federal regulations have been received or are obtained.

Review: The applicant states: “A residential building permit will be applied for if the conditional use permit is granted.” **Staff notes that the applicant addresses the City’s requirement for a residential building permit, but does not address the actual criterion of providing permits or proof of compliance with state and/or federal regulations or permits required for the driveway and utilities installation, which is the topic of this application. However, note 9 on the conditional use permit plat states that no state or federal permits are required.**

7 Architectural Design Review:

- 7.1 Architectural design review is not required for this application.

8 Conservation Commission:

- 8.1 At the meeting held on August 13, 2025, the Conservation Commission stated in a motion that they have no concerns with the application as presented relative to the impact to the wetland buffer for installation of the driveway and utilities and recommended approval.

9 Recommendations:

- 9.1 Staff recommends that the Planning Board **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 makes the motion outlined below:

- 9.2 **Grant conditional use permit approval** for disturbance of wetland buffer to install a driveway and utilities for an allowed residential use at Tax Map Lot 202Z 21, currently unaddressed Sewalls Falls Rd (future address of 184 Sewalls Falls Rd), based on the evidence provided showing that the criteria of Sections 28-9-4(b) and 28-4-3(d) are or will be met with the following precedent and subsequent conditions:

- (a) **Precedent Conditions** – to be fulfilled within two years and prior to signature of the conditional use permit plat by the Chair and Clerk of the Planning Board, unless otherwise specified.

1. Revise the conditional use permit plat as follows:
 - a. Revise Note 8 to include the name and license number of the certified wetland scientist who performed the wetland delineation and the date the delineation was performed. The signature and stamp/seal of the certified wetland scientist shall also be added to the conditional use permit plat. (Sections 12.03(5), 12.07, 14.02(3)(a)(xi), 14.02(3)(xii), and 34.05(5))
 - b. Show and clearly label the location and layout, with dimensions, of proposed and existing driveways on the subject site and on adjacent properties, along with distances between existing driveways and the proposed driveway, sight distance for the proposed driveway, and other necessary information to show compliance with Section 9.01.A of the Construction Standards and Details. (Sections 12.08(8), 12.08(22), and 14.02(3)(b)(viii)) and
 - c. Correct the location of the RO/RS District designation line.
2. Upon notification from the Planning Division that the project complies with the precedent conditions, Zoning Ordinance, and Site Plan Regulations, deliver to the Planning Division for signature two full-size conditional use permit plats that contain the signature and seal of the New Hampshire licensed land surveyor and the New Hampshire certified wetland scientist.

(b) Subsequent Conditions

1. The applicant is responsible for compliance with the municipal code, Site Plan Regulations, and Construction Standards and Details, including obtaining necessary variances, waivers, and conditional use permits.
2. Prior to issuance of the driveway permit, wetland buffers shall be clearly and permanently marked with the required buffer markers. The required buffer markers are available for purchase in the Planning Division and shall be placed every 200 feet along the edge of the wetland buffers. The markers shall remain in place permanently. Once the markers have been installed, notify the Planning Division to inspect.
3. Prior to construction, a driveway permit application shall be submitted in accordance with municipal code and Construction Standards and Details, with all required attachments and fees. No driveway installation shall occur until after issuance of the driveway permit.

Prepared by: KOB