



Town of Amherst, New Hampshire  
**Office of Community Development**  
Building · Code Enforcement · Planning · Zoning · Economic Development

## **STAFF REPORT**

**CASE #:** PZ19038-060424  
**MEETING DATE:** July 17, 2024  
**CREATED BY:** Nic Strong, Community Development Director  
**ZONING DISTRICT:** Residential Rural (RR) with Wetland & Watershed Conservation District (WWCD Overlay)  
**APPLICATION DESIGNATION:** Final Minor Subdivision  
**PLAN TITLE and DATE:** Subdivision Plan Land Of James Kaveney & Lisa Kaveney  
Tax Map 6 Lot 30 82 Baboosic Lake Road Amherst, New Hampshire  
Scale: 1" = 40' June 3, 2024  
**PROPERTY OWNER:** James & Lisa Kaveney  
**APPLICANT/AGENT:** Kevin McClure, Meridian Land Services, Inc.  
**MAP/LOT:** Map 6 Lot 30  
**LOT SIZE:** 6.719 acres  
**ROAD FRONTAGE:** Baboosic Lake Road  
**LOCATION OF PROPERTY:** 82 Baboosic Lake Road

### **PROJECT OVERVIEW:**

- The applicant proposes to subdivide Map 6 Lot 30 into two residential lots.

### **BACKGROUND/CHRONOLOGY:**

- The Subdivision Regulations include definitions of major and minor subdivisions but there is not a separate process or set of requirements for each category, nor are there any restrictions on creating multiple minor subdivisions over time that would be categorized as a major subdivision should they be presented at one time.

### **SUBMISSION ITEMS:**

- Application Form completed and signed by James Kaveney, as owner and applicant, was submitted on June 3, 2024, along with:
  - list of abutters with mailing addresses;
  - four full size copies of the lot line adjustment plan;
  - ten 11" x 17" copies of the lot line adjustment plan (see attached);
  - Amherst Subdivision Plan Review Checklist;
  - Stormwater Management Procedure Sheet;
  - Test Pit Data dated June 3, 2024.
- There are no outstanding fees.
- The Subdivision Application was submitted along with a CUP application. The applications were noticed together but separate staff reports have been prepared.

**ITEMS REQUIRED PER SECTION 202.2 APPLICATION and 210.2 & 210.3**

**SUBMISSION DOCUMENTS FOR FINAL REVIEW PHASE:** (received Y, N, N/A)

Completed and signed Application Form - Y

Names and mailing addresses of all abutters, applicant and professionals - Y

Three sets addressed mailing labels - Y

Fees - Y

Waivers - **missing for studies**

Three paper print copies of full-scale subdivision plat - Y

Ten legible 11" x 17" copies of final plat - Y

Soils investigation data - Y

Drainage calculations, if applicable - N/A

Legal Data - N/A

Study or review of, unless waived by the Planning Board (210.3 B.23.): **missing waiver request**

Fiscal impact - **missing**

Environmental impact - **missing**

Traffic - **missing**

Water supply - **missing**

Drainage Report - **missing**

Hydrogeological - **missing**

Other, as deemed necessary by the Planning Board - N/A at this time

- **The Board should discuss any waiver requests for items required for a completed application. Then determine if the application is complete. Then, when the application is in the jurisdiction of the Board, the Board may ask the applicant for a complete presentation of the project.**
- **See below for waiver criteria and language.**

*The Board should determine if the application is complete. Should the Board determine that the application is incomplete according to the regulations, notification in the form of a written decision shall be issued, per RSA 676:3, indicating what is needed to make the application complete. "A completed application sufficient to invoke jurisdiction of the Board means that sufficient information is included or submitted to allow the Board to proceed with consideration and to make an informed decision." RSA 676:4. I (b)*

*RSA 676:4, I. (c) (1) includes an extension to the deadline for Planning Board action on any application for which Regional Impact was identified. No Regional Impact was determined.*

*If the application is determined to be complete, the deadline date for Board action is September 20, 2024.*

**PLAN REVIEW:**

The Subdivision Plan, dated June 3, 2024, was reviewed against the Amherst Subdivision Plan Review Checklist on July 13, 2024. The outstanding issues are as follows:

- Map 6 Lot 28-1 is not noted on the plan. It has different ownership than Map 6 Lot 28-1-BC and should be shown;

- no driveway sight distance information is provided;
- no statement of suitability of the land for development has been provided;
- bounds should be set on the final plat or a separate certification of bounds set will be required to be recorded at the Hillsborough County Registry of Deeds at the applicant's expense.
- a list of lienholders and mortgages identified and certified by an attorney is missing;
- the studies referenced in Section 210.3 B.23. are missing- no waiver has been requested;
- any waivers granted by the Board should be listed on the final plat;
- there is no note about requiring debris containers for construction sites;
- State Subdivision Approval will be required and the approval noted on the plans;
- ordinarily the parent lot number stays with the lot that the existing house will remain on, and the sub-lot number would be given to the new lot;
- the proposed driveway to the new lot is shown in the wetland buffer - a CUP application was also submitted;
- the Stormwater Procedure Sheet indicates the need for a Stormwater Management Plan but no such plan was provided;
- no information was submitted to indicate how the wetland buffer measurements were determined.

**WAIVER REQUESTS:**

- No waivers have been requested.
- Section 202.3 of the Subdivision Regulations states:

"The Planning Board, upon a showing of good cause by the applicant, may waive any provision of these Subdivision Regulations. It is the applicant's responsibility to submit waiver requests in writing, citing the provision requested to be waived, and the reasons for requesting the waiver."
- RSA 674:36. II. (n) states that subdivision regulations may include provision for waiver of any portion of the regulations:

"The basis for any waiver granted by the planning board shall be recorded in the minutes of the board. The planning board may only grant a waiver if the board finds, by majority vote, that:

  - (1) Strict conformity would pose an unnecessary hardship to the applicant and waiver would not be contrary to the spirit and intent of the regulations; or
  - (2) Specific circumstances relative to the subdivision, or conditions of the land in such subdivision, indicate that the waiver will properly carry out the spirit and intent of the regulations."
- Motions for granting waivers should follow the suggested language below:
  - "I move to grant the waiver requested to Section XXX of the Subdivision Regulations as the Board has determined that strict conformity with the requirement would pose an unnecessary hardship on the application because \_\_\_\_\_ and the waiver will not be contrary to the spirit and intent of the regulations." **OR;**
  - "I move to grant the waiver requested to Section XXX of the Subdivision

Regulations as the Board has determined that specific circumstances relative to the subdivision/site plan, or conditions of the land in such subdivision/site plan, namely \_\_\_\_\_, indicate the waiver will properly carry out the spirit and intent of the regulations."

**STORMWATER REGULATIONS:**

- The Stormwater Procedure Sheet submitted with the application indicated the need for a Stormwater Management Plan but none was submitted. If a waiver is to be requested for any reason, please see the following:
- Per the Stormwater Regulations, Section 3. H.:
  - A. Waivers
    - A waiver from these regulations may be granted under the following conditions:
      - 1. The applicant identifies the specific provisions from which relief is sought and its proposed substitute solution, and
      - 2. a. For applications relating to a subdivision, site plan, or Conditional Use Permit (CUP), the applicant demonstrates, and the Planning Board finds: (1) that granting the waiver will not impair achieving the spirit and intent of these regulations; (2) that compliance with these regulations is not reasonably possible given the specific circumstances relative to the subdivision, site plan, or CUP, or the conditions of the land in such subdivision, site plan, or CUP; and (3) that the proposed substitute solution is consistent with the goals of these regulations and is in the best interest of the Town;
- Any motion granting the requested waiver should reference the language of this waiver section.

**REGIONAL IMPACT:**

- The Planning Board determined at the June 19<sup>th</sup> meeting that this application did not present any regional impact.

**SITE WALK:**

- The Board could discuss holding a site walk.

**GENERAL REGULATIONS**

- The sections listed are ones of general concern for all subdivision applications:
- 203.1 The Planning Board shall, in the exercise of the authority granted pursuant to NH RSA 674:36, review all proposed subdivisions with a view toward determining the impact that the proposed subdivision will have on various Town services; and to that end, determining whether such proposed subdivision, if permitted, would create one (1) of the following conditions:
  - A. Constitute a scattered or premature subdivision of land as would involve danger or injury to health, safety, or prosperity by reason of the lack of water supply, drainage, transportation, schools, fire department, or other public services;

- B. Necessitate an excessive expenditure of public funds for the supply of such services. If, after such review, the Board determines that the proposed subdivision would cause either of the aforementioned conditions, then the Board shall so inform the applicant and indicate that the applicant may modify the proposal to avoid the aforementioned conditions; and in doing so, the said Board may, considering all the circumstances, specify the extent to which the particular proposed subdivision may be developed in any given year, as well as establish the minimum duration of time for the total development of such particular subdivision. The Board shall state in its records any modifications it will require.

- **The Board should discuss the subdivision in terms of the above highlighted items.**
- 207 Character of Land for Subdivision  
All land to be subdivided shall be, in the judgment of the Board, of such character that it can be used for building purposes without danger to public health or safety, or to the environment. Land subject to periodic flooding, poor drainage, or other hazardous conditions, shall not ordinarily be subdivided. Land with inadequate capacity for sanitary sewage disposal shall not be subdivided. Plats for the subdivision of land shall conform with all regulations of the Board, the Zoning Ordinances, and the Water Pollution Control Regulations and other applicable bylaws, ordinances, and regulations at both State and local levels.
- **The Board should discuss the land in terms of the above highlighted items.**
- 208 Lot Layout  
The layout of lots shall conform to the requirements of the Zoning Ordinance when in force and shall be appropriate for the intended construction.
- **The frontage to the proposed lot is shown in two segments.**
- **The definition of frontage in the Zoning Ordinance is: "Frontage. The continuous distance of any property line of a lot which abuts a legally accessible public street as classified by RSA 229:5, or a private road approved by the Planning Board. (3-6-04)."**
- **To me, this means that the required amount of frontage for a lot has to be continuous. Therefore, a lot could be created that had two segments of frontage such as is proposed by this subdivision plan, but one of the segments has to meet the minimum requirements in the district, which this plan does not.**
- **Board to discuss.**
- 209 Preservation of Existing Features  
Due regard shall be given to the preservation and protection of existing features, trees, scenic points, brooks, streams, rock outcroppings, water bodies, high value ecological habitats, other natural resources, historic landmarks, stone walls, and other significant features. Originality in lot layout will be encouraged to achieve the best possible relationship between the development and existing features on the property.

- **The plans indicate stone walls on the property. Buffers to wetlands are shown.**

**DRIVEWAYS:**

- 303 Driveway Standards
  - 303.1 Prior to subdivision approval, the applicant shall demonstrate that each platted lot will enjoy at least one location along its frontage where a driveway for access to that lot can be safely accommodated. In order to satisfy this requirement, the plans shall: (a) specify the location, dimensions and design elevations for driveway apron construction on each lot; (b) all season safe intersection sight distance as required in Amherst Driveway Regulations; and c) demonstrate such driveway construction can occur without interfering with utility installations and/or stormwater management improvements.
  - 303.2 Refer to Section 3.10, Driveway Regulations for additional requirements.
  - 303.3 A Driveway Permit is required for any new permanent or temporary driveway, and for any modification to an existing driveway.
- **An existing driveway is in place for proposed Map 6 Lot 30-1.**
- **The driveway location is shown for the proposed lot. No sight distance is indicated.**
- **A driveway permit will be required from the Department of Public Works when the driveway is constructed.**

**WETLAND AND WATERSHED DISTRICT:**

- Section 4.11 Wetland and Watershed Conservation District.

F. DISTRICT BOUNDARIES.

The Wetland and Watershed Conservation District shall be comprised of all wetlands and surface waters, together with associated buffers, having the following dimensions:

1. Wetlands:

a.	Water protection wetlands:	100 feet
b.	Significant wetlands:	50 feet
c.	Other wetlands:	25 feet
d.	Vernal pools (*):	Tier One: 100 feet
		Tier Two: 50 feet

\*For those lots created prior to March 11, 2014, the noted buffer widths for vernal pools shall not apply.

2. Surface Waters:

a.	Lakes and ponds:	100 feet
b.	Ephemeral streams:	25 feet
c.	Intermittent streams:	50 feet
d.	Perennial streams:	100 feet

- **The plans indicate 25' and 50' wetland buffers from wetlands on the proposed lot.**

- **A CUP has been applied for separately for the driveway to be constructed within the buffer.**

**DEPARTMENTAL COMMENTS:**

- Request for Comments was sent on June 10, 2024.
- The Fire Chief responded by email dated June 21, 2024, that he had no comment.
- The SAU39 Superintendent responded by email dated June 12, 2024, that the proposal will not substantially impact the schools.

**IMPACT FEES:**

- This development is subject to the impact fee ordinance and schedule of fees recently adopted and updated by the Board of Selectmen.
- The impact fees have been set up on a square footage basis and there are five categories of residential development that are listed in the schedule.
- According to the Impact Fee Ordinance, the Planning Board has to assess the impact fee at the time of approval and the fee is collected at the time of Certificate of Occupancy.
- **The Board should discuss this impact fee and the categories available to use for the assessment and the assessment should be added to the approval.**

**DEFINITION OF "ACTIVE AND SUBSTANTIAL DEVELOPMENT AND BUILDING"  
AND "SUBSTANTIAL COMPLETION OF IMPROVEMENTS UNDER RSA 674:39**

**FIVE YEAR EXEMPTION:**

- The Planning Board may, as a condition of subdivision approval, specify the threshold levels of work that shall constitute the following terms, with due regard to the scope and details of a particular project:
  - (A) 'Substantial completion of the improvements as shown on the subdivision plat'; and
  - (B). 'Active and substantial development or building.'
- According to State law a subdivision or site plan once approved has 24 months to begin active and substantial development or building on the property in order to qualify for five year vesting against changes to zoning, subdivision and site plan review regulations. Additionally, the applicant must make substantial completion of improvements on the property to become fully vested.
- For active and substantial development or building, other towns consider things such as: construction of subdivision roads to the level that would permit issuance of certificates of occupancy; construction of foundations; installation of utilities ready for connection to buildings/structures; installation of drainage improvements required for the subdivision/site plan, including detention basins, treatment swales, underdrain, etc.; installation of all required erosion control measures; site grading.
- For substantial completion of improvements, other towns consider things such as: all foundations to be installed; entire site drainage to be completed; establishment of all on- and off-site improvements specified as part of the approval; all roadways are constructed.
- If the town does not specify anything in the way of the above two sets of items the application automatically receives the five year exemption from regulation changes. BUT, the applicant can become subject to changes after the five year time frame.

- The Planning Board is able to extend the 24 months relative to "active and substantial development or building" for good cause shown.
- **The Board should discuss with the applicant what is appropriate for this subdivision.**

**FINDINGS OF FACT:**

- Pursuant to RSA 676:3, all local land use boards have to include specific findings of fact that support any decision to approve or disapprove an application for a local permit.

**PLANNING BOARD OPTION(S):**

- The Board could consider continuing the application to the next meeting if further information/discussion/documentation/a site walk is needed.

**OR;**

- The Board could consider moving to approve the application as follows: *(The Board could combine the approval of the subdivision with the CUP or condition each one upon the other.)*

I **MOVE** to approve Case #PZ19038-060424 for James and Lisa Kaveney for the above cited Final Subdivision of Map 6 Lot 30, with frontage on Baboosic Lake Road, with the following conditions:

**CONDITIONS PRECEDENT**

Conditions Precedent: The following conditions must be satisfied prior to the Planning Board Chair signing the plans.

1. Submission of revised plans in the number required by the Subdivision Regulations and that include all of the checklist corrections, any corrections as noted at this hearing and any waivers granted.
2. Submission of the mylar for recording at the HCRD.
3. Bounds should be set on the final plat, or a separate certification of bounds set will be required to be recorded at the Hillsborough County Registry of Deeds at the applicant's expense.
4. Receipt of State Subdivision Approval and listing of the approval number on the final plat.
5. Receipt of a list of all lienholders and mortgages, identified and certified by an attorney, if any.
6. Payment of any outstanding fees related to the subdivision application and/or the recording of documents with the HCRD.



**SUBSEQUENT CONDITIONS:**

Conditions Subsequent: The following conditions subsequent shall be met during construction and on an on-going basis:

1. The applicants shall comply with all of the Town of Amherst's Subdivision Regulations, Stormwater Regulations and Zoning Ordinance requirements.
2. The approval is based upon the plans, specifications and testimony submitted to the Planning Board. Acceptance and approval by the Board of the submission shall constitute an agreement between the Town and the applicant that subdivision and development of the land in question shall be done as detailed on the final plat/s. Deviation from the approved final plat requires the consent of the Board.
3. The applicant is assessed impact fees in accordance with the Amherst Impact Fee Schedule approved on August 14, 2023, at the \_\_\_\_\_ rate, with the exact amount of the fees to be calculated by the Community Development Office based on the final square footage determinations. Said impact fees to be collected in accordance with the Impact Fee Ordinance.

**ACTIVE AND SUBSTANTIAL DEVELOPMENT OR BUILDING AND SUBSTANTIAL COMPLETION OF IMPROVEMENTS:**

1. Within 24 months after the date of approval, the following items must be completed in order to constitute "active and substantial development or building" pursuant to RSA 674:39, I, relative to the 5-year exemption to regulation/ordinance changes:  
\_\_\_\_\_
2. The following items must be completed in order to constitute "substantial completion of the improvements" pursuant to RSA 674:39, II, relative to final vesting:  
\_\_\_\_\_

**NOTE:**

Please be aware that the staff report does not represent any opinion of the Planning Board as to the acceptability of the plans; it is only to verify that the standard details and issues are addressed in some manner for the Board to consider. **There may, therefore, be items discussed at the hearing that have not been mentioned as part of the staff report or that are in direct contradiction to information contained herein.**

NS/

7/13/24

Kaveney Final Minor Subdivision

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