



# MADBURY PLANNING BOARD

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**Approved**

## OFFICIAL BUSINESS

**Minutes of:** August 4th, 2021

**Meeting Convened:** 7:00 p.m.

### Members in Attendance:

Mark Avery – Chair  
Michael Card  
Fritz Green – Ex Officio  
Doug Hoff  
Casey Jordan  
Bevie Ketel – Alternate

### Support Staff in Attendance:

Eric Fiegenbaum – Town Administrator

## Agenda

### **1. Seating of Alternates:**

Bevie Ketel was seated for Member Goodnow.

### **2. Approval of Minutes:**

Minutes for the last meeting were not in the board's package for this meeting. They will be reviewed at the next meeting.

### **3. Correspondence:**

Chair Avery presented that NH-DOT will be paving route 108, and the planning board will be assisting in the evaluation of any concerns.

### **4. Preliminary Consultation - Subdivision of 22 Mill Hill Road (Map 2, Lot 24):**

Chair Avery opened the floor to owner Suzanne Watson. Ms. Watson mentioned that she is planning on dividing her property to build a second home. She has come to the board to seek information on the process of subdividing. Chair Avery suggested hiring an engineer or surveyor to help her with this process and that if she has any questions along the way she can send it to him. Member Jordan added the planning board has a website with a checklist to run through all the necessary requirements. Ms. Watson indicated that her consultation could wait given the public waiting to hear about the next agenda item.

### **5. Public Hearings - 356 Knox Marsh Rd. (Map 8, Lot 1G):**

Chair Avery noted that this public hearing is for a two lot subdivision, a follow on site plan, and a conditional use permit (CUP) for a temporary wetland crossing during construction. Chair Avery read the rules of a public hearing. Chair Avery then read the public notice.

Chair Avery then asked Mr. Chris Berry of Berry Engineering to run through the checklist items required for consideration of this subdivision with Member Jordan. After completion of the checklist, Member Green made a **motion** to accept the application for consideration. **Seconded** by member Jordan. All Aye. **Motion approved.**

Mr. Berry introduced himself and the project. He reviewed the background of the property, structures, wetlands, swales, culverts, suitable soils, test pits, possible well locations, and stormwater drainage. He noted the purpose of this subdivision is to create a building for Atlantic Broadband to use for broadband communication services.

Mr. Berry then addressed the concerns that Planner Durfee offered in her memo. He noted that he will request a variance from the Zoning Board for the ordinance's requirement to have frontage on a public road since the only access to the proposed lot is via a private road. He also noted the stormwater flow from the rain garden will be directed toward the natural flow on the lot. He indicated that they have talked to the Fire department and that there will be a maintenance agreement and extension of easements for the private road. Mr. Berry also noted that he recommends various means of erosion and sediment control to let the contractor have some flexibility in construction. He stated that the site will have no hazardous materials and that there will be an awning to protect the cooling mechanism from the elements.

Member Green confirmed there will be no windows; only a door. Mr. Berry confirmed no windows.

Chair Avery asked if Mr. Berry is looking for a variance or a waiver for the use of a private road instead of a public road. Mr. Berry replied he needs both.

Member Green asked where on the map is the CUP needed. Mr. Berry indicated the east side of the proposed lot along the private access road through the wetland buffer there.

Member Jordan asked about the preexisting road easements. Mr. Berry explained the need to extend the easements to the entire length of the new lot. Chair Avery asked when the easement would be available to review. Mr. Berry said that the lawyer is currently writing this up and a road maintenance agreement.

Member Green noted the need for Police and Fire approval as a possible condition for approval. Mr. Berry was told that he could go directly to the Chiefs but that formal written input would be needed.

Chair Avery opened the Floor to public comment at 7:45.

Carolyn Guillette was the first to speak opposing the project as she feels it doesn't fit into Madbury's Master Plan and that it would be a negative impact on property values. She had several questions including what this property is zoned for, is it in a historic district, is it designated for commercial use, and why are we considering industrial commercial projects in a residential agricultural district? Chair Avery noted that this is a residential/agricultural property, that Madbury does not have a formal historic district, and that the applicant would need a variance from the zoning board in order to use it commercially.

Ben Shaw noted his concerns included the value of abutting property, the possibility of increased noise, the need for a better buffer, what possible future uses accepting this site plan could open the door to, and the concern of rainwater flow. Mr. Berry noted the only noise would be when the generator would need to kick on. Mr. Berry also noted that the water management plan included a rain garden to accommodate runoff from the impervious surfaces and because of that no more water would leave the lot after building than leaves the lot now. He also agreed that more trees could be added to make a better buffer.

Tom Burke asked since Atlantic Broadband is a public company and the University of New Hampshire is a public university was there discussion of housing this on their land, and what is the future plan for this site down the road? Atlantic Broadband's representative noted there is no future plan for this site beyond the current application and that they had not engaged with UNH.

Chris Levesque asked whether or not this property should be subdivided as it has no public road access and noted some of his concerns should be directed at the Zoning Board. Chair Avery noted that the Zoning Board will need to review this case to determine if a variance will be granted for commercial use and for frontage on a private road. He explained that both would be needed for this project to be approved.

Matt Gianino asked about fire prevention and rezoning of the subdivided lot. Chair Avery noted that the building permitting will include fire codes/prevention and that the plan shows where a well could be located if needed. Chair Avery also stated that a variance from the Zoning Board will be needed for commercial use; however, the lot's zoning will not change to Commercial and that it will still be zoned Residential Agricultural. He went on to say that, the variance would only apply to the Atlantic Broadband proposal and that a different commercial use could not come in without its own variance.

Sandy Heald asked for a clarification of what broadband is and if there will be antennas. Chair Avery and Mr. Berry explained that there will be no antennas and that this is a 900 sq. ft. building with electronic equipment inside. Jeff D from Atlantic Broadband noted that this building will assist in getting fiber optic internet to Madbury and Dover.

Member Green asked about the capacity of this building and any possible future expansion. Jeff D noted that this building is a relay that serves a set radius. Any increase in the area served would require another building in another location. He said that the proposed Madbury building will not need to be bigger.

Matt Gianino then asked if hazardous materials would be in this building. Chair Avery noted that nothing has been noted that could be regulated by the Planning Board under the town's ordinances; but, he has spoken to the Fire Chief and the building will have to conform to fire code which can include the contents of the building. Member Jordan explained that the materials in this building would be no different than the materials in your TV or computer at home.

Mellisa Walker asked for clarification of the contractual service. Mr. Berry noted this will provide broadband for Dover and Madbury and that Madbury has an agreement with both Comcast and Atlantic Broadband.

Tom Burke wanted it on the record that he feels this project should have been discussed with the University of New Hampshire and not a private land owner. He asked why this site? Mr. DiBerto explained that he was contacted by Mr. Walker to start this project and that Atlantic Broadband felt this site was ideal.

Chair Avery closed the public comments at 8:20 and read into record four emails of opposed residents who were concerned with maintaining rural character and who all felt a commercial endeavor had no place in this area of Madbury. Text of the emails is filed in the official record.

At 8:32 the board began discussing this application.

Member Green noted that Police, Fire, and Library are all examples of non-residential buildings that provide for the residents of Madbury. All of these examples along with the residents all use the internet in which the broadband fiber optic would be helpful. This service supports a lifestyle we have come to expect. Furthermore, this would be a tax revenue for the town.

Member Ketel noted most of the concerns are visual. She then noted how this service could be helpful with so many remote workers. Finally, she wonders if the emailing abutters would need any clarification. Chair Avery noted they could read the minute and review the posted plans and forward any questions.

Chair Avery mentioned that, since this building is unmanned, it would not appear like a typical commercial building with signage, bright lighting, and vehicles and people coming and going. He noted that an agricultural resident could legally build a structure, such as a large steel pole barn, that might be more intrusive than this building.

Member Jordan noted that this small brick building would look similar to other small brick buildings that serve the community and that this would be an empty building that will be maintained.

Chair Avery also talked about the concerns about “rural character”. He noted that this is a real goal but that it’s difficult to define exactly what rural is saying, for example is it large open fields, is it active farms, or is it large yards? He also noted that commenters’ references to the rural character in the Master Plan are useful in informing the Board’s decision, but that the Master Plan cannot legally be the sole basis for a decision.

Regarding possible future development in the area, Chair Avery noted that we don’t know what might be proposed, but that the Board would consider any proposals on its own merits and do our best for the town. He also addressed commenters’ mentions of a solar project in the area. He explained that over two years ago, an applicant came to the board for a preliminary consultation for a possible solar project at the old greenhouses; however, the applicant’s did not returned to the board. He said that it appears that the State’s current subsidies for solar power made the project economically questionable.

He also noted comments regarding current development in the area including the Town’s Safety Complex and offered for clarity that the Safety Complex is in the Municipal Zoning District and not Residential Agricultural.

Chair Avery then mentioned that, while not decided yet, the application appeared to meet the requirements for subdivision including lot size, qualifying area, septic capacity, and well siting, except for the lack of frontage on a private road. The board did not discuss whether the site plan or CUP applications appeared to meet requirements.

He then suggested that, since the ongoing use of the private road is basic to the viability of a subdivided lot, the Board should not vote on approval or denial until it has a chance to review the road easement and maintenance agreement. At this time, Member Hoff **moved** to continue the public hearing on August 18th at 7pm. **Seconded** by Member Green. All Aye. **Motion approved.**

Chair Avery thanked the public for their participation and explained that the vote to continue the hearing to the 18<sup>th</sup> constitutes public notice.

#### **6. Other Old Business:**

Chair Avery noted that the Gerrish Lane project will be revisiting the board with a formal application in September.

**Meeting Adjourned: 8:55**

#### **Meeting Attendees:**

Chris Berry, Berry Engineering  
Tom Burke, Madbury Rd  
Ben Shaw, Knox Marsh Rd  
Holly Morris, Knox Marsh Rd  
Bob Diberto, Route 108

Anthony Diberto, Hill Rd, Durham  
Chris Leonard, address not given  
Jeff Drapeau, address not given  
Sandy Heald, Evans Rd  
Melissa Walker, Perkins Rd  
Peggy Wolcott, Old Stage Rd  
Arthur Anderson, Madbury Rd  
Elizabeth Anderson, Madbury Rd  
Lauri, Ferguson, Pudding Hill Rd  
Chris Levesque, Miles Ln  
Don Fletcher, Madbury Rd  
Matt Gianino, Perkins Rd  
Carlyon Guillette, Knox Marsh Rd  
Robert, Guillette, Knox Marsh Rd  
Eric Fiegenbaum, Moharimet Dr.

**Written Input to the Board:**

Vail and Andrew Cox, Perkins Road  
Edward and Catherine Levesque, Perkins Road  
William Sullivan & Karen Gervasio, Perkins Road  
Matthew Gianino, Perkins Road  
Jessie and Peter Jacobs, Evans Road

Respectfully Submitted by Michael Card