



MADBURY PLANNING BOARD

13 Town Hall Road, Madbury NH 03823

Tel: 603 742-5131 • Fax: 603 742-2502

Approved

OFFICIAL BUSINESS

Minutes of: September 15, 2021

Meeting Convened: 7:00 pm

Members in Attendance:

Mark Avery - Chair

Michael Card - Secretary

Fritz Green - ex officio

Doug Hoff

Casey Jordan

Bevie Ketel - Alternate

Support Staff:

Laurie Plantamuro - Recording Secretary

Elizabeth Durfee - Contract Planner

1. Seating of Alternates:

Bevie Ketel was seated.

2. Approval of Minutes:

The minutes from September 1st, 2021 were reviewed. **Motion** by Member Jordan to accept the meeting notes with changes discussed. **Seconded** by Member Green. All Aye. **Motion Approved.**

3. Correspondence:

Chair Avery noticed Board that the new issue of Town and City magazine is available for review.

4. Public Hearings Continued From Sept 1st, 2021: Diberto-Atlantic Broadband: 326 Knox Marsh Road (Map 8, Lot 1G)

Hearings for Subdivision of existing lot into two lots, Site Plan Review of resulting new lot to accommodate an Atlantic Broadband structure, and a Conditional Use Permit for a temporary wetland crossing during construction)

- Robert DiBerto, Owner

- Chris Berry, (Berry Engineering), Engineer

Chair Avery explained that these hearings are continued from the previous date and

although the public comment period has been closed, the board could possibly reopen the public comment portion of the hearing.

Chair Avery re-read the application notices and public hearing rules. He then explained that the applicant has asked to withdraw the Site Plan Review application, but to continue with the application for Subdivision.

Motion made by Member Green to accept the withdrawal of the application for Site Plan Review as requested by Mr. DiBerto. **Seconded** by Member Jordan. All Aye. **Motion Approved.**

Chair Avery asked if Mr. DiBerto would like to comment on the subdivision application at this time. Mr. Di Berto declined to comment.

Member Jordan asked Mr. DiBerto if there were any changes to the current application and Mr. DiBerto said none at this time.

Consultant Durfee asked if the Board had copies of the road easements. Mr. DiBerto responded that he had given them to the Board.

Consultant Durfee asked if the Town of Madbury had a water line easement across the property and Chair Avery responded there were notes on the plan that mentioned the Town's easement. Consultant Durfee asked the Board if the Selectman had commented on the easement or this application. Member Green said there was no comment was made.

Member Card asked what the distance was between the shed on the adjoining property and the first setback. Consultant Durfee answered by saying the answer on page four shows over 25 feet.

Chair Avery then requested that the Board review the possibility of this application as a development of regional impact.

Motion made by Member Jordan that the minutes will show the Board does not believe this application for a Subdivision is a development of regional impact. **Seconded** by Member Green. All Aye. **Motion Approved.**

Chair Avery asked if there would be a requirement for a permit for a driveway on a private road. Member Jordan answered the variance would allow for frontage on a private road and the Town requires it on a public road. Chair Avery then read the language of the variance for frontage on a private road for Board review. Consultant Durfee informed the

Board that a driveway permit on a private road could still be required for site distance.

Chair Avery mentioned that due to the withdrawal of the Site Plan, this lot would now be considered a standard house lot requiring associated septic and NH DES subdivision approval. Mr. Diberto acknowledged this.

Chair Avery mentioned that the road easement language is required for consideration. Chair Avery also mentioned including the Storm Water Management as a condition for approval.

Chair Avery mentioned another condition for approval would be a Conditional Use Permit (CUP) for running utilities underground through a wet area buffer. The Board discussed the conditions and agreed with the CUP requirement.

7:25 pm: Chair Avery opened the meeting again to Public for comment.

There were no public comments; however, the applicant, Mr. DiBerto commented that the CUP for utilities has never been a requirement in the past.

7:27 pm: Chair Avery closed the public comment.

Chair Avery commented that the CUP is required because the utilities are passing through a wet area buffer. He also mentioned that Mr. Diberto's application had asked for this CUP. Consultant Durfee commented that the buffer would be considered part of the wetlands. Chair Avery then read all of the conditions for the CUP to the Board and asked for a Motion.

The Board then discussed possible conditions of approval for the subdivision. Chair Avery read the request of Mr. Berry which asked that the application approval require all future owners address the need for storm water design as a possible condition. The Board then agreed to the following conditions of approval for the application:

- Receipt of signed variance from the Madbury ZBA for the use of a private road to achieve required road frontage.
- Receipt of DES subdivision approval per Subdivision Regulations, Article III, Section 6.
- Receipt of a signed and executed road easement allowing use by the new lot.
- Addition of possible house and driveway locations to the final plan.
- Addition of a note to the final plan regarding the new lot requiring future owners to address stormwater management designs.

Motion by Member Green to approve the Subdivision application with the conditions

discussed. **Seconded** by Member Hoff. All Aye. **Motion Approved.**

Chair Avery commented that the CUP still required comment by the Madbury Water Board. The Board agreed to amend the CUP approval with a condition requiring Water Board comment.

Motion made by Member Jordan to amend the CUP approval with the condition discussed. **Seconded** by Member Hoff. All Aye. **Motion Approved.**

Motion made by Member Hoff to approve Chair Avery to review and approve the completion of the CUP and Subdivision conditions. **Seconded** by Member Green. All Aye **Motion Approved.**

5. Public Hearing: Little Tree Education, 314 NH Route 108 (Map 10, Lot 7)

Hearing is a Site Plan Review to amend the school's existing Site Plan to enlarge a deck and to increase the schools capacity from 75 students to 85-90 students.

- Sarah Greenshields, (Little Tree Education and Coldstream Properties, LLC) Owner

Chair Avery restated public hearing rules and read the public notice for the application.

The applicant requested waivers from the technical submission requirements for a site plan submission. Since the Board had agreed to this in the past, it agreed to waive these again. However this was done with an explicit admonition to the applicant that similar waivers would not be granted in the future and the the Board would only accept fully compliant applications, with full site plan drawings and associated documents.

Member Green noted that the Greenshields' indicated understanding of this admonition by nodding their heads "yes" and requested that the minutes explicitly note their agreement.

The board then voted to accept the application for consideration. **Motion** made by Member Green to accept the application for consideration. **Seconded** by Member Hoff. All Aye. **Motion Approved.**

Chair Avery opened the floor to Dave Greenshields from Little Tree Education.

Mr. Greenshields proposed to change the office layout in order to add more classroom space and to add an ADA accessible deck. He noted there would not be a change in impact to the traffic since they are moving staff to their Greenland location.

Member Green asked if the deck will be above the ground or on the ground.

Mr. Greenshields said the deck would be above ground and be open underneath. He also noted the deck would help with the fire exit.

Chair Avery summarized that there are two issues to focus on here as a pre-existing non-conforming use. First, the deck as a change to a site plan and as a possible physical expansion of the facilitate. And second, the increase in the number of students as a possible expansion of use.

Chair Avery opened up the hearing for public comment at 7:50.

Jim Shuttle spoke as an attorney for an abutter in favor. He noted that in the past there was a requirement that outside screening or fencing would be provided. He indicated his client would like this to include foliage that could also help attenuate noise from the school. The Greenshields verbally agreed to coordinate with the abutters and add such vegetation.

Jane Haynor spoke as the Registrar from Little Tree. She noted the high demand and low supply of childcare for the Madbury families. She mentioned she gets 2-3 phone calls per day of families looking for care. There are over 118 children in the surrounding area on the waitlist and the current layout has wasted space. Member Green asked how many of these 118 children on the waitlist are Madbury residents? Jane said 25 were Madbury residents.

Member Green asked about the property line and the last time a survey was performed. Mr. Greenshields noted a survey was just done and they are waiting for where the line would be.

Chair Avery closed the public comments at 8:00 pm.

Consultant Durfee reviewed her memo at this time. Then Chair Avery noted offsite impacts including noise and traffic. Mr. Greenshields noted that right now 12 office staff come and go and with the change they would be located off-site. Therefore, there would be a decrease in traffic.

Member Green asked how the student load is limited. Mr. Greenshields said the state standards require 10 sq/ft. per student.

Chair Avery asked about any changes in landscaping and Consultant Durfee asked about any changes in parking. Mrs. Greenshields said there were 30 parking spots but there are now 36 and 1 handicap spots.

Chair Avery asked about loading and delivery traffic. Mrs. Greenshields said typically it's just Amazon and Hannaford.

Chair Avery asked about erosion control during construction. Consultant Durfee added that a typical site plan has an erosion and sediment plan. Mr. Greenshields said he doesn't expect any changes to erosion. There would be 4 foot holes for deck footings, but he has no runoff plan.

Chair Avery asked what the total impervious area of the lot is? Mrs. Greenshields said she does not know, exactly but she feels the total is around 1800 sq ft. Chair Avery reminded them they are in the Aquifer and Wellhead district and more than 15% impervious surfaces would need a conditional use permit.

Mr. Greenshields felt why can't we just go back in time. He thought that the 15% requirement should have been brought up at hearings for their addition few years ago but it never was. The Board agreed that it was a mistake to not have noted this requirement during earlier actions. However, Member Jordan noted that we should be moving toward the standards and just because it wasn't done before, doesn't mean it doesn't need to be done now. Consultant Durfee noted that the ordinance's performance standards should still be met, regardless of what has happened in the past. Mr. Greenshields claims this would be cost prohibited.

Chair Avery asked about the plans for lighting, the need to call dig-safe, and if a conversation has been had with the Fire Chief to address emergencies and fire safety codes. Mrs. Greenshields noted that they are currently in conversations with him, the current lighting would be sufficient, and dig-safe would be called prior to digging. Chair Avery said that something in writing from the Fire Chief is required. Mrs. Greenshields noted she will get that.

Member Jordan asked what the wellhead radius is, and what DES impacts would be. Mr. Greenshields noted that they believe 75' is the radius and the DES tests the water and inspects the wellhead. Mrs. Greenshields noted that they have a permit to operate from the DES and she has paperwork from DES showing that there will be no impact to the well.

Chair Avery asked how many children are there per day. Mrs. Greenshields says she is licensed for 75. Chair Avery noted that Planning Board's past information has capacity at 50. Mr. Greenshields said they finished the basement to increase capacity. Chair Avery said after the Board agreed to 50 kids it was never told the school expanded. Chair Avery then asked what total capacity you would want going forward. Mrs. Greenshields said that if you include the space in the breastfeeding room, they could get 92 kids. She settled on a total limit of 100 would be acceptable. Member Green asked if the deck would count towards the square footage to support this limit. Mr. Greenshields said this is not counted, only classroom space counts.

Chair Avery noted there are three things left to focus on. First, the site plan with an enlarged deck design. Second, is figuring out the 15% impervious surfaces. And third, whether a special exemption is needed from the Zoning Board for expansion of use?

Consultant Durfee noted the Board needs to officially wave each item of the site plan submission requirements one at a time. Chair Avery reviewed article IV items A, B, C, F, G, H, I, J, K, L, P, Q, R, S, T, U as being waived and items D, E, M, N, O, and V submissions as okay.

Motion made by Member Green to waive the submission requirements on Article IV as discussed. Seconded by member Card. All Aye. Motion Approved.

Chair Avery then suggested that conditions for site plan approval would include a number of students limit, a letter from the Fire Chief, and the documentation from licensing agency.

Chair Avery then asked the board how we should approach the 15% issue. Consultant Durfee noted that we cannot wave this issue. Member Green noted that they would require a stormwater management plan with these changes. Member Jordan noted that the deck is needed, but there should be technical drawings. Also, stormwater management and 15% calculations should happen sooner rather than later.

Mrs. Greenshields argued that she does not believe the deck is a significant change and she should be able to continue not conforming. Member Hoff noted that the board generally guides lots to become more conforming, we cannot waive the 15%, and for us to ignore this issue sets a precedent. He noted that Mrs. Greenshield's request to not have stormwater management plan needs a variance from the zoning board and this is not a planning board issue.

Chair Avery agreed and added that it is the planning board's job to apply the rules while the ZBA can make exceptions. Again Mrs. Greenshields argued that she does not believe that this is a significant change and she should be able to continue not conforming. Consultant Durfee noted that the performance standards apply to everyone.

Mr. Greenshields asked if it would be a problem to get a variance. Chair Avery said that we cannot speak for the ZBA, but we can make it a condition of approval.

At this time Chair Avery noted the conditions for site plan approval could include a limit of 100 student capacity; proof of licensing, written approval from the Fire Chief; a variance from the zoning board on Zoning Article, IX-A, Section 7, Paragraph B; and that the

Greenshields add sound and noise vegetation as agreed upon between their lot and the abutters lot.

Motion made by Member Card to conditionally approve the site plan application based on the above conditions. **Seconded** by member Green. All Aye. **Motion Approved.**

Chair Avery then asked is a special exemption is needed for the increase in the number of students at Little Tree?

Member Ketel noted that it has doubled in size and suggested an exemption go to the zoning board. Member Hoff agreed that this should go to the zoning board.

Member Jordan suggested that the reduction in staff made up for the increase in students so that there was no real impact. Chair Avery was also concerned with the doubling in size, but agreed that removing office staff from the site mitigated the current increase.

Member Green Motioned to let the minutes show that the planning board determined a special exemption for expansion of use is not required. **Seconded** by Member Jordan. All Aye. **Motion Passed.**

6. Other Old Business:

None

7. Other New Business:

Chair Avery noted that the Portsmouth Water Treatment Plant will be updating their well buildings and will be presenting their plan to the board soon.

Meeting Adjourned: 9:15 pm

Meeting Attendees:

Eric Fiegenbaum, Town Administrator

Mr. Robert DiBerto

Sarah Greenshields, Little Tree Education, 314 Route 108

Dave Greenshields, Little Tree Education, 314 Route 108

Jane Haynor, Little Tree Registrar

(Note: Two additional Little Tree staff members attend but did not sign-in).

Leo Croisetiere, 308 Route 108, Dover

James Schulte, Attorney (representing Leo Croisetiere)

Respectfully submitted by Laurie Plantamuro and Michael Card