

TOWN OF AMHERST
Historic District Commission Work Session

February 7, 2023

APPROVED

1 In attendance: Doug Chabinsky – Acting Chair, Chris Buchanan, Martha Chabinsky (remote),
2 Nicole Crawford (remote), and Tom Quinn – Planning Board representative (remote).
3 Staff present: Nic Strong, Community Development Director, and Kristan Patenaude, Recording
4 Secretary

5
6 Doug Chabinsky, Acting Chair, called the work session to order at 7:00 p.m. He stated that he
7 would like the group to review the changes proposed by Nic Strong, in hopes of taking a final
8 look through the regulations and approving the changes at the next meeting. The Commission
9 can then post notices for a public hearing.

10
11 **Work Session Topics**

12 **1. Updates to the HDC Regulations**

13 Nic Strong stated that one of the last items she will review are the section numbers to make sure
14 that they track appropriately. Regarding Article I, Section B, the list of things an application is
15 required for, this now matches the statutory language from RSA 674:46. It states that
16 applications are required for alteration, construction, repair, moving, demolition, or change of
17 use of any structure or place located within the Historic District. The regulation language now
18 matches what is allowed per RSA. The next change was to add language regarding approving,
19 conditionally approving, or disapproving the application. She noted that the number of days is
20 not yet listed because she needs to figure out the timeframe for the 45 days and the appeal period
21 to be clear on the correct timing. There are questions regarding the 45-day time limit in terms of
22 when the Commission meets each month.

23
24 Tom Quinn asked if similar language to that used by the Planning Board, that an item is required
25 to be acted on within a certain time period unless mutually agreed to be extended by the
26 applicant and the Planning Board, could work for the Commission as well. Nic Strong stated that
27 this language could be used, but the issue is that the language does not exist in the statute itself
28 for the Commission, which it does for the Planning Board.

29
30 In Article II General Criteria, Section H, regarding waivers, Nic Strong stated that she is unclear
31 where this language came from, as there is no language in the statute for HDCs to grant waivers.
32 Someone made this language up at some point. The first two items in this list are essentially
33 variance criteria, which seems too stringent for a set of regulations. She instead added the
34 Planning Board's waiver criteria for discussion.

35
36 Doug Chabinsky stated that the first criteria is okay. Regarding the second item, he asked how
37 'unnecessary hardship' is defined. Some people may argue that higher costs for certain materials
38 are a hardship. The most recent version of the regulations did not say that cost is not a
39 consideration of the HDC.

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Nic Strong stated that unnecessary hardship is determined on a case-by-case basis, but language could be included that cost shall not necessarily be a determining factor, but it could be in some cases.

Chris Buchanan stated that he has seen three common examples of unnecessary hardships mentioned by applicants. 1) Applicants do not want to do a certain item because it costs too much money, 2) applicants cannot do a certain item because it is physically impossible, or 3) applicants do not want to put wood in a certain area because it will rot.

Doug Chabinsky stated that some of these items are covered in the regulations under the Windows section. There could be unique conditions in which there is excessive moisture, leading to a different type of window being used. However, rot is not a hardship.

Martha Chabinsky stated that the wording of unnecessary hardship could be subjective, and people will interpret it in whatever way suits them. This wording could be a problem. Nicole Crawford agreed.

Tom Quinn suggested that instead of unnecessary hardship, the language could mention that strict conformity would be difficult, if not impossible, for the applicant, and a waiver would not be contrary to the spirit and intent of the regulations. Chris Buchanan agreed that he liked this language.

Doug Chabinsky asked what the conditions of the land have to do with an existing dwelling that wants to do something different. This would likely only involve new construction. Nic Strong stated that the language could be changed from 'land' to 'property.' Tom Quinn noted that an example was a recent application for a non-contributing property within the District, but which sat so far back from the road that the proposed changes could not be seen from the road. Doug Chabinsky agreed with the proposed change in wording to 'property.'

Regarding Section 8.4, Nic Strong asked about language the Commission would like for contributing properties, as previously discussed. Chris Buchanan stated that he believes this conversation actually revolved around Section 9.1.

Doug Chabinsky asked about language in Section 8.3, regarding acceptable materials to be used for roadways, driveways, walkways, patios, and other similar surfaces at private residences. Private residences do not typically have roadways, so he would recommend striking that.

Tom Quinn noted that there could be a private road leading to a small subdivision. Doug Chabinsky stated that this section deals with private residences and that example could be covered under the infrastructure section. Chris Buchanan stated that a development with a private road would likely argue that it is not subject to the public infrastructure section, thus the only applicable item would be A in this Section. Doug Chabinsky suggested placing public infrastructure, including private roads, under Section B as a parenthetical, in order to get the

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84 correct markings, edgings, etc. The Commission agreed on changing the wording to Public
85 Infrastructure and Private Roads, and to remove the word 'roadway' from the Private Residences
86 section.

87
88 Chris Buchanan stated that the contributing property discussion was in regard to if a modern
89 noncontributing property should install modern outdoor lamp fixtures. There was agreement that,
90 in this case, a colonial lamp fixture should be installed. The word 'contributing' should still be
91 added to the Windows section. The issue is with modern noncontributing buildings that want to
92 install vinyl windows, as these were likely what was installed when the structure was built. The
93 language currently may require that to be the case.

94
95 Doug Chabinsky stated that he believes there needs to be a distinction made between
96 contributing and noncontributing properties for windows, doors, siding, Tom Quinn stated that
97 the language could read that replacement materials have to be the same or better.

98
99 Doug Chabinsky stated that, in the Windows section, vinyl is prohibited. Chris Buchanan noted
100 that it prohibits the use of vinyl in replacement windows. Doug Chabinsky stated that there needs
101 to be language distinguishing that certain materials can be approved if there is historical evidence
102 for them on a property, but this is only for contributing properties. Chris Buchanan stated that the
103 word 'contributing' needs to be included in Section 9.1 somewhere.

104
105 Nic Strong asked if the title for the Section could be Historical and/or Original Windows for
106 Contributing Structures. The Commission agreed to the title change, Historical and/or Original
107 Windows for Contributing Properties.

108
109 Chris Buchanan noted that there are numerous properties in the Village that are historic and were
110 recommended by historians to be made contributing properties, but the Commission has not yet
111 done so. Until the National Register is updated, there is an opportunity for those historic
112 properties to not be applicable in Section 9.1

113
114 Martha Chabinsky asked if the Commission could designate these properties in some other way
115 before they are added to the National Register. Chris Buchanan stated that the Commission could
116 make its own list of these properties. Doug Chabinsky suggested that contributing properties or
117 properties listed in the survey could be considered applicable.

118
119 Nic Strong asked about contributing properties that were proposed to be removed from the list.
120 Chris Buchanan explained that this was proposed for certain structures that burnt down and were
121 rebuilt.

122
123 Chris Buchanan noted that Section 9.2 includes a title followed by a couple of descriptive
124 sentences to give context for the section. He suggested a similar layout for Section 9.1, to expand
125 upon what is meant by contributing properties, with additional information about the survey.

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Nic Strong stated that Section 9.1, Historical and/or Original Windows, could include a descriptive sentence regarding historical and/or original windows in contributing properties or those identified in the survey. The Commission agreed to this language.

Doug Chabinsky noted that a word is missing from Section 9.4.B, regarding the installation of storm windows for other uses.

Doug Chabinsky read from Section 11.2, that an applicant's intent for installing a new fence or changing the style of construction of an existing fence must clearly be stated when applying for approval. The desire for privacy and/or to enclose for children or pets is not an acceptable reason. He asked why enclosure for children and/or pets is not an acceptable reason, as this is why he originally installed a fence in his backyard. He stated that this is likely one of the primary reasons for wanting to install a fence. Martha Chabinsky stated that this could have to do with the materials proposed for certain types of fences. Doug Chabinsky stated that these applicants would still have to conform to the fencing guidelines. Chris Buchanan stated that he believes this language was included by whoever originally wrote this section. Tom Quinn stated that he cannot understand other reasons that people would want to install a fence, other than the three listed as not acceptable reasons. Nicole Crawford stated that she cannot understand why someone would not be able to install a fence, as long as it follows the guidelines.

The group discussed privacy fences. Doug Chabinsky explained that the regulations do allow for privacy fences up to 6', preferred 4', particularly for around pools. There have been exceptions made for along busy roads or next to commercial businesses.

The Commission agreed with removing the language that 'the desire for privacy and/or to enclose for children or pets is not an acceptable reason.' Doug Chabinsky suggested that an additional category for acceptable reasons be specifically included for safety of children and pets.

Martha Chabinsky asked about applicants who would want to place a privacy fence along the front of a property. Chris Buchanan noted that the privacy fences section has its own detail in terms of restrictions.

Chris Buchanan stated that the Utility Section refers to Section 11.8, privacy fences, as a tool that people can use to camouflage utilities. He suggested that an additional item be added to the Utility Section regarding camouflaging utilities.

Doug Chabinsky asked why Section 11.4 is Demolition. The Commission agreed that this should read 'Documentation' instead.

Chris Buchanan read from the Utility Section, 'the installation of a privacy fence may be considered, though this option shall only be considered if other options will fail to obscure the utility from public view. See Section 11.8 for more information about acceptable styles.' The

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Commission agreed to include an item G. to Section 11.8, to read that 'to obscure utilities from public view.' Doug Chabinsky stated that this should be no more than 4' high. Chris Buchanan noted that this is supposed to be a last resort and shall only be considered if other options fail.

Tom Quinn asked, for someone applying for a permit to put up a fence, if that applicant is required to present a survey showing where the lot lines are, prior to getting a building permit. Doug Chabinsky stated that the Commission rules on the appearance and construction of the materials, but a survey plan would likely be the authority of the Community Development Office or the Building Inspector. Nic Strong stated that fences only require permits if they are over 6', as that is when they are considered a structure. The Commission may want to consider a paragraph in the regulations stating that it is up to an applicant to verify their property lines before starting construction, in those cases that a building permit is not needed. Doug Chabinsky stated that Section 11.15 deals with property line disputes. The Commission will not review a fence application if there is an unresolved property line dispute. If the fence is approved, the burden is on the applicant to ensure that it is built within the limits of his/her own property lines.

Nic Strong stated that Section 13 previously included the Rules of Procedure. She removed that to be included in a separate document, yet to be created. Section 13 has become Definitions, but this could be changed to Administration. Doug Chabinsky agreed that definitions are typically at the end of the document.

Nic Strong stated that Section 13, which will now become Administration, attempts to capture all statutes that have been changed, and references to application forms in the correct places. She added information in Section 13.2.A.4 regarding findings. The State statute changed last year to require that all land use boards make written findings as part of their decisions.

Doug Chabinsky asked if a letter of disapproval would include a written detailed description of the conditions necessary to be met. He asked if there could ever be a case that was so adverse that it would never be allowed. Chris Buchanan stated that, in that situation, the Commission could state that the proposal did not meet the regulations, while citing various sections.

Nic Strong stated that she would clarify the deadline item within Section 5. Section 6 states that there are 20 days for applicants to appeal but the actual timeframe is 30 days. This change will be made.

Doug Chabinsky stated that the regulations mention that, once a decision is made, either to approve or disapprove, notice needs to be made to the applicant within five business days. This is not currently occurring. This is controlled by State statute.

Tom Quinn noted that meetings are recorded and placed on the Town website. He asked if the decision has to be written or if the video would suffice. Nic Strong stated that the wording in the regulations is for a written decision.

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Nic Strong stated that Section B, Application, is not yet completely finished. She tried to include the requirements for a completed application for all projects, and then break this down into what should be specifically submitted for different types of applications that come in on a regular basis. The requirements are currently taken from the existing checklist, but she needs to go back to the sections in the regulations and add specifics. Chris Buchanan stated that the language so far was fantastic and an excellent improvement. Doug Chabinsky noted that this is likely the only section that will need to be reviewed in depth by the Commission at its next meeting.

Doug Chabinsky asked about the Determination of Completeness section. Nic Strong explained that this language is essentially the same as the Planning Board language. There is a dearth of information in the statutes for procedures for HDC's, so most towns, including Amherst, took the procedures for planning boards and used that language. It specifically states that office staff cannot determine completeness. The only people that can determine if an application is complete is the Commission. Doug Chabinsky stated that it is frustrating for applicants to come to a meeting only to be told that their application is not complete and that they must come back at a future meeting. Nic Strong stated that applications are delivered at the Community Development Office counter to whichever staff member is there that day. Most staff members are not in a position to say if an application is complete or not. She stated that, due to her current workload, she is unable to prepare for a meeting until the week before. Nic Strong stated that she hopes with a better application form and checklist it will be easier for applicants to understand if they have submitted all necessary information.

Chris Buchanan stated that he hopes there is some middle ground, in which staff may be able to notice information missing from a very simple application. Doug Chabinsky stated that he wants the application form to be very explicit so that applicants know anything less being submitted will lead to an incomplete application.

Tom Quinn stated that the Commission will have to vote on completeness at the date of the meeting, based on the 30-day deadline.

In response to a question from Doug Chabinsky regarding an application being ruled as incomplete, Nic Strong stated that the applicant would then need to reapply and pay the associated fees again. She stated that is why the Application section and the application form/checklist need to be very specific.

Nic Strong explained that the Commission has the authority to determine if what is submitted for an application is enough to allow for jurisdiction of the application process. It is possible that the Commission could begin a conversation regarding an application if one thing is missing. The Commission could make a motion during such a hearing to accept the application as complete, with the caveat that the one missing item will be submitted by a certain date, or the Commission may discover through testimony that this item is no longer needed.

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Doug Chabinsky asked if the Commission would rule that an application was incomplete without prejudice, so the applicant could resubmit without any additional fees the following month. Chris Buchanan noted that one of the to do list items is to review the fee structure and there could be language included to specify that the Commission could vote to waive a reapplication fee in certain situations.

Nicole Crawford suggested including the word 'sufficient,' in terms of voting on an application. Thus, even if there is a small piece of information missing, the Commission could move forward. Chris Buchanan stated that this seems to suggest that the Commission could rule that an application is incomplete but sufficient. However, the statute is binary on this item; an application is either complete or incomplete in the eyes of the Commission. Doug Chabinsky suggested leaving the language as-is for now, for future Commission consideration. The goal of this process is to be as clear as possible in the regulations to make sure the necessary information is submitted to verify compliance.

Chris Buchanan noted that the financial burden is a disincentive to abide by the rules, in terms of having to reapply and pay additional fees.

Tom Quinn noted that, once an application is accepted as complete, the Commission is on the clock for the 45-day deadline.

Dug Chabinsky stated that he would like to include information about conceptual consultations. Nic Strong stated that this is part of the fee schedule that needs to be discussed. Currently, a conceptual consultation costs \$60. The Commission discussed changing this fee to \$0. Doug Chabinsky noted that conceptual consultations usually lead to smoother application processes. He stated that he believes this is a service the Commission provides to District residents to help make the process easier. Tom Quinn noted that the conceptual discussions would generally be easier than an application discussion.

Chris Buchanan noted that the Commission needs to vote to request the Board of Selectmen change the fee schedule, in order to make any changes. Doug Chabinsky asked that the Commission review the new proposed draft fee schedule at its next meeting.

Chris Buchanan stated that Article VI is titled Changes to Existing Structures. The Utilities section is located within this Article. He was considering what Martha Chabinsky previously said about various aspects of utilities slipping through the cracks. He suggested separating the Utility section into its own Article. The Commission agreed with this proposal.

Chris Buchanan stated that dynamic references in the document are fairly complicated. He offered to review the dynamic word cross references within the document. Nic Strong thanked him for his offer.

OTHER BUSINESS:

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298 **2. Any Other Business**

299

300 **The meeting was adjourned at 8:25pm.**

301

302 Respectfully submitted,

303 Kristan Patenaude

304

305 Minutes approved: May 18, 2023