

TOWN OF AMHERST  
Planning Board

December 04, 2019

**APPROVED - AMENDED**

1 In attendance: Michael Dell Orfano- Chair, Arnold Rosenblatt, John D'Angelo-Selectman Ex-  
2 Officio, Marilyn Peterman, Sally Wilkins, Cliff Harris, Rich Hart, Brian Coogan (Alternate),  
3 Christy Houpis (Alternate), and Lisa Eastland (Alternate).  
4 Staff present: Nic Strong, Community Development Director, and Kristan Patenaude, Minute  
5 Taker.

6  
7 Michael Dell Orfano called the meeting to order at 7:37 pm at the Souhegan High School and  
8 noted that the Board would start with the second item on the agenda first.

- 9  
10 **2. CASE #: PZ11990-110519 – Mike Isabelle (Owner & Applicant), 4 North End Lane,**  
11 **PIN #: 008-067-000 – Submission of Application/Public Hearing/Conditional Use Permit**  
12 **– To add a garage onto an existing non-conforming structure. *Zoned Residential/Rural.***  
13

14 Mike Dell Orfano opened CASE #: PZ11990-110519.

15  
16 Tom Carr, of Meridian Land Services, explained that this is a CUP application for a garage  
17 addition. The structure is an existing, non-conforming one and the lot has no direct frontage to  
18 the Lake. A shoreland permit has been received. He noted that the required setbacks for  
19 accessory structures in this zone are 50' from the front and 20' from the side. The decks in this  
20 case control the non-conformance issue. The east side of the deck is 8.8' from the property line  
21 and the west side of the deck is 9.5' from the property line. The proposed garage east side will be  
22 16.4' from the property and the west side will be 18.8' from the property. Thus, the proposed  
23 structure is not increasing the degree of non-conformity. It is also believed that this proposal is  
24 consistent with the intent of the ordinance, as the garage addition will allow the owner to keep  
25 his tools and truck inside.

26  
27 Tom Carr noted that, in regards to section 4.11 Wetland and Watershed Conservation District,  
28 the ordinance seems to allow for expansion on predeveloped lots of land provided the intent of  
29 the regulations is met. He noted that the ordinance was written for site plans and subdivisions  
30 and calls for lots that meet regulations for new development. Tom Carr stated that he thought this  
31 expansion of a structure applies to the ordinance.

32  
33 Tom Carr explained that there will be a reduction in the amount of impervious surfaces on site,  
34 due mostly to a large section of driveway being reworked into lawn area. This will allow for  
35 more absorption than runoff. The proposal also aims to add some stone infiltration and drip  
36 edges. The owner will also be putting in a new septic system which will increase the water  
37 quality dramatically. He noted that the Amherst Conservation Commission (ACC) has reviewed  
38 the applications and recommended its approval. The ACC did ask that there be some shrubs  
39 planted in the area where there will be new lawn. There will be no change in intent for the use of  
40 the household.

41  
42 Tom Carr stated that the couple of notes from Community Development Director, Nic Strong,  
43 can be added to the plan (abutters' names, noting that there is not a wetland within 50' of the  
44 proposed structure). There can also be a note added to the plan regarding the use of fertilizer and

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45 deicing compound use on site. There is a final issue with the floor to area ratio. The tax  
46 assessment card shows 1,148ft<sup>2</sup> of net heated living space. The owner has measured this area to  
47 be 858ft<sup>2</sup>. The gross amount of living space being proposed above the garage is 787ft<sup>2</sup>. The  
48 applicant is okay with having a condition of approval be for Scott Tenney, Building Inspector, to  
49 come and measure the area to obtain an exact number.

50

51 **Discussion:**

52

53 Rich Hart stated that the ACC appreciated the proposal and there was a general consensus of the  
54 group that this would improve the health of the Lake by reducing runoff and improving the septic  
55 handling.

56

57 In response to a question from Lisa Eastland, Tom Carr stated that the original building was built  
58 in the late 1800's. He also stated that, per section 3.2D of the zoning ordinance, "a structure  
59 which does not comply with zoning setbacks may be repaired or structurally altered provided the  
60 repairs or alterations do not increase the degree of non-compliance."

61

62 Sally Wilkins stated that this appears to be an improvement to the existing conditions of the site.  
63 She also noted that all of the lots at the Lake are non-conforming, and that anything that can be  
64 done to improve the runoff into the Lake is a good thing. She also requested that the prevention  
65 of deicing material use be put in the deed, as well as on the plan.

66

67 Tom Carr noted that there is a notation on the plan with the specific strengths of fertilizer  
68 allowed by the Wetlands Bureau.

69

70 Mike Dell Orfano stated that the Board should consider the CUP criteria and asked if there were  
71 any outstanding questions regarding the CUP. There were none. Mike Dell Orfano asked if any  
72 abutters had questions about the application.

73

74 In response to Rick Boyd, 2/A North End of Lake (an abutter), Tom Carr pointed out exactly  
75 where the garage will be located on the property. Rick Boyd had no concerns once he understood  
76 the location.

77

78 **Sally Wilkins moved to approve the CUP for this addition within the Wetland and**  
79 **Watershed Conservation District with the following conditions:**

80

- 81 • **Abutter info to be placed on the plan**
- 82 • **Inclusion of deicing material information on the plan and future deeds**
- 83 • **Regarding the 15% floor area ratio – to allow the question of this number to**  
84 **be satisfactorily resolved and administered by the Community Development**  
85 **Office**

85 **Marilyn Peterman seconded.**

86 **All in favor.**

87

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88       **1. CASE #: PZ11604-080519 – Robert H. Jacobson Revocable Trust, Laurie Stevens**  
89       **Trustee (Owner) & TransFarmations, Inc. (Applicant), 17 Christian Hill Road, PIN**  
90       **#s: 005-148-000 & 005-100-000 – Public Hearing/Conditional Use Permit. To depict a**  
91       **Planned Residential Development per the Integrated Innovative Housing Ordinance**  
92       **(IIHO). Zoned Residential/Rural. *Continued from November 6, 2019***  
93

94       Mike Dell Orfano opened CASE #: PZ11604-080519.  
95

96       *Sally Wilkins recused herself. Brian Coogan sat for her.*  
97

98       Ken Clinton, LLS, of Meridian Land Services stated that he is representing the Jacobson  
99       Revocable Trust and TransFarmations, Inc. in this application. The applicant is seeking a  
100       Conditional Use Permit (CUP) for a Planned Residential Development (PRD) under the IIHO.  
101       There was a previous site walk of the area which was well attended. The applicant has seven  
102       topics to follow-up on, due to previous comments and questions: IIHO incentives and bonuses;  
103       farming scale, impact and oversight; wildlife report; traffic study; Pennichuck water; wetland  
104       buffer; and CUP criteria.  
105

106       Carter Scott, of TransFarmations, Inc. went through the IIHO incentive bonuses.  
107

108       In the demographics section: for Senior housing (55+), there will be 12 units spread throughout  
109       the development. This equates to a 15% bonus, or 1.8 units. On the Town Master Plan, page 24,  
110       it was noted that household demographics in town over the age of 64 were expected to increase  
111       from 7% in 2000 to 16% in 2030. As of 10/31/19, MLS showed 14 units of new construction  
112       55+ built and sold over the previous 12 months. Thus, this type of housing would meet a need  
113       and be a benefit to the town.  
114

115       Also in the demographics section: for Affordable housing, this is not a required type of housing  
116       in the development and the bonus for it is not being sought; however, there are 17 units being  
117       proposed that will be price-restricted and match the HUD income limit for the Nashua, NH area.  
118       Per the Master Plan, page 24, the average sales price for a home in Amherst in 2006 was  
119       \$402,827. 80% of people living in town at that time could not afford the average sales price. It  
120       was also noted that the availability of small units that cost less could help to keep some young  
121       adults in town.  
122

123       In the housing type section: for Attached Housing, 24 units are being sought, for a 10% bonus of  
124       2.4 units. The Master Plan notes that, in 2000, 90.4% of the housing in town is single-family,  
125       detached housing. Also, a goal of the Plan was to encourage diversity in housing types in order  
126       to meet many needs. As of 10/31/19, MLS showed that 44 attached units sold in the previous 12  
127       months at an average price of \$336,676, and with a median of 21 days on the market. All of this  
128       demonstrates a strong demand and benefit to the town for this type of housing.  
129

130       In the unit type section: for Single Floor units there are 20 units yielding a 10% bonus, or 2 units.  
131       Data from MLS shows, over the previous 12 months, that 57 single floor units sold in town, with

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132 an average price of \$329,841 and a median of 15 days on the market. This, again demonstrates a  
133 strong demand and benefit to the town for this type of housing.

134  
135 In the unit size – bedrooms section: for Zero Bedrooms/Studio units, there are currently none of  
136 this type of housing in town. There are four units being proposed in order to add to the housing  
137 diversity in town, for a 0.4 unit bonus. Carter Scott shared an article on tiny houses and noted  
138 that this type of housing would be a benefit to the town and possibly help to keep young adults in  
139 town.

140  
141 Also in this section: Two-Bedroom units, there are 30 units being sought, for a 10% bonus, or 3  
142 units. In the Master Plan, it is noted that one and two-bedroom units have a positive fiscal impact  
143 on the town budget. MLS shows that 65 two-bedroom units have sold in town in the previous 12  
144 months, with a median of 17 days on market and at an average price of \$332,785. This  
145 information shows a strong demand, a positive impact on the budget, and thus a need for this  
146 type of housing.

147  
148 Under the Proposed Amenities categories: for Walkability, a 10% bonus, 3.09 units, is being  
149 sought for the various footpaths proposed throughout the development. The Master Plan  
150 encourages walkability as a benefit to the town.

151  
152 For Community Space Open to Public, a 25% bonus, 7.73 units, is being sought for first floor  
153 space in the barn that can be used for CSA pick-up, produce for the public to purchase, and  
154 possible environmental education or outreach events.

155  
156 For Open Space under Restrictive Covenant, a 20% bonus, 6.18 units, is being sought. The  
157 Master Plan encourages cluster housing as a way to maintain the existing character of an area.  
158 The development of greenways and trails throughout town is also mentioned as being a benefit to  
159 the town.

160  
161 For Type of Ownership, there are six proposed rental deed restricted units, for a 30% bonus of  
162 1.8 units. The Master Plan notes that 92% of the housing in town is owner-occupied. Some of the  
163 goals mentioned are to encourage housing diversity and meet the needs of the residents. As of  
164 10/31/19, MLS shows that the vacancy rate in Hillsborough County for rentals is 1%, and for the  
165 previous 12 months the median rental rate was \$2,050. This shows a strong demand for this type  
166 of housing.

167  
168 For the Redevelopment of existing structures, a bonus of 4 units is being sought for the  
169 redevelopment of Jacobson Farm. The Master Plan notes the importance of the preservation of  
170 historical and cultural resources in town. The farm building is originally from the 1830's and is  
171 worthy of redevelopment as a benefit to the town.

172  
173 Finally, for the category of Utilities and Public Way Betterments, a 10% bonus, 3.09 units, is  
174 being sought for the project's proposed expansion of Pennichuck Water up Christian Hill Road  
175 and the addition of new fire hydrants along the way. This would be a benefit to the town.

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176

177 Carter Scott stated that, as these bonuses are calculated, this gives a total density of 66.39 units.  
178 He is proposing 64 units in the development.

179

180 **Discussion:**

181

182 Cliff Harris noted that MLS is not a good resource to use to examine rental unit information in  
183 Amherst. Many owners rent their units by other means. The MLS data may not be a valid  
184 depiction of this information.

185

186 Marilyn Peterman stated that she believes there is an anecdotal need for rental units throughout  
187 the town, county, and state. She would be interested in seeing even more than six rental units  
188 proposed.

189 In response to a question from Marilyn Peterman, Carter Scott explained that, in general, smaller  
190 units show a different income-to-expense ratio. This is money that might not be spent in schools  
191 and services and thus could contribute to a positive fiscal impact to the town.

192

193 John D'Angelo agreed that MLS is probably not a great primary source to use for data, but noted  
194 that similar data is coming from the state that shows comparable needs. He believes this  
195 presentation was done well to show support for these needs.

196

197 In response to a question from Christy Houpis, Carter Scott explained that, while there is a need  
198 in town for workforce housing, a choice was made to call this type of housing "Housing that is  
199 Affordable" in this project. 17 units in the development will have a price limit, based on the  
200 HUD data set at that time. Currently, the HUD data shows a price limit of \$336,500 for this area,  
201 but this price will change will change and these units will match that price. There is a caveat that  
202 the solar and battery storage options are excluded from the price cap units.

203

204 In response to a question from Christy Houpis, Carter Scott noted that some elderly units will be  
205 two-floors and some will be one-floor. One-floor units are more desirable for handicap  
206 accessibility and senior living. He doesn't believe that these units are out in the marketplace as  
207 much as they could be.

208

209 Christy Houpis noted that the proposed improved walkability is only intended to be within the  
210 development but not on Christian Hill Road itself, where there will be increased traffic.

211

212 Ken Clinton agreed that no sidewalks or additional road improvements are currently proposed,  
213 but there can be additional discussions with the DPW in regards to this at a later date. He also  
214 explained that the ordinance is not set up to satisfy different kinds of walkability.

215

216 Marilyn Peterman explained that when the ordinance was set up walkability was discussed in  
217 terms of being able to access places in town. The proposed location for this development is close  
218 to town and could allow the ability for residents to travel to town. Other projects have not been  
219 able to provide the type of intended walkability due to their distance from the center of town.

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220 Ken Clinton stated that isolated stretches of sidewalks in front of new developments were not  
221 necessarily a good idea. He noted it may be possible to create a path along the frontage of the  
222 property off the road, although there are wetlands along the toe of the slope.

223  
224 In response to a question from Christy Houpis, Ken Clinton stated that he has no concern with  
225 the fact that the Master Plan is currently 10 years old because it is currently the only Master Plan  
226 that can be relied on as a reference material.

227  
228 Arnold Rosenblatt noted that it is entirely the applicant's burden to demonstrate that the bonuses  
229 are deserved. He explained that the applicant has done a good job manipulating the Master Plan  
230 data and language, but he's not convinced that the data alone is enough to persuade him in  
231 respect to some of the bonuses. He stated that it is apparent that this ordinance is being used to  
232 take large tracts of open space in order to exploit them for more than they would ordinarily be.  
233 He asked that the Board be sensitive to that. The Board's job is to determine whether the criteria  
234 have been satisfied as to if the town is receiving a benefit.

235  
236 Ken Clinton stated that this project is far and above any other project he's seen come before the  
237 Board under the PRD ordinance. He believes that this project is exactly what the ordinance was  
238 written to create. He believes that a legitimate and thorough job has been done on this project  
239 under the ordinance.

240  
241 Brian Coogan stated that the housing statistics shown demonstrate a clear demand for these types  
242 of housing. However, he has an issue with the proposed amenities demonstrating a benefit to the  
243 town versus the development alone.

244  
245 Carter Scott stated that abutters have many trails going through the land and that the project will  
246 work to expand trails in the area. The project will also allow for access to certain landlocked  
247 town parcels, such as the Rough Diamond lot.

248  
249 Brian Coogan stated that he would like to see the types of community outreach projects  
250 articulated in order to understand the proposed frequency and structure, and thus their benefit to  
251 the town. Carter Scott stated that there may be afterschool workshops; a CSA would operate  
252 supplying local vegetables and produce. Brian Coogan stated that he still needed more details.

253  
254 In response to a question from Brian Coogan, Carter Scott explained that the existing character  
255 of the land will be maintained by preserving 80% of the open space and protecting the farming  
256 culture of the land.

257  
258 In response to a question from Brian Coogan, Ken Clinton explained that Pennichuck Water will  
259 not draw from the aquifer on this land, but will be brought in, probably along the full frontage of  
260 the property. The leach field design will comply with and satisfy state and town regulations.  
261 Stormwater management will be in compliance with Alteration of Terrain standards.

262

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263 In response to a question from Christy Houpis, Ken Clinton stated that the project aims to add  
264 three hydrants along Christian Hill Road up to the proposed development.  
265

266 In response to a question from Lisa Eastland, Ken Clinton explained that the construction for the  
267 waterline will not dig up the whole road, but will instead only require a skinny trench along the  
268 road and this would not be the opportunity for a multimodal foot path construction project.  
269

270 Lisa Eastland expressed concern over the proposed tiny houses keeping with the environment of  
271 the area. She also expressed concern over the benefit of proposed walkability in fields  
272 surrounding the development versus the ability for residents to actually walk into town.  
273

274 In regards to a question from Rich Hart, Carter Scott explained that the first floor of the proposed  
275 redeveloped barn will allow public access, the second and third floors will contain rental units,  
276 and the basement floor will be used as cold storage.  
277

278 In response to a question from Christy Houpis, Carter Scott stated that it will probably cost about  
279 \$300,000 to redevelop the farmhouse. Christy Houpis expressed concern with the requested four  
280 unit bonus for redevelopment of the structure for communal space.  
281

282 Rich Hart commented that this proposal is probably one of the best he's seen for Amherst in  
283 terms of the things it's offering: community space, open space, paths and trails, etc. His issue is  
284 that this development would be perfect in almost any other part of town than where it's being  
285 proposed.  
286

287 Marilyn Peterman commented that the Master Plan is a ten year plan. It can't be projected as to  
288 what the next plan will look like; the applicant has to use what the town currently has for a Plan.  
289

290 Arnold Rosenblatt stated that the current Master plan never was in-date. It uses broad, vague  
291 language and shouldn't be used as a document to support this project.  
292

293 Carter Scott quoted from the IIHO ordinance, "In order to achieve the purpose of the IIHO, an  
294 applicant may propose to incorporate any of the following restrictions and amenities which have  
295 been determined to be desirable to the Town in accord with the Amherst Master Plan," to explain  
296 that that language is what is given for the applicant to work with.  
297

298 Mike Dell Orfano stated that he needed to move the discussion along and explained the CUP  
299 process and stated that the applicant will later come back for a Non-Residential Site Plan Review  
300 (NRSPR) to prove that the up-to number of units, potentially given by the Board tonight, is  
301 physically possible.  
302

303 The Board next heard the information for the Conditional Use Permit (CUP) from the applicant.  
304

305 1) **3.18 C. 1. a.** The property in question is in conformance with the dimensional  
306 requirements of the zone, or meets Planning Board standards for the reduction in

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307 dimensional requirements, and that the proposed use is consistent with the Amherst  
308 Master Plan.

309  
310 Ken Clinton explained that the project is in conformance with the requirements of the zone and is  
311 consistent with the Master Plan. The lots substantially exceed the required acreage and frontage.  
312 The IIHO is derived from the Master Plan and thus looks to protect the town's natural, cultural,  
313 historical resources, and its existing character. This project is proposing housing diversity, with  
314 many ages and demographics considered. It also proposes open space, community space, and  
315 trails.

316  
317 2) **3.18 C. 1. b.** The proposal meets the purposes of the ordinance under which the  
318 application is proposed.

319  
320 Ken Clinton explained that this project offers a unique approach due to the agrihood concept, and  
321 the use of the farm. It looks to preserve the traditional, rural aesthetics of the area, utilizing  
322 farming, open space preservation, pods and clusters of homes, and different unit types.

323  
324 3) **3.18 C. 1. c.** There will be no significant adverse impacts resulting from the proposed use  
325 upon the public health, safety, and general welfare of the neighborhood and the Town of  
326 Amherst.

327  
328 Ken Clinton stated that the project will be controlled by regulatory authority. It will feature state  
329 approved septic designs, water brought in from Pennichuck Water, lower farm pollutants due to  
330 best management practices (where there are none currently), and low and net zero objectives.  
331 Everything on site will be well-engineered and designed and based on town and state regulations.  
332 For the upcoming traffic study, a consultant is being considered to work jointly with this  
333 proposal and another current proposed development in town, in order to get joint data that can be  
334 extrapolated to show how each affect traffic singularly and together.

335  
336 Mike Dell Orfano stated that the DPW Director is asking that the applicant provide the scope of  
337 the traffic study prior to its commencement for his review.

338  
339 Ken Clinton agreed that the scope is already underway. He also noted that the stormwater design  
340 will be professionally engineered, reviewed by the state, and a third party town engineer will  
341 crosscheck it. The public health, safety, and welfare is thereby safeguarded.

342  
343 4) **3.18 C. 1. d.** The proposed use will not be more objectionable to nearby properties by  
344 reason of noise, fumes, vibration, or inappropriate lighting than any use of the property  
345 permitted under the existing zoning district ordinances.

346  
347 Ken Clinton explained that the proposed development is consistent with nearby properties and  
348 will be no more objectionable to nearby properties than they will be to this development. The  
349 land offers a significant buffer. Regarding the farming component of the land, the small tractor  
350 will not generate enough noise as to be objectionable.

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351

352 Ken Clinton also noted that the town has adopted a Right To Farm ordinance (3.12 Farming  
353 section) and read the intent (A.) of this ordinance.

354

355 5) **3.18 C. 1. e.** The proposed use will not adversely affect the ground water resources of  
356 Amherst, in particular the Aquifer Conservation District.

357

358 Ken Clinton explained that the proposed development will thoroughly comply with all town and  
359 state regulations. The development will not draw on the aquifer, as water will be brought in by  
360 Pennichuck Water. He also noted that erosion and stormwater management will be reviewed by  
361 DOT and the septic systems by DES Subsurface Bureau.

362

363 In response to a question from Mike Dell Orfano, Ken Clinton explained that there are lines on  
364 the plan to denote where the aquifer conservation district is. The majority of the proposed homes  
365 are not within this area.

366

367 6) **3.18 C. 1. f.** The application shall file a Non-Residential Site Plan Review application in  
368 accordance with the “Non-Residential Site Plan Review Regulations” with the Amherst  
369 Planning Board.

370

371 Ken Clinton stated that this application will be filed as the next step in this process.

372

373 **Public Comment:**

374 Mike Dell Orfano stated that, although the Board’s written policy was that abutter testimony  
375 could be limited to two minutes, and previously the Board had limited it to three minutes, he was  
376 not going to do so this evening, as long as everyone stayed on track and allowed the next person  
377 to speak.

378

379 Mike Dell Orfano read a letter from Jack Child into the record, as requested. [This letter can be  
380 found as an attachment to these minutes.]

381

382 Mike Dell Orfano stated that many other letters had been submitted that said basically the same  
383 thing. He noted that Jim Hendrix had commented on traffic and the Board would consider those  
384 studies at a later date. Mike Dell Orfano went on to say that he did not think there were any  
385 conflicts of interest among the Board members.

386

387 In response to a question from Frank Montesanto, 55 Christian Hill Road, Mike Dell Orfano  
388 explained that the breakdown for each category of housing type will be more clearly defined in  
389 the NRSPR.

390

391 Frank Montesanto questioned who is keeping track of all of the bonuses given for each of the  
392 currently proposed developments. He noted that it is possible that the bonuses being given to  
393 each proposal are taking care of the need. He doesn’t believe that each proposal should be given  
394 a clean slate when seeking density bonuses. Mike Dell Orfano stated that the Master Plan update

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395 will be looking at housing needs, as will the NRPC Regional Housing Needs Assessment, which  
396 will be updated soon.

397

398 Brian Coogan commented that he doesn't believe this information is currently being tracked. The  
399 Board understand that there is a gap here and is looking to address it.

400

401 Jim Hendrix, 44 Christian Hill Road, stated that he is glad to see that there will be a hydrological  
402 study done. He noted that the septic mounds will probably be quite unsightly in the fields. He  
403 also noted that the potential residents of this development will have to deal with a lot of mud  
404 each year, due to the wetness of the area.

405

406 In response to a question from Jim Hendrix, Ken Clinton explained that there are a variety of  
407 regulations and design criteria for the proposed roads on the property. It is unlikely that the road  
408 up to the old ski hill will be 8% grade the whole way. If the Fire Department is okay with the  
409 grade being approximately 9.5% in some short sections and 8% in others, the applicant will  
410 pursue that.

411

412 In response to a question from Jim Hendrix, Mike Dell Orfano explained that he mentioned the  
413 idea of having a third party oversee the traffic study to DPW Director, Eric Hahn, who  
414 respectfully disagreed with the idea. DPW Director Hahn stated that there will be a benefit to  
415 having the applicant submit a scope for the study and keep that scope consistent across the  
416 currently proposed developments. NRPC has also suggested that they get involved with the  
417 scope of the study. There will be multiple experts looking into this aspect.

418

419 Sally Long, 24 Ponemah Road, stated that she is currently a school crossing guard at the  
420 intersection of Boston Post Road and Foundry Street. She has concerns regarding the additional  
421 traffic on these roads during busy school hours.

422

423 John Silva, 3 Davis Lane, stated that the Board is ignoring the elephant in the room – offsite  
424 impacts. As a community planner for 45 years, he believes that to not permit community  
425 involvement prior to issuing a not-to-exceed number of units prejudices the whole process. He  
426 also believes that there should be no number issued until the required studies are completed, if  
427 the process is being done correctly.

428

429 Mike Dell Orfano explained that the ordinance reserved the right for the Board, subsequent of  
430 the completed studies, to reduce the up-to number.

431

432 John Silva stated that this process prejudices the project. It leaves the community to argue down  
433 the up-to number, instead of involving the community in establishing the number in the first  
434 place.

435

436 Brian Coogan explained that the Board may set a maximum unit value tonight, or not. Data will  
437 then be collected and the applicant will have to present to the Board again. The determined  
438 number can only go down. This is an iterative process.

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439  
440 Jason Osborn, 14 Bloody Brook Road, stated that Merrimack is currently building a lot of rental  
441 housing that would probably address the needs for this type of housing. He stated that tiny homes  
442 are simply mobile homes or RV's and should be treated as such. He believes there is an issue  
443 with sight distance down Christian Hill Road, which this project could add to. He questioned the  
444 tax impact of the project, and also who will maintain the solar and other equipment. He also  
445 noted that the fields where corn is proposed to be grown would make great ball parks or playing  
446 fields for the town. The town should give the land the use it demands.

447  
448 In response to a question from Shannon Gascoyne, 5 Parker Farm Lane, Lisa Eastland explained  
449 that, out of the 64 proposed units, 24 of them are going to be attached.

450  
451 Shannon Gascoyne explained that the 2010 Master Plan, on page 33, notes that the town school  
452 buildings are overcrowded. She requested that a socio-economic study be added to the list of  
453 impact studies for this project, and any other proposed project that is not permanently age-  
454 restricted. She also stated that, though many of the units proposed for this project are small, it is  
455 the life experience of many to squeeze families into small spaces, especially in a town with good  
456 schools and infrastructure. Ken Clinton noted that the various studies and reports listed in the  
457 subdivision and site plan regulations, plus studies as the Board deemed appropriate, had not been  
458 determined yet. Mike Dell Orfano stated that these would be determined NRSR level.

459  
460 Bryan Galante, 32 Boston Post Road, stated that he has concerns regarding the additional  
461 electrical load from the proposed development on an already fragile town distribution system. He  
462 believes that net zero housing is not possible in New Hampshire due to the number of no-sun  
463 days. He questioned who will be responsible for the cattle/animals on the land. He also  
464 questioned how the high taxes of town will be addressed for low-income residents in this new  
465 development. He noted that new construction in town is not currently selling well, and wonders  
466 how the applicant will address that issue. He has concerns regarding the effect on the local  
467 aquifer with the number of new septic systems needed for this development. He requested that an  
468 electrical power load study be added to the list of impact studies for this project.

469  
470 Tim Kachmar, 15 Mack Hill Road, read a letter from Scott Stimpert, 7 Brimstone Hill Road, to  
471 the Board. Scott Stimpert's letter noted that the applicant must conform to the existing use of the  
472 area, but is instead looking for a non-conforming use. Absent any compelling benefit to the town,  
473 the Board should deny the application. He stated that the CUP application is lacking in detail and  
474 incomplete in many ways. It is incumbent on the applicant to show no adverse impact to the  
475 town. The letter mentioned the applicant's past financial decisions, as demonstrating a public  
476 track record of failure on smaller and less complex projects than this one. The land will be  
477 forever changed for the worse if this project fails.

478  
479 Mike Dell Orfano asked that the Scott Stimpert letter be sent to the Community Development  
480 Office for inclusion in the application packet.

481

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482 Tony Yakovakis, 22 Eaton Road, stated that he believes the Board giving the applicant an up-to  
483 number that can be reduced, takes the burden off the applicant and puts it onto the town. He  
484 explained that the data presented in the application is easy to come up with and can be made to  
485 look contradictory by anyone. He doesn't believe that this project aligns with keeping the  
486 historical feel of the town. He noted that the schools in this town are good and he believes people  
487 here hope that their children aspire to more than a tiny house.  
488

489 Tom Quinn, 30 Christian Hill Road, stated that the applicant has provided very little data to  
490 prove the case. He believes that most of the housing data was given by the two real estate  
491 members of the applicant's group, who have a financial interest in the project. He stated that the  
492 Board's job is to control growth and protect the town's residents. The Board doesn't have to give  
493 any density bonuses. He noted that concerned citizens have property rights as well, and that he  
494 has never heard that idea mentioned by the Board. He told the Board that it is okay to vote no.  
495 He explained that the number of units, the layout of the project, and the mix of housing  
496 information have all changed since the original application. As the original application was  
497 accepted as complete by the Board, they should only be looking at the submitted application. He  
498 noted that the Board thought that it was okay to not take minutes on the site walk for this  
499 proposal, which violates RSA 91-A. He believes the Board is doing the applicant's heavy lifting  
500 for him, and is thus, not impartial. He noted that there have been serious procedural and legal  
501 errors so far in this process, and that the rights of property owners have been violated. No bond  
502 will fix this mess if it fails and the town will have a large problem on its hands. He believes that  
503 in order for the applicant to be granted a CUP, certain points must be proven now, not later.  
504

505 Dan Muller, Esq., 13 Holly Hill Road, of Cronin, Bisson, & Zalinsky, noted that he is  
506 representing about 33 residents.  
507

508 In response to a question from Dan Muller, Esq., Mike Dell Orfano explained that the Board sets  
509 a not-to-exceed unit number for the CUP phase. Per the ordinance, the applicant then has an  
510 opportunity to prove that the number is physically possible on the site during the NRSPR. All of  
511 the required studies are also covered during the NRSPR. If the Board feels, after hearing the data  
512 and facts, that the site doesn't suit the original number, then the Board will roll back the number  
513 at that time.  
514

515 Dan Muller, Esq., stated that, per the ordinance, there are certain items that need to be satisfied  
516 before a CUP can be granted that the applicant has not done. He also doesn't believe that the  
517 studies can be deferred to another day. He drew the Board's attention to ordinance section 3.18 A  
518 – Conditional Use Permits.  
519

520 Mike Dell Orfano stated that the CUP requires that a NRSPR be filed, but doesn't say that it has  
521 to be filed before a CUP is issued. Dan Muller, Esq., disagreed that it does.  
522

523 Dan Muller, Esq., also noted that the federal definition of senior housing does not allow for units  
524 interspersed throughout the development, and thus the bonus for that section should not be  
525 awarded. He also noted that, per the elderly housing section 4.20, the cluster neighborhoods are

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526 not as intended, and thus the bonus for this section shouldn't be awarded. He also believes that  
527 there are elements of the application that will require relief from the ZBA.

528

529 Mike Dell Orfano requested that Dan Muller, Esq., submit these items to the Community  
530 Development Director for review.

531

532 Bill Stoughton, 11 Pine Top Road, stated that he is a member of the ACC and that the ACC has  
533 not yet reviewed the request for waivers to the wetland buffers on this project.

534

535 Ken Clinton explained that the applicant presented to the ACC in July and indicated that they  
536 would be back before them for possible buffer impacts in the future. He explained that there will  
537 be a need for an additional CUP application at the same time as the NRSRP, for this buffer  
538 impact. This does not require a waiver, as it is allowed under certain circumstances.

539

540 Bill Stoughton explained that there is a tension between giving an up-to number of units right  
541 now per a benefit to the town, and a future step that may require encroachment to a wetland  
542 buffer. This is a very sensitive location, due to the associated aquifer and wetlands.

543

544 Dean Collura, 32 Christian Hill Road, agreed that the number should not be defined without all  
545 of the actual facts. He believes that cluster housing and heavy traffic will be very impactful and  
546 could deter many from moving to the town.

547

548 Kelly Mullin, 48 Christian Hill Road, stated that she struggles with the idea that the proposed  
549 development will have no adverse impact to health, safety, and public welfare. She believes there  
550 are serious safety concerns on Christian Hill Road. She understands that some Board members  
551 have an allegiance to the IIHO because they wrote it, but it is poorly written and that should be  
552 the problem of the Board to dissect and figure out. The ordinance is written backwards and  
553 should be looked at more carefully before an up-to number is given. She also questioned why the  
554 Board and the Board of Selectmen are able to pick and choose which ordinances to enforce  
555 (IIHO versus impact fees). She finds it ridiculous that other towns have found ways to enforce  
556 the impact fee ordinance.

557

558 Mike Dell Orfano noted that the Board of Selectmen recently received proposed changes to the  
559 impact fee ordinance, in order to allow the town to enforce the fees. These changes will be seen  
560 on the ballot in March.

561

562 Doug Chabinsky, 89 Boston Post Road, stated that there are three developments currently being  
563 built in town and another three that are proposed. He doesn't believe that the ordinance was  
564 written to consider six projects occurring simultaneously. If each project is treated as a stand-  
565 alone, and not looked at within the fabric of the community, the latter will probably be eradicated  
566 to a point that no one will want to move to town anymore. The Board needs to look at the entire  
567 picture to make an assessment.

568

569 **There being no one else to speak, Mike Dell Orfano closed the public hearing.**

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570 **Discussion:**

571

572 Marilyn Peterman suggested that the application be tabled until the Board can meet with Town  
573 Counsel for an opinion on how to proceed regarding the issues of ordinance legality that were  
574 brought up.

575

576 Arnold Rosenblatt questioned what Counsel would be asked. He understands the opposition to  
577 the project, but believes he is able to have a view of the project based on the ordinance and vote  
578 on it.

579

580 Mike Dell Orfano pointed out that there were statutory deadlines in place for the Board's action  
581 on this application.

582

583 Marilyn Peterman noted that, in fairness to the applicant and the town, it is important to get  
584 answers to the questions that arose regarding the legality of the ordinance, and the procedural  
585 process.

586

587 Mike Dell Orfano stated that the ordinance was reviewed by Counsel before it was voted on and  
588 was deemed okay.

589

590 In response to a question from Lisa Eastland, Ken Clinton stated that the development will have  
591 some sort of an association, probably in several sub-associations/clusters.

592

593 In response to a question from Mike Dell Orfano, Carter Scott stated that the project is not  
594 looking to use senior housing per se, but will simply note this restriction in the deeds for these  
595 units.

596

597 Christy Houpis noted that there are clear questions regarding the process that the Board  
598 followed, the frameworks and tools used during the hearings, and this specific project itself. He  
599 believes it would be imprudent for the Board to make a decision at this time, as it may leave the  
600 town in legal jeopardy.

601

602 The Board discussed that the applicant could agree to extend the deadline for the application.  
603 The next available date at the high school is February 19<sup>th</sup>.

604

605 Ken Clinton explained that the applicant requested to table at the last Board meeting on  
606 November 6<sup>th</sup> because of a letter from Dan Muller, Esq., dated October 24<sup>th</sup>, received October  
607 30<sup>th</sup>, regarding legal challenges. The applicant's attorney reached out to Town Counsel at that  
608 time and decided that there were legitimate issues in the letter and that the Board should continue  
609 on with the process. It is unfair to the applicant to table this application until February 19<sup>th</sup>.  
610 The Board reviewed the CUP criteria.

611

612 Rich Hart stated that he has concerns regarding item 3.18 C. 1. c., due to the traffic study not yet  
613 being complete. Mike Dell Orfano explained that the traffic study will be scoped by NRPC and

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614 DPW, and if the data proves a life safety issue with the proposed development, then the Board  
615 will roll back the number of up-to units, without recourse from the applicant.  
616

617 Lisa Eastland noted a concern regarding the cluster neighborhoods on the slope-side of the  
618 development. She doesn't believe that there has been a lot of evidence given to show that all of  
619 the requested bonuses are required.

620

621 **Marilyn Peterman moved to accept the Conditional Use Permit. John D'Angelo**  
622 **seconded.**

623

624 **Discussion:**

625

626 Brian Coogan stated that he doesn't understand the project and how there is a benefit to  
627 the town to deserve the requested bonuses.  
628

629

629 Arnold Rosenblatt stated that the comments regarding the integrity of the Board from the  
630 public are unfortunate. He believes that even Board members he regularly disagrees with  
631 always act on the best interest of the town and not out of self-interest. He also believes  
632 that there is an apparent problem with open space being taken in town. Regardless of this,  
633 there is a right to develop open land. If the town wants to preserve land it needs to do so.  
634 He will vote against the motion as he does not believe the applicant sustained the burden  
635 of proof in this case. He does not believe the applicant satisfied item 3.18 C. 1. b. and  
636 does not wish to award bonuses in a vacuum. He further does not believe the applicant  
637 satisfied the burden of 3.18 C. 1. c., with regard to lack of adverse impact. This doesn't  
638 mean that the applicant cannot still develop the land in some way.  
639

640

640 Christy Houpis stated that the applicant failed to ensure that any and all of the items listed  
641 in 3.18 C. 1. c. will be impacted. He believes that the Board is having issues with their  
642 hearings, the ordinance use, and specific issues with this project itself. The Board must  
643 look to ensure the safety and health of the neighbors in town. He stated that certain Board  
644 members have voiced their opinions on social media, leaving the Board and town open to  
645 legal scrutiny. He believes that the limited public comment time at a previous Board  
646 meeting was arbitrary. He stated that the Board should decline the application and wait  
647 until it has the proper tools in place, including impact fees. Christy Houpis stated his  
648 concerns were with the pitch of the proposed road, increased drainage, runoff, grazing,  
649 traffic volume, financial viability, and a lack of Amherst-specific data. If the Board does  
650 approve the application, he hopes that it will be made conditional upon having a  
651 substantial bond, firm construction plans for the renovation, possible impact fees,  
652 pending a look holistically and cumulatively of the town, and studies completed by third  
653 parties. He believes it would be in the town's best interest to not approve the application,  
654 or at least to take 20 units off the proposal, based on the data.  
655

656

656 John D'Angelo stated that he believes the application met the CUP criteria and will vote  
657 yes for it.

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Marilyn Peterman stated that she has been on the Board for a long time and has consistently seen the town vote to preserve open space, and to provide a diversity of housing. Housing for the elderly wasn't provided for a long time and there continues to be a need for it. Many people also can't afford to live and work in town, and thus affordability should also be addressed. Suggesting that Merrimack is creating enough rental properties to meet the need isn't a solution to Amherst's housing problem. She also doesn't believe that all developers come here to fleece the town, as many have worked with the town to provide the housing needed. She stated she would approve the CUP.

Cliff Harris stated that he sides with Arnold Rosenblatt.

Rich Hart stated that he would vote no on the motion, based on his previous explanation.

**Voting: 2-0-4 (2 in favor: M. Peterman, J. D'Angelo; 4 opposed: R. Hart, A. Rosenblatt, B. Coogan, C. Harris).**

Mike Dell Orfano stated that there were things in the process that have been identified and considered and may cause the project to fail. He stated that the Board had to evaluate the housing mix under the PRD regulations and fine tune the housing available and number of bedrooms, etc. He stated this would be part of the NRSPR, which would take care of almost all the concerns that were alluded to this evening. Mike Dell Orfano stated the purpose of this stage was to reduce the cost to the developer at this stage. Mike Dell Orfano stated that, in his opinion, this project offered the town an innovative approach. He was not sold on the farming concept, but likes the idea of clustered houses and variety of housing. He believed this was an opportunity lost.

Arnold Rosenblatt asked that the record be clear that he was not voting consistent in any way to Christy Houpis' comments, but for his own reasons previously articulated.

Mike Dell Orfano explained that the applicant can reapply for a CUP with more information.

In response to a question from Ken Clinton, Mike Dell Orfano stated that he historically doesn't have to vote as Chair, and didn't vote on this motion.

*Marilyn Peterman left the meeting.*

OTHER BUSINESS

**2. Minutes: November 6, 2019; November 20, 2019**

**The Board agreed to defer review of these minutes to the next meeting.**

**3. Zoning Ordinance Amendments**

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702 The Board reviewed the proposed changes to the zoning ordinance.

703

704 John D'Angelo explained that the town reached out to Bruce Mayberry, an expert on impact  
705 fees, and the following items were suggested.

706

707 1) From Section 4.19, subsection G. Impact Fee Establishment Procedure:  
708 Remove this sentence: "In order to establish an impact fee, the Selectmen shall  
709 identify projects eligible for impact fee funding as indicated in the Capital  
710 Improvements Program, as, from time to time, amended.

711

712 Subsection G ties impact fees to a specific item in the CIP and thus makes enforcement very  
713 restrictive.

714

715 In response to a question from Rich Hart, John D'Angelo stated that the Planning Board will still  
716 decide which projects can be tied to impact fees, but they will not be required to be tied to the  
717 CIP.

718

719 In response to a question from Sally Wilkins, John D'Angelo stated that Bruce Mayberry will  
720 help the town dictate how to calculate impact fees.

721

722 2) From Section 4.19, subsection G. Impact Fee Establishment Procedure:  
723 In the next sentence from the one previously suggested for removal, remove the  
724 word "then."

725

726 This is a housekeeping item.

727

728 3) From Section 4.19. Impact Fee Ordinance:  
729 Remove this sentence: "G. 1. A determination of the number of building  
730 permits that will need to be issued in order to finance the impact fee. (3-10-  
731 09)."

732

733 John D'Angelo explained that this removes the requirement to get a number of building permits  
734 in order to get an impact fee.

735

736 4) From Section 4.19. O. Applicability of Impact Fees.  
737 Remove this sentence: "1. Any person or agent, who after the effective date of  
738 this ordinance, seeks to undertake new development within the Town of  
739 Amherst, New Hampshire, by applying for site plan approval, subdivision  
740 approval or a building permit and who is not vested pursuant to RSA 674:39,  
741 is hereby required to pay the appropriate Impact Fees in the manner set forth  
742 in this ordinance, in accordance with any Impact Fee Schedule adopted by the  
743 Board of Selectmen."

744

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745 Replace it with this sentence: “1. Any person or agent, who after the effective  
746 date of this ordinance, seeks to undertake new development within the Town  
747 of Amherst, New Hampshire, by applying for site plan approval, subdivision  
748 approval or a building permit, and which is not covered under an exemption  
749 pursuant to RSA 674:39, is hereby required to pay the appropriate Impact  
750 Fees in the manner set forth in this ordinance, in accordance with any Impact  
751 Fee Schedule adopted by the Board of Selectmen.”  
752

753 John D’Angelo explained that this is a rewording to broaden the wording to include any kind of  
754 exemption.  
755

756 *Lisa Eastland sat for Marilyn Peterman.*  
757

758 **Arnold Rosenblatt moved to merge the four proposed amendments into one single**  
759 **amendment for placement on the ballot. Cliff Harris seconded.**  
760 **All in favor.**  
761

762 The Board reviewed the other two proposed amendments.  
763

764 5) Amend Article VI, Administration, Section 6.3 Board of Adjustment, Sub-  
765 section G. Time Limits of Special Exceptions and Variances, to add a sub-  
766 section entitled Scheduled Termination of Variances, that would provide for  
767 the termination of all variances that were authorized before August 19, 2013,  
768 and that have not been exercised, as follows:  
769

770 **Scheduled Termination of Variances**

771 **Pursuant to RSA 674:33 I-a. (b), all variances that were authorized by the**  
772 **Amherst Zoning Board of Adjustment pursuant to the Amherst Zoning**  
773 **Ordinance and RSA 674:33 before August 19, 2013, and that have not**  
774 **been exercised, shall terminate according to the following procedure:**

775 1. **Upon adoption of this amendment, the Planning Board shall post**  
776 **notice of the termination in the Town Hall. The notice shall be**  
777 **posted for one year and shall prominently state the expiration date**  
778 **of the notice.**

779 2. **The notice shall state that variances authorized before August 19,**  
780 **2013, are scheduled to terminate, but shall be valid if exercised**  
781 **within two years of the expiration date of the notice or as further**  
782 **extended by the Zoning Board of Adjustment for good cause.**  
783

784 6) Amend Article VI, Administration, Section 6.3 Board of Adjustment, Sub-  
785 section G. Time Limits of Special Exceptions and Variances, to add a sub-  
786 section entitled Scheduled Termination of Special Exceptions, that would  
787 provide for the termination of all special exceptions that were authorized  
788 before August 19, 2013, and that have not been exercised, as follows:

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- 789                    **Scheduled Termination of Special Exceptions:**  
790                    **Pursuant to RSA 674:33 IV. (c), all special exceptions that were**  
791                    **authorized by the Amherst Zoning Board of Adjustment pursuant to the**  
792                    **Amherst Zoning Ordinance and RSA 674:33 before August 19, 2013, and**  
793                    **that have not been exercised, shall terminate according to the following**  
794                    **procedure:**  
795                    **1. Upon adoption of this amendment, the Planning Board shall post**  
796                    **notice of the termination in the Town Hall. The notice shall be**  
797                    **posted for one year and shall prominently state the expiration date**  
798                    **of the notice.**  
799                    **2. The notice shall state that special exceptions authorized before**  
800                    **August 19, 2013, are scheduled to terminate, but shall be valid if**  
801                    **exercised within two years of the expiration date of the notice or as**  
802                    **further extended by the Zoning Board of Adjustment for good**  
803                    **cause.**

804  
805                    **John D'Angelo moved to merge the last two proposed amendments into one single**  
806                    **amendment for placement on the ballot. Cliff Harris seconded.**  
807                    **All in favor.**

808  
809  
810                    **The meeting was adjourned at 11:54pm.**

811  
812  
813  
814  
815  
816                    **Respectfully submitted,**  
817                    **Kristan Patenaude**

818  
819                    **Minutes approved as amended: January 15, 2020**