

TOWN OF AMHERST

Planning Board

August 19, 2020

APPROVED

1 In attendance: Arnie Rosenblatt - Chair, Cynthia Dokmo – Vice Chair, Michael Dell Orfano,
2 Dwight Brew-Selectman Ex-Officio, Bill Stoughton, Marilyn Peterman, Brian Coogan, Tracie
3 Adams (Alternate) and Christy Houpis (Alternate).
4

5 Staff present: Nic Strong, Community Development Director; Natasha Kypfer, Town Planner;
6 and Kristan Patenaude, Minute Taker.
7

8 Arnie Rosenblatt called the meeting to order at 7:02 pm., with the following statement. As Chair
9 of the Amherst Planning Board, I find that due to the State of Emergency declared by the Gover-
10 nor as a result of the COVID-19 pandemic and in accordance with the Governor's Emergency
11 Order #12 pursuant to Executive Order 2020-04, as extended by Executive Orders 2020-05,
12 2020-08, 2020-09, 2020-10, 2020-14, and 2020-15 this public body is authorized to meet elec-
13 tronically.

14 Please note that there is no physical location to observe and listen contemporaneously to this
15 meeting, which was authorized pursuant to the Governor's Emergency Order.

16 However, in accordance with the Emergency Order, I am confirming that we are:

17 Providing public access to the meeting by telephone, with additional access possibilities by video
18 or other electronic means:

19 We are utilizing Zoom for this electronic meeting.
20

21 All members of the Board have the ability to communicate contemporaneously during this meet-
22 ing through this platform, and the public has access to contemporaneously listen and, if neces-
23 sary, participate in this meeting through dialing the following phone #312-626-6799 and pass-
24 word 850 5785 2735, or by clicking on the following website address:
25 <https://zoom.us/j/85057852735> that was included in the public notice of this meeting.
26

27 Providing public notice of the necessary information for accessing the meeting:

28 We previously gave notice to the public of the necessary information for accessing the meeting,
29 including how to access the meeting using Zoom or telephonically. Instructions have also been
30 provided on the website of the Planning Board at: www.amherstnh.gov.
31

32 Providing a mechanism for the public to alert the public body during the meeting if there are
33 problems with access: If anybody has a problem, please call 603-341-5290.
34

35 Adjourning the meeting if the public is unable to access the meeting:

36 In the event the public is unable to access the meeting, the meeting will be adjourned and re-
37 scheduled.
38

39 Please note that all votes that are taken during this meeting shall be done by roll call vote.
40

41 Let's start the meeting by taking a roll call attendance. When each member states their presence,
42 please also state whether there is anyone in the room with you during this meeting, which is re-
43 quired under the Right-to- Know law.
44

Roll call attendance: Cynthia Dokmo; Dwight Brew; Brian Coogan; Mike Dell Orfano; Bill Stoughton; Christy Houpis; Tracie Adams; and; Arnie Rosenblatt; all alone and present. [Marilyn Peterman was also present, but unable to roll call due to computer issues].

PUBLIC HEARING:

- 1. CASE #: PZ12172-121819 – Arboleda Realty LLC (Owner & Applicant) - The Farmhouse Marketplace, 340 Route 101, PIN #: 008-052-000 - Public Hearing/Non-Residential Site Plan. Proposed multi-use commercial building. Zoned Northern Transitional. Continued from August 5, 2020.**

Arnie Rosenblatt recused himself by muting himself and taking himself off video. Cynthia Dokmo took the Chair.

Ken Clinton, Meridian Land Services, joined the meeting.

Cynthia Dokmo stated that the Board would hear three waiver requests from the applicant. These requests were all submitted to the Community Development Office and reviewed by Nic Strong. She suggested that the Board hear the waiver requests first and vote on them, before hearing the full presentation.

Ken Clinton reviewed the Meridian letter regarding waivers with the Board. He explained that he doesn't believe this project needs monitoring wells, as not every project has/needs these as part of the project. He stated that these wells are not necessary on site as they serve no function. The basis of this waiver is that the specific circumstances of the site plan will indicate that the waiver carries out the spirit of the ordinance.

In response to a question from Mike Dell Orfano, Bill Stoughton stated that the Amherst Conservation Commission has no concern regarding the distillery or any alcohol or hazardous materials going into the groundwater. Bill Stoughton stated that he believes Ken Clinton has mentioned that any raw materials for the distillery are similar to grape juice, and the cleaning products for the area would be benign.

Ken Clinton explained that the second waiver is for locating individual trees over 5" in diameter. He explained that this waiver is usually for properties in the Commercial zone that are light on trees. This property is not in the Commercial zone and the intention of the project is to keep most of the existing trees, especially along the frontage. The project would like to keep the Route 101 corridor as it is. This waiver meets the spirit and intent of the ordinance.

Ken Clinton stated that the third waiver is regarding the submission of three 8 ½" x 11" photos to depict a view of the front of the property and from across the street. These pictures are not relevant for this property because it is not a standard property and there is a lot of foliage in the front. He has submitted 2 pages of 12"x16" photos that are more illustrative of how the site looks

89 and feels. The regulation, as worded, is not germane to the property. He is happy to resubmit the
90 photos with labels.

91
92 No Board members had any comments or questions at this time.

93
94 Nic Strong stated that she has no comments regarding the waiver requests.

95
96 Cynthia Dokmo noted that there were no hands up in the public and closed the public comment
97 section.

98
99 *Tracie Adams set for Arnie Rosenblatt.*

100
101 **Mike Dell Orfano moved to grant the waiver request for monitoring wells on the**
102 **basis that there is no hazardous material stored on the site. Marilyn Peterman**
103 **seconded.**

104
105 **Mike Dell Orfano amended his motion: to grant the waiver request for the**
106 **monitoring wells because it meets the specific circumstances relative to the site plan,**
107 **or conditions of the land in such site plan indicate that the waiver will properly**
108 **carry out the spirit and intent of the regulations. Marilyn Peterman seconded.**
109 **Roll call: Bill Stoughton - aye; Dwight Brew - aye; Mike Dell Orfano - aye; Marilyn**
110 **Peterman - aye; Tracie Adams - aye; and Brian Coogan - aye. Motion carried**
111 **unanimously.**

112
113 **Bill Stoughton moved to grant the waiver requested by Section III.2.B.18 of the site**
114 **plan review regulations, as the Board has determined that the specific circumstances**
115 **relative to the site plan, or conditions of the land in such site plan indicate that the**
116 **waiver will properly carry out the spirit and intent of the regulations. Dwight Brew**
117 **seconded.**

118 **Roll call: Bill Stoughton - aye; Dwight Brew - aye; Mike Dell Orfano - aye; Marilyn**
119 **Peterman - aye; Tracie Adams - aye; and Brian Coogan - aye. Motion carried**
120 **unanimously.**

121
122 **Bill Stoughton moved to grant the waiver requested by Section III.2.B.19 of the site**
123 **plan review regulations, as the Board has determined that the specific circumstances**
124 **relative to the site plan, or conditions of the land in such site plan indicate that the**
125 **waiver will properly carry out the spirit and intent of the regulations. Mike Dell**
126 **Orfano seconded.**

127 **Roll call: Bill Stoughton - aye; Dwight Brew - aye; Mike Dell Orfano - aye; Marilyn**
128 **Peterman - aye; Tracie Adams - aye; and Brian Coogan - aye. Motion carried**
129 **unanimously.**

130
131 Cynthia Dokmo stated that the Board will now discuss impact fees and 'active and substantial
132 development' for this application.

Ken Clinton reviewed page 14 of the staff report with the Board, subsequent and precedent conditions. He explained that item 1a under Conditions Precedent - plan revisions as noted, has items including bonding and landscape bonding that he is not in agreement with. Item 1b deals with the waivers that were just granted and granted earlier in the process. Item 1c deals with the irrigation system and he will add a note to the plan specifying the unit model. Item 1d regarding disturbance of construction areas, will be fulfilled by using yellow caution tape. A note will be included regarding compliance, for item 1e, but he is not agreeable to the intermediate as-built. Item 1f, regarding the height and elevation of the building, will be indicated in the plan set. There were also some typographical corrections to be made, per item 1g.

Ken Clinton explained that item 2a deals with bonding and will be touched on later. Item 3 is also about bonding. Item 4 deals with lighting details and locations. The foot candle power plan was not originally shown to the Board, and that will be supplemented on the plan sheet. Regarding item 5, he does not believe that further third-party verification is necessary. There are no issues with items 6 or 7. Item 8, dealing with Town Counsel and Amherst Conservation Commission approving the easement documentation, will be completed. Any outstanding fees, item 9, the applicant will be responsible for.

To summarize, the Conditions Precedent are agreed on, other than portions or all of items 1a, 1e, 2, 3, and 5.

Relative to Subsequent conditions, item 2, regarding an intermediate as-built, is not a town requirement, and thus not agreeable at this time.

Ken Clinton went into more detail on the issues regarding further costs incurred by additional reviews by a third party. The comments by Keach-Nordstrom were broken down into three categories: 1) "a group" incidental, minor revisions. 2) "b" group, engineering items more applicable to the Alteration of Terrain (AoT) permit process and not the town site plan review standards. 3) "c" group, items not fully addressed with the Board that needed more discussion. Some of these are items not applicable relative to third party review, but more appropriate for state level review. Some of these items involve bonding for overall improvements, the lighting plan, and monitoring wells. Thus, Ken Clinton doesn't believe that additional third-party review is required, as most of the key items will be brought through an even more stringent state permitting process. A third PE, at the State level, will be reviewing these items along the way.

Ken Clinton explained that the town requirements for bonding in terms of site plan regulations state that, "the Planning Board may require posting, prior to approval of any plans, of a bond or escrow agreement." Typically, in that case, the Board would have all of the information at hand to calculate the cost. The AoT and DOT approval is still required for this project, so the full costs are not yet known. This project is not likely to go right to construction, so the costs today are not known. The bonding is not required, only if there are special circumstances. These costs would need to be before the Board tonight. These costs are not currently available and are unnecessary.

Ken Clinton explained that the town requirements for landscape bonding in terms of site plan regulations state that, "...if the landscaping cannot be completed prior to issuance of a Certificate

of Occupancy (CO), the owner shall be required to submit a security to the Community Development Office.” He stated that the project is not at the point of construction. He does not foresee that this will happen, prior to seeking a CO.

Ken Clinton stated that, regarding the Maintenance Bond item for landscaping, this item is not ready to be installed and the amount is unknown. These three bonding items are premature. He agrees that these are part of the building permit process. When these item costs are known, prior to construction, the applicant could come back at that point to review with the Board.

Ken Clinton cited RSA 674:39, state law for active and substantial development, which states that the Planning Board may, as part of its subdivision or site plan regulations or as a condition of the subdivision plat or site plan approval, specify the threshold levels of work that shall constitute the following terms, with due regard to the scope and details of a particular project. One of these items is active and substantial development. The nature of the development and the economic uncertainty of this time mean that this project may not be built for 2-3 years. The application would thus possibly be subject to changes in ordinances simply because of this economic uncertainty. He is thus looking for the most generous position for the Board to grant. There are possible thresholds to be considered for substantial development: Conditional Approval, Signed Site Plan, Issuance of a Building Permit, Stump/Grub, Foundation Installation, and Weatherproof of Building Exterior.

Ken Clinton stated that he believes conditional approval is okay in this case; however, he would also agree upon a signed site plan, but no later than the issuance of a building permit.

The statute also gives the Board the leeway to extend the time frame for active and substantial completion by 24 months. This could be extended to 30 months, 36 months, and 42 months. He would look for a combination of threshold definition and time frame extension. He believes that issuance of a building permit is a significant commitment and 36 months is the highest realistic extension that make sense for this project.

Dwight Brew stated that he is concerned if a bond amount is not set, the project could be started, not completed, and the Town may then not have the funds to clean up the site. He then questioned if a bond can be required at the time the building permit is issued.

In response to a question from Dwight Brew, Ken Clinton stated that he would be okay with the Board requiring a bond, mutually agreed upon by both parties, before the building permit is issued.

Dwight Brew stated that, regarding active and substantial development, due to COVID-19 he believes it is justifiable to treat this application differently and relax the two-year subsequent timeline, instead of picking a time frame and requiring the site to be arbitrarily disturbed in order to meet that. He would support the items as discussed by Ken Clinton.

Mike Dell Orfano stated that he agrees with Dwight Brew; this is not business as usual. He believes that relaxing the requirements is in the best interest of the spirit of the law, given current

circumstances. He is not sure how much to relax the requirements, as he wants the application to stay active.

In response to a question from Mike Dell Orfano, Ken Clinton stated that he is advocating for the definition of active and substantial development to be the issuance of a building permit, as this is a legitimate threshold for the applicant to reach to be committed to the project. He also believes that extending the timeline to 30-36 months instead of 24 months is legitimate.

Bill Stoughton agreed with Dwight Brew regarding some degree of relaxation.

In response to a question from Bill Stoughton, regarding extending the time frame now or at the 23-month mark, Nic Strong stated that the Board can grant either. Ken Clinton explained that, if the applicant was to come back after the fact, technically a modification of the site plan would need to be approved. Thus, he would prefer this extension to be granted tonight.

In response to a question from Bill Stoughton, Ken Clinton stated that the applicant could come back at month 35, if a 36-month extension was granted, to go through the process of requesting additional relief.

Bill Stoughton stated that he agrees with extending the time frame to up to 36 months total. He also believes that he would like to see something more than the issuance of a building permit for the definition of active and substantial development. He stated that concrete in the ground on site, such as through stormwater improvements, would be appropriate to gain the benefit of vesting the requirements.

Christy Houpis stated that Bill Stoughton and Dwight Brew covered his thoughts.

Tracie Adams stated that she believes an extension makes sense, possibly up to 36 months in total.

Brian Coogan had no comments at this time.

Marilyn Peterman stated that she is comfortable with the issuance of a building permit and 36 months in total. She noted that in Section IV of 674:39, the Planning Board may extend the timeline for a good cause; she believes this falls under that category.

In response to a question Mike Dell Orfano, Ken Clinton agreed that it takes a substantial disturbance of the property to reach the point of implementing the drainage plan and certifying that it's been done correctly. The drainage is also not all installed at one time. After the stumping/grubbing is complete, the rough drainage basins are placed, that act as collection areas for stormwater during the construction process. Some of the basins may be in place but "concrete" may not be in place until after the foundation is installed. These items all happen in an overlapping sort of way. If stormwater improvements were required for 'active and substantial development,' these might not happen for months after stumping/grubbing happens.

Mike Dell Orfano noted that there is no way to know what the recovery period will be from business interruption from COVID-19. The capital investment, plans, and building permit being pulled show substantial commitment to constructing the building, without actually disturbing the land. Construction will require a strong business environment to make that happen.

Marilyn Peterman agreed with Mike Dell Orfano. She stated that the issuance of a building permit is a clear indication that the project is going to move forward. She stated that the Board has seemed to place a lot of emphasis on holding a developer's feet to the ground due to distrust. This is a precarious situation and she believes the issuance of a building permit is appropriate.

Bill Stoughton stated that in looking for "concrete in the ground," he was looking for something less than a foundation, but more than a piece of paper.

In response to a question from Bill Stoughton, Ken Clinton stated that, in other economic times, this project would go right to construction and this wouldn't be an issue. As an intermediate step, stumping/grubbing could be expanded to installing stormwater basins. At that point, material is actually being moved around on the site. He doesn't believe that's necessarily appropriate here, but it would be his fallback.

Bill Stoughton stated that he would like if that degree of work be required for active and substantial development.

Cynthia Dokmo reviewed the process. The items will be taken up one-by-one, then the general issues Nic Strong raised, then the public will be heard, the Board will deliberate and vote, if it so chooses.

In response to a question from Brian Coogan, Ken Clinton stated that the commitment level is far greater when having to pull a building permit. In this economy, that is an appropriate level to show that the applicant is financially committed. This project was started in 2016; it is now 2020. He is asking for three years to get to active and substantial development, so the project will be more than 50% in just to get there.

The Board moved on to discuss bonding.

Dwight Brew suggested that the bonding should have to be done at the time the building permit is pulled.

Bill Stoughton agreed with Dwight Brew.

Mike Dell Orfano questioned if the Board is discussing this as a restoration bond. Dwight Brew agreed that he is referring to a bond that will restore the land if the developer goes away.

In response to a question from Marilyn Peterman, Mike Dell Orfano stated that the Board required a bond on the Lowe's project and on the original Brook Road development, to ensure that the bridge would meet Fire Department and DOT standards. A restoration bond is typically only

required if the Town is concerned with the financial stability of the owner and there is a reasonable likelihood of economic failure. Those bonds have not been required in a majority of the projects the Board has approved.

The Board discussed sending the plans back to the Town Engineer for additional third-party review.

Bill Stoughton stated that the Community Development Director is very able and creates very detailed reports that lead to a better Board product. If there are items noted that the Director believes need to be reviewed by a third party because the expertise is not held by the Town, he would be concerned to move forward without these items being addressed to the satisfaction of the Community Development Office. He stated that the State and Town share jurisdiction over these matters. If the Town doesn't have the expertise, it goes to the Town Engineer. The cost is fairly small, at about \$1,500.

Ken Clinton stated that \$1,500 is not a large amount, but when considering the level of comments, it could add up to a lot. It is not always typical to go back and forth with a third-party review. The list of items identified here include items that do not need to go back to a third party. Practically, he understands Bill Stoughton's standpoint, but he doesn't believe this type of back and forth is common.

In response to a question from Bill Stoughton regarding what it would take for Nic Strong to feel that there is adequate information to protect the Town's interests, Nic Strong explained that the items for additional third-party review were narrowed down to just a few items. This should cost less than \$1,500.

Ken Clinton stated that it would be agreeable to the applicant to have as a conditional item that Keach-Nordstrom acknowledge that the applicant satisfactorily address the key engineering concerns, as long as they are agreeable to Keach-Nordstrom and Meridian, and as long as these are acceptable to Nic Strong. There is a caveat that, if these changes are not found acceptable, the applicant will come back before the Board.

Christy Houpis stated that it would be prudent to have that language within the conditional approval.

Mike Dell Orfano stated that there are certain engineering conventions needed on the plans for the person with the shovel doing the work on the ground. He explained that one of Keach-Nordstrom's notes, #15, to add more details onto the plans, can lead to a lot of errors. Ken Clinton stated that the third-party review is to see if the plan is compliant with Town regulations. Nowadays it isn't possible to put every aspect of construction or design on each sheet. Each sheet has a specific purpose and the plan sets are expanding. Mike Dell Orfano suggested that Ken Clinton have a conversation with Keach-Nordstrom to get resolution on how best to prepare a set of plans to implement them with the fewest errors.

Mike Dell Orfano stated that, regarding an as-built, it is important for the applicant that they're getting what they paid for. Ken Clinton stated that, if Meridian stays on with the project, it will be involved with construction, along with an engineer. He stated that he is not often asked to place an intermediate as-built on a site plan. He believes that an intermediate as-built should involve drainage structures prior to additional back fill and prior to pavement. However, this is not in the Town's regulations.

In response to a question from Mike Dell Orfano, Nic Strong stated that if the site isn't certified by an engineer that it was constructed as designed, it isn't known if drainage is going where it's supposed to go. She has concerns that if there is no interim knowledge from an as-built, there is no way to know what is there.

In response to a question from Mike Dell Orfano, Ken Clinton stated that his firm could do the certification and an engineer could provide that to the Town, if an as-built is required for a certificate of occupancy. The intermediate as-built is a pause on the project. This is not a requirement of the Town and maybe not applicable to the project.

In response to a question from Mike Dell Orfano, Nic Strong stated that, if the Board is concerned in meeting the spirit and intent of the drainage requirements for the site, it should discuss this item. Also, to determine if an as-built provided at the end that states that it meets the design intent is enough.

Mike Dell Orfano stated that the Town has the authority to cause a third-party inspection of a site. This is something the Board has done in the past. There were extenuating circumstances in those cases. Keach-Nordstrom has done the certifications for the Town in the past to make sure it meets the intention of the plan.

Ken Clinton explained that the staff comment only notes that an interim as-built be done and that an engineer provide that to the Town. If Meridian was not involved, another company would be to assist with the construction activity.

Mike Dell Orfano stated that he will not demand that a third party perform this certification, but that the Board must discuss it.

Tracie Adams noted that Nic Strong has explained what she feels is best for the Town. She believes that Keach-Nordstrom reviewing a smaller number of items for a smaller fee is not unreasonable.

Marilyn Peterman had no further comments.

Brian Coogan had no comments.

Cynthia Dokmo noted that page 10 of the Staff Report, bullets 3 and 8, were noted that Nic Strong felt Keach-Nordstrom should review.

Cynthia Dokmo stated that impact fees are assessed upon approval and the Board has the ability to determine which items are applicable to the project. Nic Strong has suggested that the Commercial/Retail development be used: Police at \$0.30, Fire at \$0.50, and Roads at \$0.98.

Dwight Brew explained that the Planning Board can waive an impact fee if it is determined that the item will not be an additional impact by the development. He believes that all three of these impact fees are appropriate.

Bill Stoughton questioned if the Retail rate should be imposed on all parts of the project. He explained that the barrel barn/distillery could be charged at the Industrial rate, the lower offices could be charged the Office rate, and all other structures, including the cottage, could be charged the Retail rate. He believes that these amounts could be specified in a conditional approval in accordance with the fee schedule currently in effect.

Tracie Adams agreed that all three impact fees could be imposed on this project.

Mike Dell Orfano questioned if the road impact fees should apply, as this project is located on Route 101, a state highway.

Marilyn Peterman thanked Bill Stoughton for his suggestion of breaking up the uses on the property. She agreed with Mike Dell Orfano that the road impact fee should not be assessed.

Ken Clinton stated that the road impact fee is not applicable whatsoever to this project. He is doubtful that the full amount of Police or Fire impact fees are applicable either. He believes that the usage for these items on the nearby LaBelle Winery would be a close comparison as to the project's impacts on these items. He does not believe that the Board should seek a placeholder amount for impact fees and stated that he will seek this as an amended site plan item when back before the Board due to bonding items.

In response to a question from Mike Dell Orfano, Dwight Brew stated that this application cannot be grandfathered in, as the impact fee ordinance was established in 2008, and this project does not predate that.

Mike Dell Orfano stated that he believes this project will be a huge benefit to the community and disagrees with burdening it with inappropriate impact fees. He would like to see the comparable Police and Fire impact records for LaBelle Winery. He believes that if the project does not draw these resources, it cannot be considered a significant impact.

Ken Clinton stated that he will disagree with any impact fees imposed and will come back before the Board to argue that these impact fees are unfair, unjust, and unreasonable.

Marilyn Peterman agreed that the comparable impacts of LaBelle Winery should be studied.

In response to a question from Brian Coogan, Ken Clinton stated that he will do research into the impacts imposed by LaBelle Winery. He understands that the Board may require identification of

the categories of impact fees that may be appropriate on site but disagrees with exact amounts being decided on.

Cynthia Dokmo stated that comparing the proposed project to LaBelle Winery is like comparing apples to oranges. There are other uses on the proposed site that do not exist at LaBelle.

Ken Clinton stated that he and the Fire Chief met today regarding items that were outstanding. The last item, the marking of a fire lane, was addressed today. An email was sent to Nic Strong with these revisions.

Ken Clinton explained that a memo from the Heritage Commission notes that there are structures and stone walls on the property. As part of the wetlands permit, a report with descriptions and photographs of these items was sent to the Wetlands Bureau and a copy will also be provided to the Town. Any stone walls that are disturbed will be re-utilized on site, to the greatest extent possible. The historic flagstones will also be used on site.

Mike Dell Orfano noted that Keach-Nordstrom item 2 deals with entry/exit traffic from the site. Ken Clinton mentioned that the Town does not need to evaluate this at this time, because this will be covered under DOT regulations. There is greater analysis needed regarding the turning lane length.

Mike Dell Orfano stated that traffic and traffic flow are all Board concerns regarding public safety. Ken Clinton agreed but stated that this is not relevant at this time from a local standpoint. If more spaces are determined to be necessary by DOT analysis, then the decision will ultimately be up to the DOT.

Cynthia Dokmo noted that no hands were raised and closed the public comment section. The Board moved on to vote on four items.

Bill Stoughton moved that the Board define active and substantial development, or building, in this case to mean: within 36 months after the date of approval, the following items must be completed in order to constitute “active and substantial development or building,” pursuant to RSA 674:39. I, relative to the 5 year exemption to regulation/ordinance changes: installation of stormwater basins. Dwight Brew seconded.

Discussion:

Mike Dell Orfano suggested that a less disruptive alternative might be to request a complete set of architectural drawings.

Christy Houpis agreed with Bill Stoughton.

In response to a question from Mike Dell Orfano, Nic Strong stated that architectural drawings and renderings are requirements of pulling the building permit.

In response to a question from Dwight Brew, Mike Dell Orfano stated that having the drawings is a prerequisite of the building permit. An alternative motion would be that a building permit be the milestone because it requires architectural drawings.

Roll call: Bill Stoughton - aye; Dwight Brew - no; Tracie Adams - no; Marilyn Peterman - no; Brian Coogan - no. 1-4-0; motion failed.

Bill Stoughton moved that the Board define active and substantial development, or building, in this case to mean: within 36 months after the date of approval, the following items must be completed in order to constitute "active and substantial development or building," pursuant to RSA 674:39. I, relative to the 5 year exemption to regulation/ordinance changes: issuance of a building permit. Dwight Brew seconded.

Roll call: Bill Stoughton - aye; Mike Dell Orfano - aye; Dwight Brew - aye; Tracie Adams - aye; Marilyn Peterman - aye; Brian Coogan - aye. Motion carried unanimously.

Bill Stoughton moved that, should this project be approved tonight, that a condition precedent be specified, that submission of security required for completion of improvements and landscaping, as specified in the non-residential site plan review regulations, and acceptable to the Planning Board, be required prior to issuance of a building permit. Dwight Brew seconded.

Discussion:

Mike Dell Orfano stated that a completion bond is much more expensive than a restoration bond. The motion suggests that, if the developer fails, money will be given to complete the project, instead of having the land restored to its native state.

Bill Stoughton restated the motion: that, should this project be approved tonight, that a condition precedent be specified, that submission of security required for site restoration and landscaping, as specified in the non-residential site plan review regulations, and acceptable to the Planning Board, be required prior to issuance of a building permit. Dwight Brew seconded.

Roll call: Bill Stoughton - aye; Mike Dell Orfano - aye; Dwight Brew - aye; Tracie Adams - aye; Marilyn Peterman - aye; Brian Coogan - aye. Motion carried unanimously.

Bill Stoughton moved that, should this project be approved tonight, that a condition precedent be included as follows, verification from the town engineer that the plan revisions noted on pages 10 and 11 of the staff report, dated 8/19/2020 are acceptable. Dwight Brew seconded.

Roll call: Bill Stoughton - aye; Mike Dell Orfano - aye; Dwight Brew - aye; Tracie Adams - aye; Marilyn Peterman - aye; Brian Coogan - no. 5-1-0; motion carried.

Mike Dell Orfano noted that Keach-Nordstrom item 4 suggests that site specific soil data be provided. While Ken Clinton stated that this is not a Town requirement, the county soil map doesn't necessarily represent the site soils. The source of the data used for drainage is essential for a land alteration permit for the State.

Mike Dell Orfano moved that the applicant provide the Town engineering certification that the intent of the drainage plan has been met to the satisfaction of the engineer. Marilyn Peterman seconded.

Roll call: Bill Stoughton - aye; Mike Dell Orfano - aye; Dwight Brew - aye; Tracie Adams - aye; Marilyn Peterman - aye; Brian Coogan - aye. Motion carried unanimously.

Bill Stoughton moved, in the event this application is approved tonight, to assess impact fees in accordance with the Amherst Impact Fee schedule approved on June 22, 2020, as follows: with the exact amount of the fees to be calculated by the Community Development Office based on final square footage determinations: a) for the Barrel Storage Barn and Distillery at the Industrial rate; b) for the lower floor only of the Marketplace/Tavern building at the Office rate; c) for all other structure square footage, including the Cottage, at the Retail rate; said impact fees to be collected in accordance with the Impact Fee Ordinance. Dwight Brew seconded.

Discussion:

In response to a question from Mike Dell Orfano, Bill Stoughton explained that the Planning Board doesn't specify how the collected impact fees are spent.

Cynthia Dokmo noted that the applicant has stated that he will come back before the Board to discuss impact fees. The Board can discuss amending the impact fee amounts at that time, if it so chooses.

Marilyn Peterman noted that the motion includes Road impact fees, but that the proposed project is on a State highway.

Dwight Brew explained that the Impact Fee ordinance does not differentiate between houses built on main roads or dirt roads in Town. People usually use multiple roads to get to a business in Town. He also explained that Impact Fee ordinance does not look at other houses in Town to determine how much of an impact a new home will have on the Fire Department; likewise, for this project looking at the impact that LaBelle has on these items.

Brian Coogan stated that for Police, Fire, Recreation and Schools, the Town bears the burden to offer these services to its citizens. The Town bears no burden for this State highway. A person could travel the entire length of the State highway to get to the proposed project site.

Roll call: Bill Stoughton - aye; Mike Dell Orfano - no; Dwight Brew - aye; Tracie Adams - aye; Marilyn Peterman - no; Brian Coogan - no; Cynthia Dokmo - aye. 4-3-0; motion carried.

In response to a question from Marilyn Peterman, Nic Strong stated that an example of a substantial improvement for a project could be all of the buildings being constructed, or the parking lot being completed. The substantial completion of an item on the plan shows that the project will stay the same as it was approved under the current regulations.

Bill Stoughton moved that, in the event this application is approved tonight, that the Board require the following items must be completed in order to constitute “substantial completion of the improvements,” pursuant to RSA 674:39 II, relative to final vesting: all foundations to be installed. Dwight Brew seconded.

Discussion:

Bill Stoughton noted all of the items in the staff report as possible examples: all foundations installed, entire site drainage to be completed, establishment of all on and off-site improvements specified as part of the approval, all roadways are constructed.

In response to a question from Bill Stoughton, Nic Strong stated that an example can be all buildings being enclosed.

Bill Stoughton stated that his instinct is to have all structures under roof and closed in.

Mike Dell Orfano noted that the foundations in the ground, drainage in place, and rough roadways are in place demonstrate substantial completion.

In response to a question from Dwight Brew, Nic Strong stated that the project will have a deadline to completion under the building permit. This can be extended by the Building Inspector due to extenuating circumstances.

Marilyn Peterman noted that the infrastructure are the important parts of the project to go forward with and to ask the developer to put the buildings in is a step too far.

Mike Dell Orfano moved the motion.

Bill Stoughton stated that the Board’s job is to approve the site plan, and most of that work concerns the structures in the ground. The Building Inspector deals with the structures coming out of the ground. Thus “substantial completion” could be read as what the Board deals with, site improvements.

Roll call: Bill Stoughton - aye; Mike Dell Orfano - aye; Dwight Brew - aye; Tracie Adams - aye; Marilyn Peterman - aye; Brian Coogan - aye. Motion carried unanimously.

Mike Dell Orfano moved that the design, as presented to the Board on August 5, 2020, meets the architectural design standards, as per Article VII, Sections 12.1 - 12.3. Marilyn Peterman seconded.

Roll call: Bill Stoughton - aye; Mike Dell Orfano - aye; Dwight Brew - aye; Tracie Adams - aye; Marilyn Peterman - aye; Brian Coogan - aye. Motion carried unanimously.

In response to a question from Mike Dell Orfano, Nic Strong agreed that Meridian putting the soil plans in the drainage report fulfills the requirement for the AoT.

Mike Dell Orfano moved that the parking is adequate for the intended use. Marilyn Peterman seconded.

Roll call: Bill Stoughton - aye; Mike Dell Orfano - aye; Dwight Brew - aye; Tracie Adams - aye; Marilyn Peterman - aye; Brian Coogan - aye. Motion carried unanimously.

Bill Stoughton moved to approve CASE #: PZ12172-121819 for Arboleda Realty LLC for the above cited Non-Residential Site Plan of Map 8 Lot 52, 340 NH Route 101, with the conditions precedent and subsequent contained in the Staff Report dated 8/19/2020, with the following changes:

1) Deletion of condition precedents 2 and 3 [bonding], 5 [verification from town engineer]

2) Deletion of subsequent condition 3 [impact fees]

And replacement of those deleted conditions with the motions previously approved tonight.

Mike Dell Orfano seconded.

Roll call: Bill Stoughton - aye; Mike Dell Orfano - aye; Dwight Brew - aye; Tracie Adams - aye; Marilyn Peterman - aye; Brian Coogan - aye. Motion carried unanimously.

Cynthia Dokmo thanked Ken Clinton and the applicant for their patience, and the Board for working so hard on this.

Arnie Rosenblatt rejoined the meeting and took his seat as Chair.

WORK SESSION:

Dwight Brew explained that the Master Plan Steering Committee met for the first time on Monday. The Committee contains members: Tracie Adams, Chris Yates, Dwight Brew, Jared Hardner, Tom Gauthier, Will Ludt, Joe Ilsley, Tim Kachmar, and Tom Quinn. Nic Strong and Natasha Kypfer were also present. The next meeting will be on September 11, 2020, at 2pm. There will also be a posted subcommittee meeting, between now and September 11th, regarding what

and when the Committee wants to communicate with the community. All meetings are public and posted.

6. Minutes: July 15, 2020; July 23, 2020; August 5, 2020

Cynthia Dokmo moved to approve the meeting minutes of July 15, 2020, as presented. Dwight Brew seconded.

Roll call: Bill Stoughton - aye; Mike Dell Orfano - aye; Dwight Brew - aye; Cynthia Dokmo - aye; Marilyn Peterman - abstain; Brian Coogan - aye. Motion carried unanimously.

Cynthia Dokmo moved to approve the meeting minutes of July 23, 2020, with the following amendments: Line 298 - change "possible" to "possibly." Marilyn Peterman seconded.

Roll call: Bill Stoughton - aye; Mike Dell Orfano - aye; Dwight Brew - aye; Cynthia Dokmo - aye; Marilyn Peterman - aye; Brian Coogan - aye. Motion carried unanimously.

Marilyn Peterman moved to approve the meeting minutes of August 5, 2020 and presented. Cynthia Dokmo seconded.

Roll call: Bill Stoughton - aye; Mike Dell Orfano - aye; Dwight Brew - aye; Cynthia Dokmo - aye; Marilyn Peterman - aye; Brian Coogan - aye. Motion carried unanimously.

Nic Strong stated that the next meeting is on September 2, 2020. This meeting will include the Carlson Manor application, a conceptual discussion regarding the Hazen property, and two CUPs.

Marilyn Peterman moved to adjourn the meeting at 10:03pm. Mike Dell Orfano seconded.

Roll call: Bill Stoughton - aye; Mike Dell Orfano - aye; Dwight Brew - aye; Cynthia Dokmo - aye; Marilyn Peterman - aye; Brian Coogan - aye. Motion carried unanimously.

Respectfully submitted,
Kristan Patenaude

Minutes approved: October 7, 2020