

TOWN OF AMHERST
Planning Board

March 3, 2021

APPROVED - Amended

In attendance: Arnie Rosenblatt - Chair, Dwight Brew-Selectman Ex-Officio, Bill Stoughton, Mike Dell Orfano, Cynthia Dokmo [8:00pm], Marilyn Peterman, Brian Coogan, Tracie Adams (Alternate), Chris Yates (Alternate), and Christy Houpis (Alternate).

Staff present: Nic Strong, Community Development Director; Natasha Kypfer, Town Planner; and Kristan Patenaude, Recording Secretary.

Arnie Rosenblatt called the meeting to order at 7:02 p.m., with the following statement. As Chair of the Amherst Planning Board, I find that due to the State of Emergency declared by the Governor as a result of the COVID-19 pandemic and in accordance with the Governor's Emergency Order #12 pursuant to Executive Order 2020-04, as extended by various Executive Orders, this public body is authorized to meet electronically.

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

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

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

We are utilizing Zoom for this electronic meeting.

All members of the Board have the ability to communicate contemporaneously during this meeting through this platform, and the public has access to contemporaneously listen and, if necessary, participate in this meeting through dialing the following phone #312-626-6799 and password 843 5507 5029, or by clicking on the following website address: <https://zoom.us/j/84355075029> that was included in the public notice of this meeting.

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

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

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

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

In the event the public is unable to access the meeting, the meeting will be adjourned and rescheduled.

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

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

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Roll call attendance: Dwight Brew; Bill Stoughton; Brian Coogan; Marilyn Peterman; Christy Houpis; Tracie Adams; Chris Yates; Mike Dell Orfano; and Arnie Rosenblatt; all alone and present.

Christy Houpis sat for Cynthia Dokmo, until she joined later in the meeting.

PUBLIC HEARINGS

- 1. CASE #: PZ12164-121619 – MIGRELA and GAM Realty Trust (Owners) & MIGRELA Realty Trust (Applicant), Carlson Manor, 153-159 Hollis Road, PIN #s: Tax Map 1, Lots 8 & 8-2, Tax Map 2, Lots 7, 7A, 7B, 3-1 & 3-2 – Public Hearing/Subdivision & Non-Residential Site Plan. Proposed 54-unit condominium style development. Zoned Residential/Rural. Continued from January 20, 2021**

Arnie Rosenblatt read and opened the public hearing. He explained that the applicant will make a presentation, the Board will have a chance to comment/ask questions, the public will have a chance to comment/ask questions, and then the Board will further discuss the item.

Chad Branon, of Fieldstone Land Consultants, joined the Board. He explained that a number of details have been submitted to the Board since the last meeting, including: a CUP application for impacts to the jurisdictional wetlands and buffers, and a revised complete plan set with outstanding comments addressed. This complete plan set is formally modified to the 52-unit layout previously discussed, as some of the stormwater features were relocated out of the jurisdictional wetlands in order to reduce impacts on site and to mitigate concerns regarding the temperature impacts to adjoining wetlands systems.

Chad Branon presented the plan set that shows the currently proposed and former locations of the stormwater systems. The relocation of the stormwater system proposed in the center buffer area led to the loss of two units. The only impacts now associated with the wetland buffers are from the outfalls from the stormwater systems.

Chad Branon stated that covenants have been submitted that include information on the age-restrictions. The project has been changed to a 55+ format which will eliminate the Board's concerns and questions regarding the legality of antidiscrimination. He noted that there would still be 65+ units in the development but the rest would all be restricted to 55+.

Chad Branon noted that the applicant is not opposed to the requested revisions mentioned in the Staff Report. He does have a comment regarding bonding, as this will be a condition of approval with review by Keach-Nordstrom. The applicant is requesting that restoration bonding be required, instead of the full financial guarantee mentioned in the Staff Report. He also mentioned that the review by Keach-Nordstrom was received on March 2, 2021, and that the applicant has no issues with the minor comments made.

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Tracie Adams noted that the Board had not received a bond estimate yet nor the floorplans requested. Chad Branon noted that all of the floor plans are not yet ready to be shown. He only received four of the floor plans options today. He displayed these floor plans for the Board.

In response to a question from Marilyn Peterman, Chad Branon stated that the units will average approximately 1,800 square feet, minus the garage. He does not have proposed duplex plans to show the Board, but these will be similar to the plans shown. The first unit type was single floor with an option for a second floor. It showed breaks in the roof and arch components on the elevations. The size was 1,800 square feet, not including the garage. The second unit was single floor with three bedrooms and was just under 1,800 square feet. The third unit had a second-floor option and was 1,650 - 1,700 square feet. All the garages were noted as two-car. The fourth unit design was single floor and just over 1,500 square feet.

Chad Branon noted that the buffer restoration plan was submitted with the plan set and more details have been added to it.

In response to a question from Tracie Adams regarding residents' concerns with the nearby brook temperature analysis (Witch's Brook), Chad Branon explained that his team has been researching different stormwater practices. The team reviewed literature from the UNH Stormwater Center and decided to implement gravel wetlands as part of this project. This type of stormwater management is considered a best practice because it removes most of the associated nitrogen and phosphorus and mitigates impacts to stormwater temperatures. The studies done by the UNH Stormwater Center were completed on parking lots, which is quite different than this project. This project has a different layout that is further disconnected. The homes range in size from 1,500 - 1,800 square foot footprints. The layout includes vegetated lawns that the stormwater will infiltrate through. The State will require additional treatments through the Alteration of Terrain permit, including gravel wetlands on the upland sides of all jurisdictional wetland areas. The restoration plan also will work to reclaim areas previously impacted. Chad Branon continued that there would be shading along the area which would aid in temperature mitigation. He stated that because of all the design features he does not believe that the temperature is an issue.

Tracie Adams thanked Chad Branon for the explanation but noted that a temperature analysis still has not been completed.

In response to a question from Tracie Adams, Chad Branon explained that the regulations require 40% of the parcel to be placed into open space; that would be approximately 13 acres of this property. This project is proposing 19.75 acres to be placed in open space, exceeding the requirements.

Marilyn Peterman stated that she believes the layout of the development is unimaginative. She asked if the arch features shown on the renderings would be standard for each unit. Chad Branon stated that his understanding was that the renderings provided by his client would be used for the units. Marilyn Peterman asked about the envelopes of land with each unit and whether the land

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would be in common or if the unit owner would have some private use. Chad Branon stated that there were proposed Limited Common Areas for each unit that would have exclusive rights. Marilyn Peterman asked if the owners wanted to add extra landscaping would they be allowed to do that. Chad Branon stated that there was a landscape plan, but the owners would be free to add additional plantings. Marilyn Peterman suggested that without changing the layout, the angle of the units be tweaked throughout the layout, or that the units are not left in a row. She also suggested that the owners be able to choose units with different arch designs. She believes there needs to be something different done architecturally to make the design monotonous. The design as it currently is looks like a grid. She believes either changing the layout of the units by turning them slightly or setting one more forward or back or changing the architectural design of each will add to the overall look of the community and be appreciated by the future homeowners. Marilyn Peterman stated that she hoped the landscaping installed will be similar to that shown on the renderings.

Mike Dell Orfano asked if Chad Branon had seen the letter from Town Counsel regarding the elderly housing. Arnie Rosenblatt stated that communication had not been disclosed and was subject to attorney/client privilege. Mike Dell Orfano asked Chad Branon to go over how the 65+ and 55+ allocation would be done. Chad Branon stated that Gerry Prunier, project attorney, has submitted some legal documents that will need to be reviewed by town counsel.

Mike Dell Orfano asked about Sheet 9 Note 7 and whether that note still accurately reflected the proposed mix of units on site. Chad Branon explained that units 33-42 (10 total units) are proposed to be 65+, single-floor, ADA compliant, with 2-bedrooms; units 49-52 (4 total units) are proposed to be 55+, attached, rental units, with 2-bedrooms; units 5, 6, 11, 12, 17, 18, 22-25 (10 total units) are proposed to be 55+, attached, rental units, with no restrictions on the number of bedrooms; and units 1-4, 7-10, 13-16, 19-21, 26-32, and 43-48 (25 total units) are proposed to be 55+, with no restrictions on the number of bedrooms. He stated that, as proposed, only units 33-42 are proposed to be 65+ in this configuration. This is one way to handle the configuration of elderly housing on site.

Mike Dell Orfano noted that, as part of the original CUP approval, this project was proposed to have the following unit mix: four 65+ 1-bedroom units; ten 65+ 2-bedroom units; four 2-bedroom units with no age restrictions; ten attached, rental units with no age restrictions; and 28 units with no age restrictions. He stated that the unit layout, as currently proposed, has stripped out the diversity of the population of the project.

Chad Branon explained that the applicant removed the one-bedroom units and changed most of the units to 55+ because of requests made by the Town to address anti-discrimination concerns.

Mike Dell Orfano explained that a larger concern of his now is the diversity of the ages allowed within the development. He stated that he has an issue with the development being almost exclusively 55+, with only a few remaining 65+ units. He stated that he also has an issue with the proposed curb appeal of the units, with each unit showing a huge garage door facing the street. He believes this is a lazy design.

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Brian Coogan had no questions at this time.

Bill Stoughton agreed with Mike Dell Orfano's point that the original IIHO approval was for up-to 54 units, based on the project providing 14 65+ units, not 10, and four 1-bedroom units, not zero. He noted that these changes seem to speak to the applicant seeking a revised IIHO CUP application for an entirely different density evaluation. The IIHO ordinance as it existed when the CUP approval was given contained a purpose in Section 4.16.A that permits alternative development approaches while "protecting and preserving the rural aesthetic the Town has consistently valued." Bill Stoughton noted that his view of the proposed design is that it does not protect and preserve the rural aesthetic of the Town and thus does not meet the purpose of the IIHO. He explained that the consistent distance between the units and that all units are laid out in a line with the minimum setbacks allowed, leads this to look like an urban/suburban aesthetic, not a rural one, and thus is not consistent with the IIHO. He noted that Marilyn Peterman made these comments and raised these concerns back at the time of the original CUP approval.

Bill Stoughton noted that Tracie Adams had asked about the open space, and he went on to ask where the covenants were. Chad Branon explained that the open space covenants are currently being drafted and will be shared with the Board soon.

Bill Stoughton stated that this project has been in the works for about 14 months* and that submission of these documents has been a requirement of the ordinance all along. He does not believe it is appropriate for the applicant to be asking for approval tonight while still working on pieces of the application. (*This was later corrected to 24 months.)

Bill Stoughton noted that the project's attorney submitted a one-page document for the age-restricted enforcement mechanism for this project. That document refers to paragraphs of condo documents that don't yet exist. He stated that he had looked through the condo documents and did not find any reference to age restrictions. He does not believe that this is acceptable to use as a basis for the approval of this application. Chad Branon stated that he would share this concern with the project's counsel.

Bill Stoughton noted that the original approval was for up-to 54 units and that at past meetings the applicant has taken the position that the up-to number could not be revisited. Chad Branon stated that the up-to number is allowed to be modified by the Planning Board if the original design is not supported by the site. As in the past, the applicant modified this number by reducing the number to 52 units and removing the proposed 1-bedroom units. Revisions to this project were made based on the feedback received. The applicant can revisit these changes based on new concerns. Chad Branon noted that the applicant had heard the Board's concerns and comments and that Gerry Prunier, Esq., had discussed the age restrictions with Town Counsel and the applicant's decision was to adjust the project to be 55+. He again stated that he could revisit this based on the Board's feedback.

Chad Branon noted that the layout of this proposed project has been the same for quite some time. He remembers Marilyn Peterman mentioning modifications to the layout in the past but

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believed it had more to do with dispersing duplexes throughout the project, not necessarily reworking the road design. He said again that it has been this way for a long time, and this was the first time he had heard concerns with the layout. He will take the comments regarding the layout back to the applicant. The more detailed landscape plan was included to help show the breakup of the layout of the site. Chad Branon said that he could understand Marilyn Peterman's concerns with adjusting the layout to add more character and said that they could add more components and features like street trees, for example. He said he could look at adjusting the orientation of the units.

Bill Stoughton stated that the Board is entitled to revisit the density numbers of the project under the IIHO. He believes that this Board is not only entitled but obligated by the ordinance to do so for this project again at this stage. Under the IIHO, the CUP that was original filed included language per 4.16.D, the Planning Board was allowed to change density and other site requirements "as they determine to be necessary in the best interest of the Town..." The purpose of the IIHO was to permit alternative development approaches while preserving the rural aesthetic as noted in 4.16.A. The IIHO application must also comply with CUP requirements in Section 3.18. Per Section 3.18.C.1.b., CUPs require "that the proposal meet the purposes of the ordinance under which the application is proposed." In this case that means the IIHO. Most importantly, Section 3.18.D specifies that no building permit be issued for the development until the Board is "satisfied that all the standards and conditions of this article and the ordinance have been met." The next step in this project, if approved, would be for building permits to be issued. Bill Stoughton noted that this was the last time that the Planning Board would see this application before building permits were issued. Now is the time for the Board to make sure that the applicant meets the requirements and purpose of the IIHO ordinance. Bill Stoughton stated that this forces the Board to look at the density and to make sure the application meets all the purposes of the ordinance in terms of the best interests of the Town and to preserve and protect the rural aesthetic of the Town.

Bill Stoughton thought that the Board could go through each bonus category to review the proposed number to see if there was a benefit to the town and the rural character was maintained. However, he believes that a better idea would be for the Board to vote yay/nay on this application, in considering whether or not the applicant complies with the IIHO and delivers all the benefits envisioned in the original application. He stated that this application is no longer operating under the approved matrix given through the original CUP due to the new number of units proposed and the new bedroom count and is the equivalent of a new application.

In response to a question from Dwight Brew regarding the enforcement and administration of elderly person covenant document, Chad Branon stated that he would like for Gerry Prunier to speak to this. Unfortunately, Gerry Prunier could not attend this meeting.

Dwight Brew stated that he had lost track of what was being requested. Chad Branon explained that the only changes to the original approval are the reduction of two units and the removal of one-bedroom units. The original density bonus associated with the one-bedroom units was 0.6 units. Thus, the project has been reduced by two units and lost the 0.6-unit bonus. Chad Branon

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noted that, if an owner wants one of the units to only be a one-bedroom unit, the additional bedroom could be used as a study, etc. He does not see the changes made as being materially substantial in terms of the density decision. The reduction of two units was a compromise made to remove stormwater features from the buffer area. If the Board does not like the changes made, modifications can be made.

Dwight Brew ran down the column for bonuses: 55+ – none, 65+ – 14, attached units – 14, single-floor – 14, ADA-compliant – 14, two-bedroom – 10, walkability – 14.45, improved access to public places – 14.45, community space open to public – 14.45, community space restricted to residents – none, open space under restrictive covenant – 14.45, open space improved and open to public – 14.45, open space improved non-public – none, rental – 14, redevelopment of existing structures – 3, utilities betterments – 14.45, and public way betterments – none. Chad Branon stated that these numbers are correct, but the way this chart works is that the development has an allowable density of 14.45. The applicant is only allowed to use 14 for the allowable density when looking at the bonus section for senior 55+, senior 65+, attached units, single-floor units, and ADA-compliant units. Thus, the applicant is using 14 for the 65+ category, but that does not mean that he cannot also have 55+ units. This chart is only for bonus calculations and not what is being provided overall by the project. Chad Branon noted that the other numbers, as stated by Dwight Brew, are correct.

Cynthia Dokmo entered at 8:00pm.

Dwight Brew noted that, per meeting minutes of January 2, 2019, Marilyn Peterman suggested a shift on the angles of the proposed units where possible, so as to not have them all lined up in a row. He stated that this concern has been there for a long time. Chad Branon stated it was important for everyone to understand that the plan presented represents the buildable lots, but the actual homes can be adjusted and shifted within the common areas. There is room to make adjustments, such as those suggested by Marilyn Peterman. Chad Branon went on to say that the plans show the layout and standard landscaping, but he had never said that he could not or would not make adjustments. He said it had not been mentioned in a long time, but he could do that.

Dwight Brew pointed out that the Board had plans in front of them for over two years and the plans show the houses in a row. Chad Branon confirmed that the plans show the houses on each lot.

In response to a question from Christy Houpis, Chad Branon stated that the project is proposed to be broken into four phases. The first phase includes the main road, from sta. 13+25 to 18+62, stormwater features, emergency vehicle turnaround, and all associated infrastructure. The second phase includes the next part of the road, roads C & B on the plans, and all associated units and infrastructure along it. The third phase includes the center section of the main road, the wetland crossing, and all associated infrastructure. The fourth phase includes the road wrapping back to Route 122 and all associated infrastructure.

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In response to a question from Christy Houpis, Chad Branon stated that the two units that were recently removed from the plan were slated to be built in phase two (one was originally planned for phase one).

Christy Houpis stated that he concurs with the design concerns raised by other members. He is also concerned with the public access and restrictive covenant issues. He concurs with Bill Stoughton regarding the issues with the IIHO and age-restricted issues. He agrees that the current proposal seems to be a substantially different project.

Chris Yates agreed with Bill Stoughton's comments. He believes the proposal is way too many units for this piece of land. The public has commented on this item from the get-go as well. He stated that this is a rural area, and the proposal seems to be an urban-type subdivision. The rural aesthetics of this area will be lost. He would like to see a reduction in the proposed unit number to match the surrounding area.

Arnie Rosenblatt clarified for the record that he does not believe the Board was not prepared to accept the mix of elderly housing units with unrestricted units. He does not believe that the Board said this mix was not permitted. He believes there was a question about this being permitted and discussion among the Board as to if it is even within their purview. It may be of concern to the applicant so that they do not run afoul of state or federal statutory schemes. Arnie Rosenblatt stated that the Planning Board did not direct the applicant to go back and revise the plan to be either 55+ only or 65+ only. While he is not critical of the applicant's choice, he wants to make it clear that this was not led by the Planning Board.

Arnie Rosenblatt stated that the Board would now hear public comment.

Public Comment:

David Sutherland, 32 Peacock Brook Lane, questioned why 55+ homes would need the potential for 4+-bedrooms. He also questioned how the applicant has not supplied the Board with all the proposed unit layouts. He noted that the Board's job is for the taxpayers of Town, not developers. He gave thanks to Chris Yates, Bill Stoughton, and Dwight Brew.

Danielle Pray, 7 Stearns Road, explained that she also noticed the proposed 4-bedroom unit layouts. She noted that during the original application presentation for this project in November 2018, only 1, 2, and 3-bedroom units were mentioned.

Chris Rand, 164 Hollis Road, stated that he believes it is unfair to the community that the applicant is trying to modify the design from how it was originally proposed. He views this development as being detrimental to surrounding properties and, thus, not a benefit to the Town. Stating that the proposed layout is not imaginative, is a kind way to put it. He believes this project shows high-density rows of houses, which would be an eyesore and outside the character of the Town. He believes the applicant is trying to game the bonus system by stacking bonuses and leaving behind an eyesore that will reduce property values of abutters. He noted that the Town has removed rules that allow this type of development, and that the federal government

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has removed any requirements for this type of development. He believes approving this project would go against the wishes of the voters, as they voted out the IIHO last year. He asked the Board to speak for the residents of the Town.

Chad Branon stated that the generation of the architectural plans was initiated a while back when the applicant had not made the proposal to transition to 55+ housing. He said that he would like to speak to Attorney Prunier regarding the proposed architectural plans and the age-restriction layout changes. The applicant's intent with these changes was not to make this project 55+, but to address the concerns made previously by the Board and that he would like the opportunity to reconsider the modifications based on the feedback from the Board.

In response to a question from Arnie Rosenblatt, Chad Branon stated that he is requesting that the Board table this hearing to a future meeting so he can review the concerns with the project attorney.

Marilyn Peterman stated that her opinion on the design of the project was not intended to lead to a separate review of this as a new application. She noted that she believes 1-bedroom units are generally not marketable. She said that changing the number of units did not affect the rental, duplex, single floor and two-story construction that was proposed. Marilyn Peterman went on to say that Planned Residential Developments (PRDs) are no longer based on the number of bedrooms and thus, if someone wanted to build 3 or 4-bedroom units for 55+, this would not be considered by the Board. She does not believe this is a new application as now proposed. The Board originally gave an up-to number of 54; the applicant is now proposing 52 units. The applicant can arrange these units on the land as desired. She did not know the topography of the area. Generally, garages are found to the front of units of this type. She believes this proposal is essentially the same, with a reduction of two units and the 1-bedroom layouts.

Bill Stoughton stated that there are more changes to the proposed plan than just those two items. There is also a reduction from 14 to 10 65+ units. This affects the density calculation for the IIHO; an ordinance that the Town already voted not to support anymore. This proposal no longer follows the scheme as previously laid out. He believes that, if the idea is that this proposal is grandfathered in under the IIHO, then the scheme should stay the same. Bill Stoughton stated that he would vote against a continuance.

Mike Dell Orfano suggested that the Board table this application to a date certain on the grounds that the applicant has not made dramatic changes that can't easily be cured. It would be onerous to the applicant, after two years of this process, to terminate the application based on minor and curable items. He noted that, if the application is to be tabled, the applicant should come back to the Board with substantive information as requested, including color coded units that should be consistent with the original allowances based on that diversity. He agrees with Bill Stoughton and Marilyn Peterman that the design looks urban and that the architectural designs need work. He suggested that the applicant consider rolling back the number of proposed units in order to add extra open space to the project.

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Mike Dell Orfano moved to table this application to April 7, 2021, at 7pm, via Zoom. Marilyn Peterman seconded.

Discussion:

Christy Houpis noted that he does not agree with a continuance. He does not believe that the changes made are minor and may not be easily modified.

Dwight Brew stated that there is a lot of information still missing. He would like assurances that these items will be there, if the application is tabled. He believes these matters have been attempted to be discussed with the developer many times and shut down. He believes that there were missed opportunities in the past to have an honest discussion on these items, such as there being too many proposed units on this site. He will be extremely disappointed if this application is continued, and the missing information is not nailed down.

Roll call: Mike Dell Orfano – aye; Marilyn Peterman – aye; Brian Coogan – nay; Dwight Brew – nay; Christy Houpis – nay; and Bill Stoughton – nay. 2-4-0; motion failed.

Bill Stoughton moved to deny this application, for the following reasons: the proposed design does not protect and preserve the rural aesthetic the Town has consistently valued, as is required by Section 4.16.A. of the Zoning Ordinance– in particular, it has a nearly uniform distance between units, all of which are in line with the street, with nearly identical setbacks, unlike other clustered developments approved by this Board; this design is more like those seen along Route 3, which decidedly does not provide a rural aesthetic, that is likely inescapable at the chosen density of 54 or 52 units. Second, the application does not provide at least 14 units restricted to 62/65+ occupants and thus does not comply with the promises made at the time of the IIHO CUP approval in January 2019. Third, the Board has no documentation on age-restrictions of any type. The proposed age monitoring document refers to sections of the declaration that do not exist. Fourth, the application lacks any restrictive covenants on open space as contemplated by the bonus densities awarded in that category. Fifth, the applicant has not provided architectural plans for attached units as required by Section 4.17.H. of the zoning ordinance, despite repeated requests to do so.

Christy Houpis noted that he would second the motion if Bill Stoughton agreed to amend it to add Section 3.18 to the first bullet point.

Bill Stoughton agreed and amended the motion as such. Christy Houpis seconded the motion.

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Mike Dell Orfano thought the motion was unfair to the applicant with this complicated development and stated that it appears the applicant has acted in good faith in the changes made; this was possibly just a misunderstanding made on behalf of the applicant's attorney. He believes the mistake made was that the applicant didn't do research on the legality of the original approval and simply made changes to appease the Board's concerns. He will not support a draconian motion.

Marilyn Peterman stated that she believes some Board members appear to be going to any length to stymie development. The Board should consider that a lot of work has been done by this developer and the rights of a landowner. She believes the Board should allow the applicant to make revisions, as he has already been involved in a two-year process. Some applicants before the Board in the past have had three- or four-year processes. She believes denying this applicant as a way of saying no to development is wrong.

Dwight Brew stated that this application got a CUP back when the IIHO was in effect. He asked if the vote to deny the application would mean that the applicant have the opportunity to come back with a substantially different proposal under the IIHO, or would a denial remove the opportunity to reapply under the IIHO. Arnie Rosenblatt was not certain of the answer to that question. Dwight Brew noted that there was confusion about the number of 65+ units and whether it was 10 or 14.

Chad Branon stated it was intended to be 14 and then noted that Attorney Prunier was not available for the meeting tonight due to a medical procedure.

Dwight Brew stated that he is learning toward voting against the proposed motion without understanding the implications of the applicant reapplying under the IIHO.

Mike Dell Orfano stated that he believes the Board would be ill-advised to deny this application without the applicant's attorney present. He believes that the applicant, if reapplying, would need to do so under the current law and not the IIHO.

Bill Stoughton stated that he is sensitive to the fact that the applicant's attorney is not present but would like to find some middle ground.

Arnie Rosenblatt noted that he believes he could be the tie-breaker in this vote. He stated that he would vote against this application tonight because he does not believe the applicant has articulated information that satisfies the views of this ordinance. However, he is also uncomfortable exposing the Town to what may occur if the application is denied tonight. He believes it is safer for the Board to grant a continuance at this time. His concerns with the application are more substantive and broader than only the senior housing issue. He noted that he wished the reason for the applicant's attorney's absence had been explained at the beginning of the meeting.

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Bill Stoughton withdrew his previous motion for the reasons stated by the Chair, with the applicant's understanding that there are concerns regarding the completeness of the application and the inability for counsel not to attend this meeting.

Mike Dell Orfano moved to table this application to April 7, 2021, at 7pm, via Zoom, at which time the applicant should have a complete and final application that complies with the concerns raised at this and previous meetings. Dwight Brew seconded.

Discussion:

Chris Yates noted that the last time this application was continued the applicant was asked to come back to the Board with completed documents. He is unclear how this extra 30 days will lead to a completed application.

Arnie Rosenblatt stated that he shares these concerns. Additionally, his concern is that the Board do what is best for the Town, including avoiding possible disputes. The record needs to be clear in order to avoid unnecessary litigation.

Chris Yates stated that he can see both sides of this issue but believes the can has been kicked down the road long enough.

Mike Dell Orfano explained that the language of his motion is intended to make it clear that this continuance is the applicant's final opportunity. The Board's obligation is to give the applicant as much opportunity as possible.

Dwight Brew stated that during the CUP phase the plans for Carlson Manor were not complete and there were many concerns from the Board about this. It was the developer's responsibility to develop final plans with the number of units on the parcel to the benefit of the Town. There have been a number of Board meetings with discussions and possibilities for improving the Carlson Manor plans in an effort to provide an overall benefit to the Town. Unfortunately, not all areas were productively discussed as the developer seemed to think that many of these items were already cast in stone and there was nothing further to discuss. Some discussion regarding the most appropriate number of units per this design could have led to something more productive for this project.

Tracie Adams noted that she has a concern that the Board has asked for some of the requested items in the past and not received them. She also is concerned about this application and Section 4.17 of the ordinance regarding "somewhat greater density." She does not believe this plan represents that. She also believes that the proposed clusters are not harmonious with the neighborhoods surrounding them. The diversity of age groups needs to be further considered. The fact that the client's attorney could not be present tonight should lead to this application being continued

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and she agrees with Mike Dell Orfano's language regarding all final materials needing to be submitted, if that is approved.

Brian Coogan stated that he is unclear what the applicant's attorney, if he had been present this evening, would have been able to provide that would satisfy some of the Board's concerns. He believes pressure needs to be put on this project to come in a final form.

Arnie Rosenblatt noted that his reasoning for proposing to vote against this application is not based on the lack of adequate information provided or the lack of counsel this evening. He believes that the application, as currently presented, does not satisfy the requirements of the ordinance. He also explained that the applicant providing additional information will not satisfy his belief that this application doesn't satisfy the ordinance.

Roll Call: Mike Dell Orfano – aye; Marilyn Peterman – aye; Brian Coogan – nay; Dwight Brew – aye; Christy Houpis – nay; and Bill Stoughton – aye. 4-2-0; motion carried.

Chad Branon explained that he was only just informed by text regarding Attorney Prunier's absence, or he would have shared that information earlier.

COMPLETENESS REVIEW OF APPLICATION AND PUBLIC HEARING IF APPLICATION IS ACCEPTED AS COMPLETE:

2. **CASE #: PZ13739-020921 – Obadiah Dart (Owner) & Chapel Street Consultants, LLC (Applicant), 318 & 320 NH RTE 101, PIN #s: 008-047-000 & 008-048-003 – Submission of Application/Public Hearing/Subdivision Application – Proposed Lot Line Adjustment between Lots 008-047-000 & 008-048-003. Zoned Northern Transitional.**

Tom Carr, of Meridian Land Services, joined the meeting. He explained that the proposal is a lot line adjustment for Map/Lot 8-47, a landlocked property located in the Northern Transitional Zone. There is a 15' right of way used to access this lot from Route 101. There used to be a house on the property and the applicant filed a variance request with the Zoning Board of Adjustment (ZBA) to reconstruct this structure within 19' of the lot line. This will modify the existing lot, which is still pre-existing and non-conforming, to be larger, but still non-conforming. The plan being shown to the Board tonight is slightly different from the one seen and approved by the ZBA. The intent of this project is to add 1.64 acres from Lot 8-48-3, which is conforming and will remain that way, to Lot 8-47, which will become more conforming although still remain non-conforming. The applicant will also need to address access to the landlocked property via the easement with the Board of Selectmen.

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In response to a question from Bill Stoughton, Tom Carr stated that he has no objections to the conditions in the Staff Report.

In response to a question from Bill Stoughton, Tom Carr stated that the plan presented to the ZBA didn't have the complete topography of the site, so the net tract areas couldn't be computed at that time. The intent of the plan has remained the same all along.

Bill Stoughton noted that he has no issue with the application but doesn't want the Planning Board to step on the ZBA's toes. Tom Carr explained that the intent of this plan all along has been to add land to Lot 8-47 in order to make it as close to conforming as possible, without making Lot 8-48-3 non-conforming.

Chris Yates, Tracie Adams, and Brian Coogan had no questions at this time.

In response to a question from Dwight Brew, Tom Carr stated that Lot 8-48-3 is not landlocked and is a complete lot of record.

Dwight Brew noted that he shares the same concern as Bill Stoughton regarding stepping on the ZBA's toes.

Christy Houpis and Marilyn Peterman had no questions at this time.

In response to a question from Mike Dell Orfano, Tom Carr stated that the access to Lot 8-47 is only via an easement. There is a current curb cut along Route 101 for this access.

In response to a question from Mike Dell Orfano, the applicant's attorney, Tom Quinn, Esq., explained that the application presented to the ZBA lacked the final plans for these lots. The application itself was worded to request a variance to alter the lot lines by approximately 0.8 acres. Lot 8-47 was always intended to be expanded for this project, but the total amount will be slightly more than originally expected, making it slightly less non-conforming. The current plan is consistent with what was presented to the ZBA but does a little better at making Lot 8-47 more conforming than originally intended with the variance already granted. The ZBA could have tabled this application until the exact net tract area was calculated or limited its relief to being not more than or less than 0.8 acres, but instead the variance was granted for "approximately 0.8 acres."

Attorney Quinn, Esq., stated that the applicant is okay with the condition's precedent. The applicant would like to discuss the subsequent condition #1, that "the Applicants shall comply with all of the Town of Amherst's Subdivision Regulations." He explained that the applicant will not comply with the Subdivision Regulations because of the variance granted by the ZBA. He's hoping that the condition can read, "the Applicants shall comply with all of the Town of Amherst's Subdivision Regulations, other than the provisions granted by the variance." He also noted that there is a requirement within lot line adjustments that the owners exchange deeds.

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Being that the applicant is the owner of both lots, he is requesting that this not be a requirement for this application.

Chris Yates stated that he had no further comments at this time.

In response to a question from Bill Stoughton, Tom Carr stated that 1.164 acres are proposed to be transferred from Lot 8-48-3 to Lot 8-47. This will bring Lot 8-47 from approximately 1.1 acres to approximately 2.25 acres.

Bill Stoughton stated that he checked the ZBA minutes from the associated hearing for this applicant and the decision does indeed approve a variance for "approximately 0.8 acres" for this property.

Tracie Adams, Brian Coogan, Dwight Brew, Christy Houpis, and Marilyn Peterman had no further questions at this time.

In response to a question from Mike Dell Orfano, Tom Carr stated that the larger lot has an existing structure on it. It has a net tract area of approximately 3.8 acres.

Cynthia Dokmo noted that she is not too concerned with the changes made to the application since it was seen by the ZBA.

Arnie Rosenblatt noted that no hands were up from the public at this time.

Mike Dell Orfano moved to approve the lot line adjustment, subject to the condition's precedent, the change in subsequent condition #1, for it to read "the Applicants shall comply with all of the Town of Amherst's Subdivision Regulations, other than provisions from which relief has been granted by the ZBA," and to strike the second sentence in subsequent condition #2. Bill Stoughton seconded.
Roll Call: Mike Dell Orfano – aye; Marilyn Peterman – aye; Brian Coogan – aye; Dwight Brew – aye; Cynthia Dokmo – aye; and Bill Stoughton – aye. 6-0-0; motion carried unanimously.

OTHER BUSINESS:

3. Discussion regarding Map 8 Lot 47, NH Route 101, landlocked land and Board of Selectmen request for comment on Release of Liability

Nic Strong explained that every lot in Town has to have frontage in order to obtain a building permit. RSA 674:41 gives the Board of Selectmen the authority to allow a building permit for a particular lot with no frontage. There is a release of liability form for the Town to review. The Planning Board is to give input to the Board of Selectmen before they act on this type of decision.

In response to a question from Mike Dell Orfano, Nic Strong stated that the liability of concern is getting fire trucks and other life safety vehicles down the road. There is a suggested document

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that the Board of Selectmen would act on after receiving input from the Planning Board on this item.

In response to a question from Mike Dell Orfano, Tom Quinn, Esq., stated that the easement in question is 15' wide and has existed as access to this lot since 1931. This has always been the access to this lot. Obidiah Dart, owner of the lot, stated that he will do any tree trimming necessary to make the easement more accessible, as needed.

Dwight Brew noted that the Board of Selectmen may require a comment from the Planning Board before acting on this matter. Nic Strong agreed that this is the case.

Bill Stoughton moved that, with respect to the proposed release of liability for Map 8 Lot 47 NH Route 101, that the Community Development Office advise the Board of Selectmen that the Planning Board has no objection. Mike Dell Orfano seconded. Roll Call: Mike Dell Orfano – aye; Marilyn Peterman – aye; Brian Coogan – aye; Dwight Brew – aye; Cynthia Dokmo – aye; and Bill Stoughton – aye. 6-0-0; motion carried unanimously.

Marilyn Peterman moved to adjourn the meeting at 9:36pm. Cynthia Dokmo seconded.

Roll Call: Mike Dell Orfano – aye; Marilyn Peterman – aye; Brian Coogan – aye; Dwight Brew – aye; Cynthia Dokmo – aye; and Bill Stoughton – aye. 6-0-0; motion carried unanimously.

Respectfully submitted,
Kristan Patenaude

Minutes approved as amended: March 17, 2021