

TOWN OF AMHERST
Planning Board

October 6, 2021

APPROVED

In attendance: Arnie Rosenblatt, Dwight Brew, Bill Stoughton (remote), Tracie Adams, Cynthia Dokmo (alternate), Chris Yates, Mike Akillian (alternate), Tom Silvia (alternate), Christy Houpis (remote) and Tom Quinn [7:50pm].

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

Arnie Rosenblatt called the meeting to order at 7:00pm at the Amherst Town Hall and via Zoom concurrently. He explained the Board is requesting all present in-person to wear masks, as a courtesy. The Board is masked and there are extras available.

PUBLIC HEARING ON PROPOSED PLANNED RESIDENTIAL DEVELOPMENT REGULATIONS:

Arnie Rosenblatt opened the hearing and noted that the Board has already reviewed and discussed the proposed posted regulations. He asked for public comment.

Beth Sullivan, Village Woods Drive, stated that she has concerns regarding clustered housing and septic designs. She noted that two different companies went bankrupt while putting in the septic in her neighborhood, which abuts the proposal. She does not see how the proposed design benefits the community.

Arnie Rosenblatt noted that this public hearing is not for any specific application, but to review proposed Planning Residential Development (PRD) regulations. He asked if Ms. Sullivan has questions in regard to the regulations themselves.

Beth Sullivan asked how the density for the project will be determined. She noted that Section I of the regulations mentions "somewhat greater density" and asked what will realistically be built. Arnie Rosenblatt asked if Ms. Sullivan is opposing the language within the proposed regulations. Ms. Sullivan stated that she is if it will be used on proposals. She stated that this proposal is looking to build a village, not a development.

Cynthia Dokmo sat for Tom Quinn.

**Dwight Brew moved to approve the Planned Residential Development regulations.
Chris Yates seconded.**

Discussion:

It was noted that a hand was raised in the Zoom audience.

Will Ludt, remote, asked if these proposed regulations are overarching. He asked if specific details, such as the clauses or factors of importance, will be ironed out later. Arnie Rosenblatt noted that it is the Board's view that these proposed regulations are being added for clarity and are consistent with the ordinance. They are being presented, as written, for adoption at this time. Will Ludt noted that he

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understands, though feels like certain items such as to ‘establish reasonable limits’ are open-ended.

Dwight Brew read Section IV of the proposed regulations, “In no case shall the Board permit a dwelling unit density increase of more than 25% above the reasonable and feasible baseline density it has determined for the subject property. There shall be no presumption that 25%, or any lesser density increase, is required to be granted, and the 25% maximum increase is an absolute cap that shall not be exceeded.”

Arnie Rosenblatt called for the vote.

Voting: Dwight Brew - aye, Bill Stoughton - aye, Tracie Adams - aye, Christy Houpis - aye, Cynthia Dokmo - aye, and Chris Yates – aye; 6-0-0, motion carried unanimously.

In response to a question from Arnie Rosenblatt, Nic Strong stated that these PRD regulations will apply with respect to any PRD application not yet submitted once a certified copy of the regulations is registered with the Town Clerk tomorrow.

OTHER BUSINESS:

1. Letter from Terry Reiber to Planning Board

Terry Reiber, 15 Martingale Road, explained that he moved into his house in December 2020. The Jasper Valley Swim and Tennis Club (JVST) sits approximately 20-30’ from his property, with the swimming pool located an additional 15’ from that. During the summer, he heard noise from JVST from 9am-8pm, seven days a week. He thought the noise would be okay if he closed his windows and turned on the air conditioning, but eventually the lifeguards started blasting music that he could hear inside even through those mitigation methods. When he contacted the JVST management, the noise would dissipate for a couple of days, only to return. He eventually brought it to the JVST Board and was told that there is no noise ordinance in Town and so there was not much he could do about the situation. He asked Building Official, Scott Tenney, who confirmed there is no noise ordinance. He is now asking the Planning Board to create a noise ordinance for the Town. He noted that there is a noise ordinance for home-based businesses, which does not allow for noise greater than 65 decibels to cross the lot line.

Arnie Rosenblatt clarified that Mr. Reiber is asking the Planning Board to draft and propose a Warrant Article to be voted on at Town Meeting regarding a noise ordinance. He asked if this might be better suited to be brought before the Board of Selectmen.

Dwight Brew stated that the Board of Selectmen has heard random complaints in the past regarding firework noise. The Board of Selectmen does not have a noise ordinance, but the State does have an ordinance/RSA regarding disturbing the peace. This State ordinance has been used in the past by the Board of Selectmen regarding firework noise. Generally, if firework noise

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continues after 10pm, the Board of Selectmen would suggest the aggrieved party contact the Police Department. The Board of Selectmen has declined to create a noise ordinance in the past because it believed that the State ordinance was applicable. He believes, in this specific case, Mr. Reiber happened to move next door to a business that has made preexisting noise.

Arnie Rosenblatt stated that any proposed legislation for noise complaints would not deal with JVST directly. This appears to be a broad request to apply town wide.

Dwight Brew stated that the Planning Board appears to have an existing noise ordinance for home-based businesses, and the Board of Selectmen has previously examined noise ordinances as well. He is unclear which entity this would fall under.

In response to a question from Arnie Rosenblatt, Nic Strong stated that proposed Warrant Article language should be discussed by the Planning Board in November, for public hearings in December and January.

Arnie Rosenblatt noted that the Planning Board has a list of possible items to discuss in terms of Warrant Articles. He asked Board members for their thoughts on including a potential item for a noise ordinance.

Chris Yates stated that he believes this to be more of an issue to be handled by the Board of Selectmen. He stated that he saw 14 references in the Planning Board's ordinances to home-based businesses and construction noise. In discussions with others, he believes additional noise ordinances would be difficult to enforce, with the required equipment and calibration and questioned who would do that.

Cynthia Dokmo noted that this was not just an issue with Jasper Valley, and that people in their own homes should have some expectation of quiet enjoyment. She read Section 3.1 Nuisance Provision of the Town's Zoning Ordinance, "Any use or other establishment that may be injurious or obnoxious because of the production or emission of smoke, fumes, dust, odor, refuse material, noise, vibration, radiation, or like condition; or that endangers the health, safety, peace, or enjoyment of the community; or tending to its disturbance or annoyance is prohibited." She asked if the noise portion of this section could be enforced. Nic Strong stated that this could be enforced by the Code Enforcement Officer.

In response to a question from Arnie Rosenblatt, Nic Strong stated that Scott Tenney is the Code Enforcement Officer for the Town.

Cynthia Dokmo stated that she would like to discuss a potential noise ordinance as part of the Board's discussion on potential Warrant Articles.

Tracie Adams stated that she would be willing to include this item in the discussion. She stated that there seems to be a lot of precedent for construction noise. She believes this item should be discussed broadly.

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Dwight Brew stated that he is okay with putting this item on the list to discuss.

Tom Silvia and Mike Akillian also agreed with adding it to the list.

Bill Stoughton stated that he believes discussion of a noise ordinance in regard to future applications before the Planning Board in which a business would generate noise would be okay. The issue at hand seems to deal more with a private issue with individual's behavior at JVST that could be addressed by the Police Department under the State RSA.

Christy Houpis stated that he would be okay with adding this item to the list to discuss. He explained that he has had issues with noise in the past in regard to construction. He is unsure though if a noise ordinance is within the Planning Board's purview.

Arnie Rosenblatt stated that there is consensus, though not unanimous, to add this to the list to discuss. He also agrees with adding it to the list and asked Nic Strong to do so. He suggested looking at what other towns have for such ordinances and how there could be exceptions carved out of the ordinance.

Town Administrator Dean Shankle stated that, in the meantime, Mr. Reiber should contact the Police Department if he continues to have an issue with the noise.

2. Discussion re: covenant for Atherton Commons and tree clearing condition

Peter Eiche, member of the Atherton Commons Board/HOA, stated that there is a clause in the original Atherton Commons' bylaws created in 1983 regarding creating a three-person committee, consisting of an Atherton Common's Board member, a member of the Planning Board, and a forestry professional, to discuss removal of dead trees within the open space area of the property. He noted that the Town does hold an easement on part of this land and that there are some old pine trees located within the easement, however, the Atherton Commons Board does not have any interest in removing these trees at this time.

Arnie Rosenblatt asked the Board its thoughts on going through with this clause, or simply choosing to waive it.

In response to a question from Arnie Rosenblatt, Peter Eiche stated that a forester has visited the property and recommended that some of the pine trees be removed.

Chris Yates stated that he believes this clause should be waived.

Cynthia Dokmo asked if this clause was required by the Planning Board at that time. Nic Strong stated that there was a note placed on the plan and in the bylaws and it was part of the approval of the project at the time.

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Cynthia Dokmo stated that the Planning Board usually sends items by Town Counsel before moving forward and wondered if that was done for this item. It seems unclear as to why this clause was included but asked what the harm would be in having a Planning Board member as part of this committee.

Tracie Adams stated that she believes it would be appropriate to waive this clause, especially if a forester is to be involved in the project. She is unclear as to what she, if named to the committee, would be qualified to add.

Dwight Brew stated that he believes the clause could be waived. He also noted that if a Planning Board member was placed on the committee, that the person's decisions could be seen as being endorsed by the entire Planning Board, which would be untrue.

Bill Stoughton stated that he agrees with Dwight Brew, especially if a forester is involved in the process.

Chris Yates echoed the opinion of waiving the clause.

Mike Akillian asked if there is an easement on the property and if any of the trees proposed to be removed are located on it. Nic Strong stated that she could not find easement information in the file. Peter Eiche stated that there is an easement on the property, but that the Atherton Commons Board has no interest in removing trees located with the easement area.

Tom Silvia stated that this clause was clearly planned for a reason back in 1983. This may have been for a good reason. He suggested that the proposed committee move forward with one Planning Board representative to review this item at this time. The Planning Board could then choose to remove the Planning Board member from the committee, if no longer necessary. He does not believe the Board should waive this clause simply because it is confused as to why it was originally created.

Cynthia Dokmo asked if any of the trees are located near an adjoining property as a buffer, as this may have been the reason for the original clause. Peter Eiche stated that he does not believe this applies but invited any Planning Board members to come out and view the proposed trees to be removed.

Dwight Brew moved to appoint a Planning Board member to this task and for that person to report back to the Planning Board once complete. Seconded by Cynthia Dokmo.

Voting: Dwight Brew - aye, Bill Stoughton - aye, Tracie Adams - aye, Christy Houpis - aye, Cynthia Dokmo - aye, and Chris Yates – aye; 6-0-0, motion carried unanimously.

Tom Silvia agreed to volunteer to be the Planning Board representative.

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3. Master Plan Update

Nic Strong stated that the build-out study is underway with NRPC. NRPC presented the baseline build-out study to the Master Plan Steering Committee at its last meeting. The Committee will now recommend any changes it feels necessary. Nic Strong explained that she distributed a flyer for the first public forum on the Master Plan Update to all Board members. This forum will take place on Monday, November 15, 2021, at 6:30pm at the Amherst Middle School. During this forum, the consultant will present information on the existing conditions and offer the public the option to move around to different stations to learn more about these existing conditions and answer questionnaires. All of the questionnaires and information will also be available to the public online. The flyer has been posted to the Town website with a link to the Master Plan website, which includes all of the associated documents. The Master Plan Steering Committee will next meet on October 26, 2021.

Arnie Rosenblatt thanked the Master Plan Steering Committee for all its work. He stated that the Planning Board will get more intimately involved in the update process as it progresses.

Mike Akillian asked about COVID-19 protocol at the public forum. He noted that the event will take place the week before Thanksgiving and that it will likely be difficult to socially distance. He also noted that it appears that the existing conditions documents have been finalized and that the next part of the process will be for the Committee to analyze the data from up-to 14 different categories regarding life in Town. He would like for the Planning Board to hear about the efforts going forward at its next work session. He would like more information on this process and about the possible costs associated with each scenario.

Arnie Rosenblatt noted that this would depend on the Planning Board's scheduled agenda. He also noted that the Master Plan Steering Committee meetings are open to the public.

Mike Akillian acknowledged this but explained that additional Planning Board members cannot participate in the Master Plan Steering Committee meetings due to there possibly being a quorum involving the three Planning Board members already on the Committee. He stated that the Planning Board work sessions are the only time for those additional Planning Board members to offer thoughts.

Arnie Rosenblatt agreed with this comment.

The group discussed the COVID-19 protocol for the forum event. Arnie Rosenblatt stated that he is not allowed to require the use of masks but has continued to ask people to wear them as a courtesy at Planning Board meetings. This has largely been followed by those attending these meetings.

Dwight Brew noted that, at its last meeting, the Board of Selectmen voted to require masks for all vaccinated and unvaccinated persons if Hillsborough County's transmission level is extremely or very high and if social distancing is not possible. Masks are required for all unvaccinated people if the transmission levels are moderate or low. He believes there is a good

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chance that Hillsborough County will be in the extremely or very high tiers at the time of the forum, and thus masks will be required, as social distancing will likely not be possible.

Christy Houpis asked about sending out the forum flyer as a mass communication tool to residents, people he knows, and/or on Facebook. He also asked about there being a quorum issue at the public forum if more than three Planning Board members are present.

Dwight Brew stated that there is not likely to be much group discussion at the forum, thus there should not be a concern regarding a quorum present. The event could also be posted as a public meeting, in order to make sure there is not a quorum issue.

Chris Yates noted that Master Plan Steering Committee members were asked by the consultant to act as participants at the forum.

It was agreed that sending out mass communications about the event is okay.

Bill Stoughton asked how other Planning Board members can share their input regarding the build-out scenarios

Dwight Brew stated that NRPC is working on a baseline build-out scenario currently. The two additional build-out scenarios are being held off on until after feedback is received at the forum and after NRPC identifies all the dials that the Committee has to work with.

Tom Quinn entered the meeting at 7:50pm.

Chris Yates noted that, in response to a previous comment from Mike Akillian, the existing conditions analyses are still in draft form and will not be finalized until all public input is received. Nic Strong confirmed this.

4. Minutes: September 30, 2021

Tracie Adams moved to approve the minutes of September 30, 2021, as submitted.

Dwight Brew seconded.

Voting: Dwight Brew - aye, Bill Stoughton - aye, Tracie Adams - aye, Christy Houpis - abstain, Cynthia Dokmo - aye, and Chris Yates – aye; 5-0-1, motion carried.

Dwight Brew moved to adjourn the meeting at 7:53pm. Tracie Adams seconded.

Voting: Dwight Brew - aye, Bill Stoughton - aye, Tracie Adams - aye, Christy Houpis - aye, Cynthia Dokmo - aye, and Chris Yates – aye; 6-0-0, motion carried unanimously.

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306 Respectfully submitted,
307 Kristan Patenaude
308
309 Minutes approved: October 20, 2021