

TOWN OF AMHERST
Planning Board

September 16, 2022

APPROVED

In attendance at Amherst Town Hall: Arnie Rosenblatt – Chair, Bill Stoughton – Board of Selectmen Ex-Officio, Chris Yates, Cynthia Dokmo, Tom Quinn, Tracie Adams, Tom Silvia, Tim Kachmar (alternate)

Staff present: Nic Strong, Community Development Director

Arnie Rosenblatt opened the meeting at 5:00pm. He outlined the meeting process. He stated that the Board would like to hear from each person that has a proposed suggestion for amendments to the Town's ordinances and regulations. The Board would appreciate a very succinct explanation of the proposal. It is not going to entertain comments from the public at this time but will hear questions with respect to any of the proposals from Planning Board members. The Board will then schedule a public meeting where it will consider whatever ideas the Board has for amending the ordinance. The Planning Board will make a decision at that meeting as to which proposals, from both the Board and public will be accepted as drafted or which may need to be modified. The Board will then hold a public hearing, with respect to any of those proposals and make a decision as to where to go next with them. The Planning Board is interested to hear discussion on each proposed amendment at the next meeting. He asked members of the public to identify themselves and give a brief description of the proposed amendment.

1. Receipt of residents' suggestions for amendments to the Town's ordinances and regulations

David Patterson stated that he is not an expert in acoustics, lighting, vehicle emissions, or municipal law, but, like so many others, he is a citizen who cares about the Town and wants to preserve its natural beauty and serenity. He stated that he represents a rather diverse community that includes many retired business owners, executives, and professionals, as well as people still working. They all share a common goal, preserving the beauty and wonderful heritage of the Town. Last April, the community came together to voice its concerns over the proposed warehouse development in the Bon Terrain area. It became abundantly clear that the current zoning regulations and ordinances are outdated and, in many cases, inadequate to address the challenges of today's changing environment. After the land developers rescinded their proposals in early June, a committed band of about 20 citizens decided to help the Town strengthen its ordinances. The group immersed itself in exhaustive research, analyzing the bylaws of scores of surrounding towns, and ultimately developing a number of documents and white papers which evolved to proposed ordinances and these are all in the package of the 11 documents that were sent in last month. David Patterson stated that the group is not opposed to reasonable and sustainable industrial development, but is opposed to development generating serious negative impacts in the areas of health, safety, and general well-being of the citizens. The group desires to provide assistance in addressing areas such as future warehouse construction, building height, noise trespass, night lighting trespass, diesel truck pollution, and enhancing critical definitions.

Mr. Patterson stated that the first proposed adjustment to the ordinances is in regard to Sections 4.9 and 9.1 The purpose of this proposal is to update specific sections to be more in line with contemporary zoning standards, to protect nearby residents, and safeguard the rural character of

TOWN OF AMHERST
Planning Board

September 16, 2022

APPROVED

the community. The group is advocating for removal or alteration of outdated definitions and the addition of verbiage that offers greater clarity regarding a more appropriate use of industrial lands in the face of mounting trends.

Barb Dalton, 14 Summerfield Way, stated that the group is suggesting an amendment to the structure height, specifically south of the Route 101 railroad tracks. Article 4 Section 4.9 of the Industrial Zone E.4. reads that “no structure shall be constructed to a height greater than 40’, excepting industrial structures south of the Boston and Maine Railroad which will not exceed 50’ for inhabited and 80’ for uninhabited structures.” At the Zoning Board meetings for the proposed warehouse on Bon Terrain Drive, attorney Morgan Hollis stated that the warehouse could have had a possible height of 80’. She stated that unnecessary heights are the Town’s calling card to all developers who want to build mega-warehouses. Barb Dalton stated that research on industrial height ordinances in surrounding towns indicated that Hollis has a consistent structure height restriction of 38’, Brookline’s ordinance states 35’, and Bedford and Milford both have ordinances which state 40’. She then reviewed Windham and Stratham’s ordinances and found a maximum height of 35’. Finally, she reviewed the city of Keene’s ordinances and found that the maximum industrial height is 35’. The portion of Amherst’s ordinances which speaks to a different maximum height south of the railroad tracks is 31 years old and needs to be updated. Since that time multiple residential developments have been built and these homes abut nearby industrial properties. If industrial structures in the rest of Town are limited to 40’, it seems appropriate that structures south of the railroad tracks should follow this. The proposed amendment will allow for consistency throughout the Town and will be more aligned with neighboring towns. For the abutting properties there will be less of a sight line and less noise propagation to potential industrial buildings. Also, heights of 50’ and 80’ do not lend themselves to the character of Amherst. She noted another concern is if the Fire Department has the necessary equipment for structures with heights of 50’ or 80’. The proposed amendment to Article 4 Section 4.9 of the Industrial Zone E.4. is that it should read, ‘no structure shall be constructed to a height greater than 40’.

Bob Fregault, 9 Elmwood Way, expressed concern regarding the previously proposed warehouse in terms of noise, light, and other pollutants. Another critical concern was protection of the local aquifer from any kind of pollution runoff from the proposed trucking activity. There is concern regarding if the Town has the resources to support this type of development. The objective of the proposal is to preserve the overall character of the Town. He gave examples of recent proposed additional major developments, such as the warehouse on Bon Terrain Drive, and a developer looking to build near Cricket Corner and County Road. It was previously noted that this same developer had interest in several properties immediately adjoining that one, so it would not just be five homes proposed but, over time, it could be over 100 homes in that area. The total complexity of projects needs to be understood. He stated that warehouse operations, such as logistics and order fulfillment practices, have changed exponentially in recent years. Thus, generic ordinances are no longer adequate to address these types of operations. The proposal to build a 1M+ s.f. warehouse in Amherst to serve central New England would probably have fit better up near the airport. The group is also concerned about high cube vertical warehouses, as they could lead to increased truck traffic, increased traffic congestion, and increased pollution.

TOWN OF AMHERST
Planning Board

September 16, 2022

APPROVED

The group considered what types of buildings should be allowed in the Industrial Zone. Large buildings also create additional concerns for stormwater runoff and drainage. The group looked at the ordinances in other towns in New Hampshire, and also in communities in other states, such as New Jersey, California and Pennsylvania. Many of these communities have experienced mega warehouses and all of them had detrimental impacts on the community. The group then drafted what it believes are reasonable and effective ordinances which should allow for the controlled growth of industry in the Town, while also safeguarding the health, safety, and general welfare of the citizens.

Paul Philp, 1 Beacon Lane, stated that, under RSA 674, the requirements are that zoning ordinances will lessen congestion of traffic on streets, secure the safety of the public from dangers, and promote the health, safety, and general welfare of the citizens of the Town. The first suggested amendment is that when an application is submitted to build in an industrial area, there be a requirement that the applicant must file and address the issue of any negative impacts upon the community. He stated that this was an item requested of the warehouse proposal which was never adequately answered. An ordinance should clearly identify that an applicant has to file a clear statement of how the proposed project will not negatively impact the Town's health, safety, or welfare. Secondly, the group would like to see additional notification to the citizens of the Town relative to any large projects. Many people that the group spoke to regarding the proposed warehouse had no idea that the proposal was occurring or the potential impacts it could have. There is an additional suggestion that the amount of impervious land that can be used for a project should be no more than 40%, and 60% should be pervious. Small towns in New Jersey and California feel like they are being forced out due to large development and warehouses.

Arnie Rosenblatt asked the speaker to continue with succinct explanations of their proposals. Mr. Philp stated that he is unclear how one can make a succinct proposal when there are 25 ordinances proposed to be amended. He stated that if the Board does not want to hear from him, he can simply leave the written statement, but he hoped at least some of the Board had read the proposed amendments.

Arnie Rosenblatt stated that he had read the proposed amendments and that he reviews all of the materials provided by the Community Development Office. He believes that all other Planning Board members likely have done the same. There are a number of proposals from other people in the audience this evening. It is not realistic for the current speakers to request to speak for a long period of time, as that is not consistent with what was articulated at the beginning of this meeting.

Mr. Philp stated that there is nothing to summarize. This item is important and should be given the time necessary. Arnie Rosenblatt noted that everyone else present likely also believes that their items are important and deserve time as well. He is not cutting Mr. Philp off but would like him to finish his summary.

Bill Stoughton asked, with respect to Bon Terrain and the warehouse proposal, if the group of citizens has given any thought as to what else they might like to see there, if not a large industrial

September 16, 2022

APPROVED

warehouse. He asked if the citizens think that the Board should consider changing the zoning so that it is something other than industrial or is in addition to industrial. He noted that the more restrictions the Board places on the zone, the greater the risk that the current landowner is being deprived of property interest.

Mr. Fregault stated that there are a lot of small factories in the Industrial Zone currently. A smaller building could complement the Industrial Zone. The group jumped on the warehouse proposal because it did not fit with the area. The group is not opposed to business development in the Industrial Zone but believes it should be consistent with what is already there. A software developing company, or metal stamping plant could fit in just fine. The group is concerned about pollution from trucks. A warehouse just sits there; the activity is the movement of materials, which involves trucks. A small industrial plant would not pollute the area, it would not create noise that would exceed comfortable limits. Even a self-storage facility would be okay.

Mr. Philp stated that the group would like to work with the Town to identify the types of things that would fit in that area. They understand that the landowner has every right to develop the property and earn a revenue of return on the investment. The group also discussed the potential for a mixed-use facility. Amherst has a lovely Town village, maybe this could be turned into a nice Town Center.

Mr. Patterson addressed the next proposed amendment. He explained that, regarding the proposed noise ordinance, this was established by assessing, utilizing, and creating best practices garnered from an in-depth review of over 40 different New Hampshire cities and towns. Like Amherst, many of these towns still retain nuisance level regulations that will not serve them very well when warehouse proposals are submitted. By earnestly attempting to treat every zone and district equally and fairly in establishing reasonable regulatory criteria, this proposed ordinance does not advocate Town monitoring, only typical police engagement or enforcement of easily identifiable issues. Associated fines should be strong and could become a fruitful incentive. In reviewing the New Hampshire town bylaws and ordinances, there were approximately six that utilized detailed allowable sound decibel level charts. The charts in this proposal were primarily derived from one of the best examples, those shown in Wilton's ordinances.

Mr. Patterson stated that the next amendment deals with controlling air pollution from diesel trucks. There is a lot of information regarding the hazards of unchecked diesel truck air pollution. The ability to regulate the number of trucks allowed in the given area can effectively reduce pollution. There are very few diesel truck pollution ordinances on record. New Jersey and areas in Pennsylvania have been recently overwhelmed with the issues of diesel truck pollution and may have preventative laws in the works. Unfortunately, the manpower required to monitor and penalize potentially offending vehicles makes the task difficult for any small town to administer. Additionally, the cost of quality assessment equipment would negatively impact the Town's budget. The objective of this particular proposal was to be creative in finding other ways to help control or prevent this issue. The proposed concept includes limiting the size of warehouses, limiting the number of loading doors on the buildings and their opening direction,

September 16, 2022

APPROVED

limiting the parking spaces for trucks, and enforcing New Hampshire law on the duration of idling time.

Mr. Patterson stated that the next amendment is regarding a lighting ordinance. He assessed the regulations that have been adopted by surrounding towns and found that almost all of them have night lighting ordinances in their bylaws. These were all crafted nearly word-for-word from the verbiage contained in the New Hampshire Innovative Land Use Planning Techniques Handbook for Sustainable Development, Section 3: Site Level Design, 3.4 Preserving Dark Skies, page 365. There is a model ordinance for outdoor lighting that can be used for Amherst.

Terry Reiber, 15 Martingale Road, explained that he spoke to Police Chief Reams and Building Inspector Scott Tenney regarding his proposed noise ordinance. Both stated that, without an ordinance that lists decibel levels, they cannot provide enforcement. He stated that Chief Reams further supported his effort to go forward with this and thought it was a good idea. The most important concept in an ordinance is the decibels at the property line. This is what will protect homeowners from excessive noise. He has modified the proposal to make sure people can still have July 4th fireworks. It also talks about penalties, such as a warning first and then levels of financial penalties. He noted that, personally, he was able to resolve most of his noise concerns with his neighbor, but it was very acrimonious. He believes that an ordinance such as this one would have more successfully allowed him to negotiate the issue. He believes there are many people in Town who are interested in this type of an ordinance and believes it will be effective to help negotiate with neighbors and get successful resolutions.

Bill Stoughton stated that, in regard to a noise ordinance for a new use of land / new construction, he believes there may be a role for a zoning ordinance. However, for existing uses wholly within a residentially zoned area, he believes this is not a zoning issue. This may be an issue for the Board of Selectmen. Typically, noise issues are individual issues conducted at certain times of day by certain people that annoy other people. Often the best way to work these out is between neighbors and he believes that has generally worked pretty well in this community.

Dave Williams, 56 County Road, stated that he is representing a group of people in a large section of town, who are concerned about some developments proposed in that area. He has two proposals; one is a change in the regulations and the other is a change to the ordinance.

Arnie Rosenblatt stated that he does not believe he has ever had anyone outside the Board suggest changes to the regulations. The Board made some fairly material changes to its regulations several months ago and spent a significant amount of effort and time addressing that. While he is happy to hear the proposed change to the regulations, this evening is really meant to deal with the ordinance amendments.

Mr. Williams stated that his proposed regulations amendments is to the subdivision regulations. The group he represents is concerned about proposed developments in his area of town and existing Town roads that are in need of improvements. In order to supply the necessary services

TOWN OF AMHERST
Planning Board

September 16, 2022

APPROVED

to those developments, he wants to make sure that citizens are not burdened with the cost of improvements to the road, specifically County Road.

Mr. Williams stated that the proposed ordinance change is regarding the minimum lot area in RSA 231:157 Scenic Roads. The proposed amendment is that lots on scenic roads that hold the scenic designation for a minimum of seven years, shall be five acres and each will have a minimum frontage of at least 300'. The definition of a scenic road is having beautiful, natural surroundings. The citizens of Amherst have identified particular roadways to say they fit this definition and have taken the necessary steps to officially designate them. Citizens have expressed a strong interest in protecting these open spaces and natural resources and requiring stricter limits on developments along these scenic roads. Scenic roads should receive greater protection from building. RSA 231:157 helps to limit "cutting, damage or removal of trees, and the tearing down or destruction of stone walls." These features add to the character of Town roads and this proposed ordinance change will help keep scenic roads scenic.

Bill Stoughton stated that there are 16 scenic roads in Town and all of them are at least seven years old. The last one was designated in 1998. He asked if Mr. Williams was familiar with the impact of the change, or how many properties would be affected by the proposed change. Mr. Williams stated that he was not but that he would look into this for the next meeting.

Will Ludt, Chair of the Heritage Commission, stated that, over the last year and a half, the Heritage Commission was awarded a grant to digitize the Historic Resource Survey information. The Commission has identified scenic roads and scenic setbacks in Amherst on a GIS map and his proposal requests working with the Planning Board to expand the number of scenic roads and setbacks in Town. He believes that a few roads may have been forgotten or were not included. For example, Chestnut Hill does not have a scenic road designation, nor does Horace Greely Road. One of the larger concerns he has is that Walnut Hill Road is not designated. The Commission is requesting that one member of the Planning Board meet with them occasionally to develop a plan for future Planning Board consideration. The group could work to draft a proposed ordinance, identifying select additional scenic roads. The Heritage Commission will do most of the drafting work but does not want to complete this in a vacuum.

The Board discussed a potential date to continue discussion on the proposed amendments heard this evening. It was noted that the Master Plan Steering Committee will likely be coming back before the Board with an update at a future meeting. The Board chose a date based on the maximum number of Board members able to attend.

Bill Stoughton stated that he would send the spreadsheet to Nic Strong which outlines some of the proposed Board changes and amendments from last year that were considered but not completed. This can also be reviewed at the next meeting.

Arnie Rosenblatt stated that the next Board meeting will be held on September 27, 2022, at 7pm, to discuss the Board's desires to move forward with one or more of the proposed amendments. He thanked all who participated and drafted these amendments.

TOWN OF AMHERST
Planning Board

September 16, 2022

APPROVED

264

265

Bill Stoughton moved to adjourn at 6:08pm. Seconded by Tracie Adams.

266

Motion carried unanimously 6-0-0.

267

268

269

Respectfully submitted,

270

Kristan Patenaude

271

272

Minutes approved: **October 5, 2022**