

TOWN OF AMHERST
Planning Board

September 27, 2022

APPROVED

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

Staff present: Nic Strong, Community Development Director; and Kristan Patenaude, Recording Secretary (via Zoom)

Arnie Rosenblatt called the meeting to order at 7:00pm. He noted that this is a working meeting of the Board. The Board will review potential ordinance changes, discuss them, and decide which of those potential changes it will attempt to draft, revise, or accept in its final form, in order to then bring to a public hearing for comments from the public. The Board will then make a decision if these items should be brought before the voters in March. The Board will not be inviting public comment this evening. This is not being done to exclude anyone. A grid of various possible ordinance and regulation changes was posted on the Town's website. He thanked each person who made an effort to present and draft the proposed amendments. All Board members appreciate the time involved. He noted that another option for those interested would be to propose these items as a petition warrant article in March.

Arnie Rosenblatt suggested that the Board review each item, by category. He noted that Board members with comments may express them, but he does not plan to poll the entire Board for each item. Any item the Board decides to move forward with, some member of the Board will need to work on.

1. Discussion of potential Zoning Ordinance and regulation amendments

Arnie Rosenblatt explained that the first items on the list are two cleanup items. Bill Stoughton noted that there are items which were deferred last year. He asked Nic Strong how urgent these items are. Nic Strong stated that these items are not particularly urgent. Arnie Rosenblatt suggested that the Board move on from this item and address it at the end if there is time.

Arnie Rosenblatt noted that the second item is regarding legislative changes. There have been significant legislative changes which impact both the Zoning Board and the Planning Board. One of the major changes is that Findings of Fact are now required with respect to any Site Plan Approval or other application which requires a vote. Nic Strong explained that one change which will need to be addressed is the timeline for ZBA applications. The Board agreed that these items will need to be addressed and that Nic Strong would bring the proposed amendments to the Planning Board for review.

Regarding a couple of housekeeping items, Nic Strong stated that these are not urgent, but are to make sure that things match throughout the ordinance.

Bill Stoughton noted that the intention is to include information about the zoning amendments in the voter's guide this year.

TOWN OF AMHERST
Planning Board

September 27, 2022

APPROVED

Tim Kachmar suggested that if an item is opened up to discuss other changes, the Board should consider reviewing it, but otherwise all cleanup items do not need to be addressed at once.

Arnie Rosenblatt explained that, with respect to reduced frontage lots, past Boards have had different interpretations of this item. There seems to be some ambiguity in the ordinance, as people have had different perspectives as to what it means. Bill Stoughton stated that this item is new this year. Tom Quinn stated that he believes this item is an important one to address because there is a current application which takes this topic to an extreme, in his opinion and, without some clarification in the ordinance, he is worried that this will continue to happen. Bill Stoughton and Cynthia Dokmo agreed to work on the wording of this proposed amendment together.

Bill Stoughton asked for the Board's opinion regarding whether the 10-acre requirement for a back lot is the appropriate number, and if this should be a change to the ordinance or in the regulations. Cynthia Dokmo stated that she believes this should be a change in the ordinance and that the regulations also need to be cleared up. She noted that the ten acres has been traditional for a long time, but she would not mind revisiting the number. Bill Stoughton stated that would be the largest lot size required in town, otherwise it is five acres.

Arnie Rosenblatt asked the group tasked with crafting the language for this amendment to consider these two topics and come back to the Board with suggestions.

Arnie Rosenblatt stated that the next item is a petition proposal regarding scenic road lot size and frontage. The proposal provides that lots on scenic roads need to have 300' frontage and need to be a minimum of five acres, regardless of what zone they are found in. This includes the areas zoned for two acre lots, which is most of Town.

Tom Silvia stated that he was surprised when reviewing the regulations that the only real difference is a 100' setback as to how scenic roads are designated. He stated that he believes this proposal may have merit and is worth examining further.

Tom Quinn stated that he believes this proposal may make the ordinances better line up with the soon-to-be-updated Master Plan. The Master Plan talks a lot about the rural nature of the Town. He noted that the original proposal from a community member spoke of this applying to roads that had been designated for seven-years. He would propose that this applies to any scenic road. He noted that the 300' frontage and five-acre lot size is not uncommon in parts of Amherst, specifically in the Northern Rural Zone.

Cynthia Dokmo explained that the Northern Rural Zone was zoned that way due to its terrain and poor soils. The Town was taken to court 20 years ago over this and lost which is why the Northern Transitional Zone of 3.5 acres was designated. She does not mind examining this proposal further but believes there needs to be consideration as to how many scenic roads are currently designated. She stated that this proposal will not just affect the southern part of Town, it is going to affect a lot of roads in Town. By statute, a scenic road designation includes more

TOWN OF AMHERST
Planning Board

September 27, 2022

APPROVED

89 than certain setbacks; it disallows removal of trees and stone walls until the Planning Board can
90 hold a public hearing. The Town's ordinance adds a little more with the setback requirement.
91 She understands what this proposal is trying to accomplish but believes it will be circumvented
92 by putting roads off scenic roads into huge tracts of land. The one recent proposal which came
93 before the Board and showed a tract of land with many backroads in it, the Planning Board
94 expressed dissatisfaction with.

95
96 Chris Yates suggested an increased setback for scenic roads instead. Cynthia Dokmo stated that
97 this could be considered, but that the statute and ordinances are clear that a setback cannot end
98 up being so large that it prevents someone from reasonably using that land. This likely needs
99 more study.

100
101 Tim Kachmar stated that he lives on a scenic road and believes this proposal would be a good
102 thing. He echoed Tom Quinn's opinion that this fits in with the Master Plan. He also agreed with
103 Cynthia Dokmo that this might require more of a study to put it on the ballot. The Board may
104 want to work with the Heritage Commission to possibly draft something for next year's ballot.

105
106 Bill Stoughton stated that he agrees with the goals of the proposal but is also concerned with the
107 risk in removing value from a landowner, which is a trigger for invalidating this at a considerable
108 expense to the Town. He would like to review the final product to see if it will survive a
109 challenge.

110
111 Arnie Rosenblatt stated that he would be interested in finding someone to draft this proposal. He
112 would favor this proposal, if not for the significant potential legal hurdles. There is a body of
113 case law that has been developed for the last 80 years regarding how much zoning can take from
114 the value of land, particularly when the land has served to some extent as an investment. He
115 stated that he believes the Board would like to pursue something that is reasonable and fair to
116 landowners but also protects the land and fulfills the Master Plan vision. He asked if any Board
117 members would be willing to consider drafting language for this item, recognizing that some
118 language has already been proposed by citizens.

119
120 Cynthia Dokmo stated that this would need to take into account all scenic roads and the impact it
121 will have on all of them and the landowners.

122
123 Tom Quinn suggested that a hybrid method might be to consider this item for frontage lots but
124 not back lots.

125
126 Tom Quinn, Tracie Adams and Tim Kachmar agreed to examine this item to potentially draft
127 language for it.

128
129 Arnie Rosenblatt explained that the next request is from the Heritage Commission, regarding the
130 designation of additional scenic roads in Town. He noted that this is not an ordinance proposal,
131 but a request for a member of the Planning Board to sit with the Heritage Commission and work
132 further on this item. Cynthia Dokmo noted that, per the ordinance, a request to designate a new

TOWN OF AMHERST
Planning Board

September 27, 2022

APPROVED

scenic road requires ten petitioners. The Town then has to mail out a letter to all landowners in the area, hold a public hearing, and then the request is placed on the ballot.

Tom Quinn stated that he has a concern with a Planning Board member working on this item while there is also another potential amendment to protect building along scenic roads. Cynthia Dokmo stated that she will speak to the Heritage Commission further about this item. Arnie Rosenblatt noted that he believes this is more of a long-term project.

Arnie Rosenblatt stated that the next proposed amendment is regarding warehouse restrictions, and definition changes.

Cynthia Dokmo noted that New Hampshire is permissive in its zoning. It does not have to prohibit something, but simply provide what can be done. She believes having definitions regarding what types of warehouses are permitted in Town would be very helpful. She expressed interest in working on this item.

Arnie Rosenblatt stated that this proposal has very detailed language. He believes it would have a very significant impact on the property in question and would potentially have a significant financial impact in turn. Cynthia Dokmo did not disagree but stated that she thought it was important to define what could take place there. Arnie Rosenblatt asked if it was realistic to think this could be done this year. Chris Yates stated he was willing to work on this as well. He thought that offering alternative uses in the Industrial zone and to define what was allowed might be an issue with the land value. Arnie Rosenblatt stated that to change things so that Bon Terrain could no longer have warehouses would have a significant impact on the value of that land.

Tom Quinn suggested that putting certain restrictions on types of warehouse, such as size, maximum height, or open space requirements, might disallow a number of the more disruptive types of properties.

Arnie Rosenblatt stated that he would reserve comment but that he was very concerned about pursuing something that could diminish land value significantly and cause the Town to lose valuable non-residential, taxable property.

Bill Stoughton stated that he proposed the next amendment, regarding alternate uses in the Industrial Zone. If the Town broadened the uses allowed in the Industrial Zone to things that may not be allowed today but that the Town would find desirable, this could offset and undercut a landowner's argument regarding the Town removing the value of the land. This could actually increase the value of the land. The Town likes the idea of a non-residential tax base because it helps property taxes. The Industrial Zone could be used for commercial businesses, a solar farm, or other low impact items. The Town would need to discuss what it wants further.

Cynthia Dokmo, Chris Yates, and Bill Stoughton expressed interest in working on these items.

Cynthia Dokmo explained that her main interest is defining what a warehouse is for the Town.

TOWN OF AMHERST
Planning Board

September 27, 2022

APPROVED

Bill Stoughton stated that he believes the warehouse restrictions item could be for the March ballot, but the Industrial Zone alternatives item would likely take more time. He suggested that the Planning Board use the public hearings for the Master Plan discussion to ask the public questions about what it would like to see in the Bon Terrain area and other industrial areas in Town. He will continue to work on the alternate uses proposal but will not put it forth for this voting cycle. He believes putting this item together with the warehouse restrictions could make the restrictions more defensible in court.

Cynthia Dokmo suggested that the small group work on an initial discussion regarding warehouse definitions to start.

Arnie Rosenblatt explained that the next item is to examine the Elderly Housing ordinance. He asked Nic Strong to explain this item. Nic Strong explained that, when the Integrated Innovative Housing Ordinance (IIHO) was repealed the density calculation mechanism for elderly housing went away. There is currently no way to calculate the density other than what is in the underlying zoning district. Arnie Rosenblatt stated that there is still a 25% bonus available for elderly housing within a Planned Residential Development (PRD) application. Nic Strong agreed but noted that there is no mechanism unless a project is proposed under a PRD.

Bill Stoughton stated that the Board of Selectmen held a meeting last month regarding a strategic planning exercise. One of the items it discussed was various categories of housing in Town. There was a sense from the Board of Selectmen that the affordability of housing in this Town is an issue and should be examined. This comes mainly from two aspects: affordability of housing for the 55+ age group in Town, those who live on a fixed income; and the younger age group trying to start careers or families. He noted that it would be useful for the Town to have people in the latter category to staff some of its departments, for example, Amherst's Fire Department is staffed by on-call firefighters. These are typically people who work in Town and can respond to calls. They are only paid if on the call. Without people in Town to work on-call, the Town would need to transition to a paid Fire Department, which would be more expensive to this Town. The Board of Selectmen supports the Town collectively focusing on the affordable housing and elderly housing ordinance items.

Arnie Rosenblatt stated that he is not persuaded that the affordable housing item is relevant to a discussion regarding senior housing. Senior housing is a completely separate issue. He stated that he honestly does not know whether there is a need for more affordable or senior housing, though he does agree the Town should have a range of housing. He stated that he believes the IIHO was a disaster, and he is concerned regarding unintended consequences when tinkering around with various density bonuses. He would also like to see more empirical data for both of these items, instead of broad concepts.

Chris Yates noted that the PRD places a cap on elderly housing density at 25%, and that the Planning Board has no way to increase that. Arnie Rosenblatt stated that was done deliberately, so that this was not crammed down the Planning Board's throat.

TOWN OF AMHERST
Planning Board

September 27, 2022

APPROVED

Tom Quinn stated that he believes it is worthwhile to see what happens with the economic cycle in the near future. It looks like real estate prices should begin falling.

Arnie Rosenblatt stated that he believes the workforce housing item should be considered separately from the senior housing item.

Bill Stoughton explained that the only reason he mentioned these two topics together is because the Board of Selectmen identified the two distinct ends of the spectrum with regard to affordable housing.

Tom Silvia, Bill Stoughton, and Cynthia Dokmo expressed interest in working on these items.

Tim Kachmar noted that, until the calculation definition changes at the State level to determine what is affordable, it will be difficult for the Town to change its ordinances. Amherst has expensive houses so the calculation for affordability or workforce housing is going to be high.

Arnie Rosenblatt noted that the Town does have an affordable housing ordinance and has had a number of developments in Town built under it. Bill Stoughton stated that this was an ordinance under the IIHO but not a current ordinance. Arnie Rosenblatt stated that the affordable housing ordinance was around before the IIHO. Cynthia Dokmo stated that she believes the Board could consider using the old PRD ordinance as a framework for these items.

Tom Silvia, Cynthia Dokmo and Bill Stoughton agreed to work on this but not for the March 2023 ballot cycle.

Bill Stoughton explained that the first three proposed environmental items on the Board's list came from last year and are areas that the Conservation Commission (ACC) wanted to look at. In conjunction with the Master Plan, the ACC had a Water Issues subcommittee that has been examining some of these items and he would suggest it continue to do so. These may not be items placed on the March ballot.

Bill Stoughton stated that the other environmental items are the ACC's recommended changes to the Building Code. Local changes to the Building Code go through the Planning Board for approval, similar to zoning amendments. As a result of recent legislation these items have to be precleared by the State Building Code Board. The ACC has drafted well water quality requirements that require testing, and well water quantity requirements. These have been run by Scott Tenney, Building Inspector, and are ready for review and placement on the ballot in March, assuming the State Board agrees.

Arnie Rosenblatt explained that the next item is for a petition article regarding lighting. Bill Stoughton stated that he is in favor of moving this item forward. It is a relatively straightforward and simple change. The goal is to make the Town's skies darker by requiring lighting that does

TOWN OF AMHERST
Planning Board

September 27, 2022

APPROVED

not shine up. Bill Stoughton stated that he would be happy to work on this item, using the language of the petition as a starting point.

Regarding the next items for noise, Bill Stoughton stated that this is not a one size fits all issue. He stated that as a land use issue for the Board, he believed it would be appropriate for the Board to consider a noise ordinance to address noise generated by nonresidential land uses and leaving the lot or site but does not believe it is in the Board's purview to address noise in residential areas. Cynthia Dokmo noted that there are some nonresidential uses in residential areas and would like to speak with Bill Stoughton further about this item.

Tom Silvia suggested that this noise item may tie in with the alternative use in the Industrial Zone conversation.

Bill Stoughton agreed with this suggestion. He stated that he would continue to look into this item, but that it would not be on the March ballot and not regarding residential zones.

Regarding the proposal for diesel engine restrictions, Bill Stoughton stated that he is concerned whether the Board has the authority on this item, as it is posed as an air pollution constraint. He believes the Town may be preempted in this area by the State and the federal government.

Tom Quinn stated that he believes this might be a difficult item to draft, as it is likely impossible to enforce.

Bill Stoughton stated that this item could possibly be addressed within defining warehouses in Town. An ordinance could require warehouse operations to provide electrical power for trucks remaining on site for more than an hour or so.

Bill Stoughton stated that the Board of Selectmen believes that the Town's existing sign ordinance is essentially unenforceable. A Supreme Court decision states that if a Town's regulations are set up so that signs must be read to be understood, this is unconstitutional because the Town is regulating content. The item before the Planning Board arose through the context of political signs being out too early under the Town's ordinance. The problem is that someone would have to read the sign to find out whether it is a political sign. Bill Stoughton stated that he has drafted changes but is fairly certain that nobody is going to be happy with them at the end of the day. The changes do stand a pretty good chance of complying with the Supreme Court decision. Nic Strong and the Board of Selectmen will review this language shortly.

Arnie Rosenblatt stated that the next item is a petition article regarding height restrictions on buildings. Bill Stoughton stated that the current ordinance is an 80' height maximum for uninhabited structures, and 50' for inhabited structures in the Industrial Zone, south of the railroad tracks. He suggested considering this as part of the warehouse definition discussion. Tom Quinn thought this was a fairly easy change. He imagined the reason for the 80' height was for the asphalt plant. Bill Stoughton pointed out the water tower as well. Arnie Rosenblatt noted some concern with the impact certain height restrictions could place on landowners.

TOWN OF AMHERST
Planning Board

September 27, 2022

APPROVED

308
309 Arnie Rosenblatt explained that the next item is a petition regarding a requirement for developers
310 to fund their proportionate share of road improvements, if necessary as a result of development.
311 He noted that the Board currently has impact fees, but these are broad with relation to roads.
312
313 Bill Stoughton stated that the Board is currently allowed, by ordinance, to impose an offsite
314 exaction on developers. He would like to see the Board get much more rigorous in reviewing and
315 assessing impacts from items such as improvements to roads, drainage, sewers, etc. He believes
316 the Board should start asking DPW to weigh in on these items and have DPW tell the Board
317 whether a study by an engineering firm is necessary.
318
319 Arnie Rosenblatt stated that this will need to be considered in the context of a regulation or
320 ordinance or both.
321
322 Tom Quinn noted that people who wish to build along Class VI roads generally are required to
323 make improvements to the roads to make them passable.
324
325 Cynthia Dokmo noted that the Board has always had the ability to require exactions for certain
326 items, and has done so in the past, for example along Route 101.
327
328 Bill Stoughton explained that the next item came from former Planning Board member, Dwight
329 Brew, who was concerned regarding 5G towers popping up around Town. Arnie Rosenblatt
330 stated that, in the past, applicants for this type of application would come before the Board with a
331 lawyer and quote the federal statute. Cynthia Dokmo noted that a recent Union Leader article
332 spoke of these towers. She noted that there is a concern that these could cause cancer. Chris
333 Yates stated that, per federal law, these towers have to be located so many feet from inhabitants,
334 based on radiation.
335
336 The Board's consensus was to not move this item forward at this time.
337
338 The Board agreed not to move forward with any of the enforcement proposals at this time.
339
340 Arnie Rosenblatt noted that the Board is not precluded from amending its regulations if
341 ambiguity or weakness needs to be addressed.
342
343 Bill Stoughton ran through the list of proposed amendments, as to which ones the Board is
344 planning to move forward for the March ballot: The first two items, no; address legislative
345 changes, yes (N. Strong); housekeeping, yes if it is an item located within an item already being
346 considered; reduced frontage lots, yes (B. Stoughton, C. Dokmo, T. Quinn); scenic road lot size
347 and frontage, yes (T. Adams, T. Quinn, T. Kachmar); designation of new scenic roads, no (C.
348 Dokmo will work with Heritage Commission); warehouse restrictions definition changes, yes (C.
349 Dokmo, C. Yates, B. Stoughton); Industrial Zone alternate uses, not for 2023 (C. Dokmo, C.
350 Yates, B. Stoughton); examine elderly housing and workforce housing, yes but not for 2023 (T.
351 Silvia, C. Dokmo, B. Stoughton); first three environmental items, no for March 2023; well water

TOWN OF AMHERST
Planning Board

September 27, 2022

APPROVED

quality and quantity, yes (ACC); lighting, yes (B. Stoughton); noise, to be addressed in alternate uses, otherwise no; diesel engine restrictions, no; sign ordinance, yes (B. Stoughton); height restrictions, yes in connection with the warehouse definitions (C. Dokmo, T. Quinn, B. Stoughton); requirements for developers to fund road improvements, yes (B. Stoughton, T. Silvia); and everything else is a no for this year.

Arnie Rosenblatt stated that the next meeting on this topic will be to address proposed draft language or to discuss if members believe these items cannot be completed in time for March.. This will not yet be the public hearing on these amendments.

The Board agreed to hold the next meeting on this topic at its second meeting in November, November 16th.

Arnie Rosenblatt thanked everyone in attendance and those who played a role in proposing what had been discussed.

2. Any other business that may come before the Board

**Chris Yates moved to adjourn at 8:20pm. Seconded by Tom Silvia.
Motion carried unanimously 6-0-0.**

Respectfully submitted,
Kristan Patenaude

Minutes approved: November 2, 2022