

TOWN OF AMHERST
Planning Board

March 15, 2023

APPROVED

In attendance at Amherst Town Hall: Arnie Rosenblatt – Chair, Bill Stoughton – Board of Selectmen Ex-Officio, Chris Yates, Tom Quinn (remote), Tracie Adams, Tom Silvia, Cynthia Dokmo, and Tim Kachmar (alternate) [7:05pm]

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

Arnie Rosenblatt called the meeting to order at 7:00pm.

PUBLIC HEARINGS:

1. SCENIC ROAD PUBLIC HEARING – EVERSOURCE

In accordance with the NH RSA: 231:158, the Amherst Planning Board will hold a public hearing on Wednesday, March 15, 2023, at 7:00 pm in the Barbara Landry Meeting Room, 2nd floor, Amherst Town Hall, Amherst NH for a scenic road public hearing for the purpose of trimming trees on Chestnut Hill Road.

Tracie Adams moved to continue this hearing to May 3, 2023, at 7:00pm, at Town Hall. Seconded by Tom Silvia.

Motion carried unanimously 5-0-0.

2. CASE #: PZ16835-011023 – Scott McEttrick (Owner & Applicant); 6 North End of Lake, PIN #: 008-066-000 – Conditional Use Permit. Construct a detached garage with an Accessory Dwelling Unit and approved ISDS and reclaim areas of the existing gravel driveway to be restored back to an unaltered state. *Zoned Residential/Rural. Continued from February 1, 2023.*

Arnie Rosenblatt read and opened the case. He noted that this item was previously continued to allow the Board time to receive Town Counsel's opinion regarding whether granting this request was within the Board's authority. The Board also conducted a site walk of the property.

Taylor Hennas, Meridian Land Services, stated that this is a preexisting, non-conforming lot of record, with a preexisting, non-conforming primary structure with a detached garage that is currently used for storage. The applicant intends to construct a detached two-story garage outside of the Wetland and Watershed Conservation District, outside of the existing access easements, and within the limits of the building setbacks. An attached garage with accessory dwelling unit (ADU) would likely need a variance from the sideline setbacks, impact the existing access easements, or would cause disturbance within the Wetland and Watershed Conservation District. The proposal also intends to reclaim approximately 1,676 s.f. of existing gravel by reducing the width of the driveway, and implementing native plantings as suggested by the Conservation Commission. Drip edges will surround the proposed garage, as well as the existing detached garage. Based on the reduction of impervious area from reclaiming the areas of gravel, this project will drop the impervious area on the lot from 48.2% to 43.8% within the Shoreland Zone. Post-development peak runoff rates are reduced in all storm event scenarios, including the 1", 2-year, 10-year, 25-year and 50-year storms. The proposed stormwater management techniques

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meet the Alteration of Terrain (AoT) requirements for post-development runoff rate. This project meets all of the State requirements within the Shoreland Program, and as well as the Subsurface Bureau.

Tim Kachmar entered the meeting.

Tom Quinn stated that his primary concern was whether the property was in conformance with dimensional requirements and that he would be more comfortable if this application was run by the Zoning Board of Adjustment (ZBA) first.

Tracie Adams asked about the proposed floorplan of the detached garage and ADU structure. Taylor Hennas confirmed that the garage will be 33'x24' with an ADU above the garage. The intention is to utilize existing grades on site, to allow for a drive under parking space. The ADU will be 792 s.f. in size.

Tracie Adams noted that the Conservation Commission requested native plantings and a drip edge on both the proposed and existing garages. Both of these items have been incorporated into the plan.

Tom Silvia noted the same concern as Tom Quinn and agreed with having this application approved by the ZBA first, due to the sensitivity of Baboosic Lake and potential development impacts on this.

Cynthia Dokmo stated that this seems to be a lot of development for the size of the lot. She hesitated to allow this additional large building.

Bill Stoughton asked if the first waiver request is still needed, as it appears the requirements of Section 3.D.3. have been submitted. Taylor Hennas explained that she believes waivers were still being sought for a separated plan set for the stormwater regulations.

Bill Stoughton stated that he has concerns regarding how to proceed on the dimensional requirements issue. He explained that this could be remedied by the applicant going before the ZBA for a variance, or by the Planning Board conditionally approving this application. He stated that, in addition to the conditions listed in the Staff Report, he would include conditions that the ADU contain no more than two bedrooms, as suggested by the Staff Report, and, for further purposes of restriction, any room used for overnight sleeping would be considered a bedroom. This is to make it clear that, if this unit is to be used as an AirBnB, the unit 2-bedroom count could not be used to then sleep ten people, for example. Any changes to the total number of bedrooms on the lot will require a new State approval of septic systems on the lot. Further, a condition requiring confirmation that drip edges should be added to the existing residence, as proposed.

Chris Yates echoed the concern that this is an additional large building proposed on a smaller sized lot.

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Tim Kachmar agreed that this proposal should first go before the ZBA for a variance. He supported Bill Stoughton's suggested conditions regarding bedroom counts.

Arnie Rosenblatt asked if there were any questions from the public.

Mark Bender, Amherst Conservation Commission (ACC), noted that the ACC had presented comments requesting additional vegetation along the shoreline and along the driveway. He asked if the plan accommodates those requests. Taylor Hennas stated that no additional plantings are proposed along the shoreline, in order to minimize additional disturbance within the associated buffer as the application does not currently propose any disturbance within the 100' buffer of Baboosic Lake. The plan does incorporate plantings within the area of reclaimed gravel, so that it will no longer be a turnaround area or utilized for driving space.

Taylor Hennas addressed the 15% floor ratio requirements. She stated that the intention of this section of the zoning ordinance is to make sure that extraordinarily large buildings are not built. This is based on a two-acre minimum. Given the percentage of 15% on a two-acre minimum size lot, this would equate to a 13,000 s.f. building. The total floor area ratio proposed by this application is 6,000 s.f. None of the adjacent lots are in compliance with this regulation, and many have also sought Conditional Use Permit (CUP) applications to propose additions or extensions onto their non-conforming primary structures. Taylor Hennas stated that the applicant would like to propose an attached ADU but given the circumstances with access easements and building setbacks had to propose the detached ADU.

Tom Silvia stated that he would like to see this moved to the ZBA for a variance request. Arnie Rosenblatt stated that he believes this would mean denying the application. Bill Stoughton asked if the Board could approve with a condition that the applicant obtain a variance from the ZBA.

Nic Strong stated that the ZBA is an appeals board. She believes the Planning Board would have to deny the application as not being in compliance with the zoning ordinance, in order for the ZBA to then be appealed to. The Planning Board would be making an interpretation of the zoning ordinance, with the appeal then going to the ZBA.

Arnie Rosenblatt stated that he believes the Planning Board is simply saying that it believes this would be better handled by the ZBA.

Bill Stoughton stated that there is language in Section 3.18.C. which states that the property in question is in conformance with the dimensional requirements of the Zone. The Board seems to be in agreement that this lot is not in conformance with the dimensional requirements of the Zone. The Board could decide not to grant the CUP. He asked if the applicant then needs to go to the ZBA with a variance request to get relief from that zoning requirement. Arnie Rosenblatt stated that he believes the Board has the ability, because this is a non-conforming lot, to not require the applicant to go before the ZBA.

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Tom Quinn stated that he believes it is a good procedure to suggest that applicants seek a variance before coming to the Planning Board, if not in compliance with the zoning ordinance. Tim Kachmar agreed that this is how things were handled, during his time on the ZBA. Arnie Rosenblatt stated that he does not believe this to always be the case.

Bill Stoughton asked how the decision will be made as to which applicants will be required to seek a variance, if they have an existing nonconforming lot. Arnie Rosenblatt stated that he believes the Board can use its discretion. In this case, some Board members seem to want this item sent to the ZBA for a variance, due to the size of the proposed building on the existing lot. Bill Stoughton stated that this seems like a roll of the dice for the applicant, without having clear expectations. Cynthia Dokmo stated that she believes some of these items will be caught by staff in the Community Development Office.

Arnie Rosenblatt asked if this application could be denied without prejudice. Nic Strong noted that, if the applicant is not able to obtain a variance, then any application submitted back to the Planning Board would have to be materially different than this one. If a variance is granted, the applicant could come back with the same application.

Bill Stoughton stated that he does want the ZBA to weigh in, but he is concerned about the process for future applications. Arnie Rosenblatt stated that if Board members want the ZBA to weigh in, this is the process to do that.

Taylor Hennas noted that nearly all of the lots surrounding Baboosic Lake are out of conformance. She asked if the Board is suggesting that anytime an applicant wants to raze and reconstruct to remain at the 15% or 15.1% floor area ratio, it would have to go through this process with the ZBA. Arnie Rosenblatt stated that that is not his intention. That is inflexible and he would not favor it.

Bill Stoughton stated that this application triggers the need for a variance due to the language of Section 3.18.C., that the Planning Board has to find that the property in question is in conformance with the dimensional requirements of the zone. This is triggered by the fact that a Conditional Use Permit (CUP) is being requested.

Bill Stoughton asked if this is a lot of record. Nic Strong stated that this lot has a couple of old plans recorded at the Registry and it meets the Town's definition of a lot of record.

Cynthia Dokmo stated that, per the ADU ordinance, because this is requested to be a standalone building, it must meet the requirements of Section 3.18. Other buildings in the area of the Lake are not necessarily standalones or ADUs. Bill Stoughton noted that the next application this evening is a request to intrude on the wetland buffers, through a CUP. Thus, it will again trigger the requirement for the lot to conform with the dimensional requirements of the zone. He asked if the Planning Board will again consider sending that applicant to the ZBA. Cynthia Dokmo stated that she is differentiating this application because it is a request for a standalone building, which is a more intensive use of the lot.

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Tom Quinn agreed that he considers if a proposal will make the lot less conforming or more conforming. In his opinion, this proposal makes the lot less conforming.

Tom Silvia moved to deny the application for CASE #: PZ16835-011023, PIN #: 008-066-000, due to the fact that the property in question is not in conformance with the dimensional requirements of the zone for the CUP ADU unit, and that the Planning Board would like the Zoning Board of Adjustment to have the opportunity to weigh in on this item. Seconded by Tom Quinn.

**Roll Call Vote: Bill Stoughton – nay; Chris Yates – aye; Tom Quinn – aye; Tracie Adams – aye; Tom Silvia – aye; and Cynthia Dokmo – aye.
Motion carried 5-1-0.**

Nic Strong asked if the statements given so far are to be considered findings of fact. Arnie Rosenblatt agreed and asked a Board member to sum up additional findings of fact. Tom Silvia stated that he believes it is best summed up in the motion.

The Board agreed that the finding of fact for this application was that “The property in question is not in conformance with the dimensional requirements of the zone as a result of the ADU relative to the CUP application.”

3. **CASE #: PZ16836-011023 – Sheila Armand; The Armand Living Trust (Owner & Applicant); 16 Clark Avenue, PIN #: 025-035-000** – Conditional Use Permit. Raze the existing family home and construct a smaller house within the same footprint along with an approved ISDS. *Zoned Residential/Rural. Continued from February 1, 2023.*

Arnie Rosenblatt read and opened the case. He noted that this item was previously continued to allow the Board time to receive Town Counsel’s opinion regarding whether granting this request was within the Board’s authority. The Board also conducted a site walk of the property.

Taylor Hennas stated that this parcel is a preexisting non-conforming lot of record, located entirely within the Wetland and Watershed Conservation District. This preexisting non-conforming lot contains a preexisting non-conforming primary structure with an estimated construction date of 1930. This proposal intends to raze the existing primary structure and construct a more nearly conforming structure within the limits of the existing footprint. This proposed structure will be serviced by a pretreatment septic system, and individual well. This proposal will also implement native plantings, as recommended by the Conservation Commission, install a drip edge, and a porous paver driveway for stormwater management techniques. There were some concerns from the Board regarding the pretreatment system proposed within the flood zone. She reached out to Gary Spaulding, Advanced Onsite Solutions, LLC, who stated that the design is completely permissible. He stated that his company provides recommendations for tanks in the flood zone to prevent buoyancy during flood events. She also reached out to Joe Jordan, Assistant Director of the Amherst Department of Public Works, who stated that the DPW is actively working to meter the flow of each dwelling that is connected to

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the community septic system. However, the system is currently at max capacity, as the system installed was for 72 bedrooms and there are currently 127 hooked up to it. The Board also requested stormwater management calculations which were provided. She noted that this proposal looks to reduce the impervious area of the lot from 15% to 11.1%. The post-development peak runoff rates are reduced in all storm event scenarios and these stormwater management techniques meet the AoT requirements for post development runoff volume. The Shoreland Permit for this lot, along with the septic design, are locally and State approved by the Subsurface Bureau and Shoreland Program.

Tim Kachmar asked if the plan is to move ahead with this proposal, without waiting to hear more about the community septic system. Taylor Hennas stated that there is no definitive timeline for when the community septic system will be upgraded or when the meter flows will be determined per dwelling. Her client is looking to move forward with this square footage dwelling, within the existing footprint.

Chris Yates asked for more information about the macerator. Taylor Hennas stated that the macerator will require a 5' setback from the frost wall. Thus, it would either be placed 5' off the back of the house or 5' off the front of the house, with the house shifting back to occupy the space. Chris Yates stated that the latter would be ideal. Taylor Hennas stated that the client would prefer to hook up to the community septic system, but without clear information, would like to move forward with the plan as proposed at this time.

Bill Stoughton stated that, if the Board moves toward approval for this application, he suggests two additional conditions. One is that the installation of the septic system shall comply with the recommendations of the February 7, 2023, e-mail from Advanced Onsite Solutions to prevent tank buoyancy, to permit continued compressor operation, and to avoid water leakage in a flood of the 100-year flood depth. The second would be that the applicant shall obtain a driveway permit. He noted that this application is not before the Board due to the proposal to raze and reconstruct, but because the septic system would encroach on the wetland buffer. He stated that he supports this application with the conditions as stated.

Cynthia Dokmo stated that she is struggling with treating this application the same as the previous one. She believes what differentiates this application from the previous one is that the footprint will actually be smaller. There is no separate structure or ADU proposed.

Tom Silvia stated that he believes what differentiates this application is that it consists of a replacement of an existing structure. If the Board denies this application, the value of that property is substantially eroded. For the previous application, the denial of an additional ADU does not have an economic impact on the value of the property.

Tracie Adams asked for clarification on what was being discussed with Chris Yates regarding shifting the house back. Taylor Hennas explained that the proposal is currently at the easterly limits of the existing footprint and very close to the road. This is to accommodate the pretreatment system within the back of the lot. There were some questions from the Board

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regarding if this lot could hook up to the community septic system. The DPW is actively working on expanding or metering actual flows from the dwellings that are connected, in order to potentially add additional dwellings to the system. If that were the case, the clients would ideally like to shift the building back from the road, still within the existing footprint, to allow for land between the road and the face of the house.

In response to a question from Tracie Adams regarding the recommendations from Advanced Onsite Solutions, Taylor Hennas explained that the two definite standards would be to make the tank appropriate for H-20 loading and to contain a 12" extended base. The client is already proposing to seal the tank. Advanced Onsite Solutions suggested a possible additional seal around where the concrete forms together, which the client is also open to. These solutions will prevent buoyancy during flood events.

Tracie Adams asked about the recommendations from the Conservation Commission. Taylor Hennas stated that the presentation to the ACC included the drip edge and porous paver driveway. Tracie Adams stated that the ACC was looking for a net benefit to the property, which appears to be presented.

Tom Quinn stated that he believes consistency is good and shared Cynthia Dokmo's concerns regarding treating this application differently. He stated that he is leaning towards wanting to send this to the ZBA as well, due to the fact that the lot does not meet the dimensional requirements of the zone. Although he does believe the proposal is likely a net benefit to the property.

Arnie Rosenblatt asked for public comment.

Wayne Dykstra, 14 Clark Avenue, stated that he has a concern with the proposed building being two stories. He stated that this proposal will make his property suffer. This is a non-conforming lot, and allowing properties to continue to expand upwards will make it difficult to view the Lake. He asked what recourse he has regarding what this proposal might do to his property values. He noted that this property is currently considered a camp, as it never had a septic system so the property cannot be lived in year-round. He believes there used to be a rule that, unless hooked up to the community septic system, properties were considered camps and could not be lived in year-round. It is unclear if that rule no longer applies if a property installs its own septic system. He stated that the Lake is dying. It was shut down for four months out of the last year due to bacterial outbreaks. There are also many less trees around the Lake than there used to be.

There was no further comment at this time.

Bill Stoughton asked if this is a lot of record. Nic Strong stated that this lot is a lot of record.

Bill Stoughton stated that he would not require a variance for this application. He stated this is a lot of record and seems to be, colloquially, grandfathered from compliance with the dimensional requirements.

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Bill Stoughton moved to find that the application satisfies the criteria of Section 4.11.I.1. of the zoning ordinance addressing the findings required for approval of a Conditional Use Permit in the Wetlands and Watershed Conservation District; and further to approve CASE #: PZ16836-011023, for The Armand Living Trust, for a Conditional Use Permit for site improvements in the Wetlands and Watershed Conservation District at 16 Clark Avenue, Tax Map 25 Lot 35, as shown on the plan dated September 15, 2022, most recently revised January 30, 2023, with the conditions stated in the Staff Report and with the following conditions:

- Installation of the septic system shall comply with the recommendations of the February 7, 2023, e-mail from Advanced Onsite Solutions, to prevent tank buoyancy, to permit continued compressor operation, and to avoid water leakage in the case of a flood of the depth of the 100-year flood.
- the applicant shall obtain a driveway permit.

Seconded by Tom Silvia.

Discussion:

Tim Kachmar addressed the abutter's concerns. There is a tree in front of the house that will need to be removed, but hopefully other trees on the property can be preserved.

Chris Yates stated that he agrees with the motion and that this application is different based on Section 4, regarding lots of record.

Cynthia Dokmo stated that she will oppose the motion. She would like the motions to be consistent and believes the language is clear.

Tracie Adams and Tom Silvia stated that they will support the motion.

Tom Quinn stated that he is torn on this motion.

Arnie Rosenblatt asked Bill Stoughton his view with respect to the abutter's concern about the impact to his property from this non-conforming lot. Bill Stoughton stated that he focused on the concern regarding the height of the proposed building. The abutter's structure is two stories high, and he does not understand how he can thus tell the applicant that a two-story structure is not allowed. Bill Stoughton stated that the Board is here to review a CUP for encroaching on the wetland buffer. The proposed structure will have to comply with the building code and other ordinances. The Board does not have a say in this item, but only if the application satisfies that the structure should be allowed to encroach in the wetland buffer, which he believes it has. While he is sympathetic to the abutter's concerns, he cannot agree with them.

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**Roll Call Vote: Bill Stoughton – aye; Chris Yates – aye; Tom Quinn – aye; Tracie Adams – aye; Tom Silvia – aye; and Cynthia Dokmo – nay.
Motion carried 5-1-0.**

**Bill Stoughton moved to grant a waiver to Section 5.A.6. of the Stormwater Regulations, permitting a nitrogen reduction of 55% rather than 60%, on the basis that granting the waiver will not impair achieving the spirit and intent of these regulations, that compliance with these regulations is not reasonably possible given the specific circumstances relative to the CUP and the conditions of the land in this CUP, and that the proposed substitute solution is consistent with the goals of these regulations and is in the best interest of the Town. Seconded by Tom Silvia.
Roll Call Vote: Bill Stoughton – aye; Chris Yates – aye; Tom Quinn – aye; Tracie Adams – aye; Tom Silvia – aye; and Cynthia Dokmo – aye.
Motion carried unanimously 6-0-0.**

REQUEST FOR EXTENSION:

4. **CASE #: PZ16895-013023 – Nelson Realty Trust (Owner & Applicant); 64 Route 101A, PIN #: 002-086-002 – Non-Residential Site Plan Amendment – Extension Request. To show a proposed 2-story, 46,800 SF manufacturing, office & storage facility with associated parking. Zoned Industrial. Continued from March 1, 2023.**

Arnie Rosenblatt read and opened the case. He explained that the primary reason for the continuance was because the applicant is requesting an extension. The existing extension lapses as of at some point next week. At least one previous extension has been granted. There was concern raised by some members of the Board that the Board lacked the authority to provide such an extension, even though at least one extension was previously provided. Accordingly, Town Counsel's opinion was sought, recognizing it is ultimately the decision of the Board to interpret the ordinances and regulations. Town Counsel's opinion has been circulated to members of the Board. The Board has some level of discretion and has exercised such discretion in the past.

Matt Routhier, TF Moran, stated that he believes it is in the purview of the Board to extend, and extend with conditions as deemed necessary. This property has previously been extended numerous times. In 2014, during a last extension approval, there was correspondence with DES with very minor comments regarding getting the AoT permit amended or updated. This can be further discussed by the Board.

Dan Prawdzik, Resin Systems, urged the Board to consider this extension. He noted that one of the issues is that he is supposedly not vested in the property, but he finds this slightly humorous as he has spent approximately \$100,000 to get to this point in the process. He has stubbed off the driveway and utilities into this property. He also bought 25% of the Coca-Cola building which was previously demolished nearby in order to use this as a road base. He has applied for a

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building permit. He would not have invested money in purchasing other nearby properties if he had known that this extension may not be granted.

Tom Quinn asked if any changes to either State regulations or local zoning have been made that would impact the application as presented in 2014. Matt Routhier stated that the AoT permit needs to be updated. There have been some changes through the Natural Heritage Bureau and Fish & Game, but these will not likely require major changes to the project. Regarding the State permit, there may need to be changes to some of the underground storage areas, with an updated rainfall frequency. He is unclear if there have been any major changes to zoning that would impact the project.

Tom Quinn agreed that it is important to keep this business in Town. He is concerned with continuing to extend this permit without completely exploring what updating needs to occur to the plan.

Tracie Adams asked if the plan will be updated to comply with recent Town stormwater regulation changes. Matt Routhier stated that the RSA talks about water quality and drinking water standards, and these will need to be updated. The plan will be updated to meet all of the current stormwater standards and requirements.

Tom Silvia asked about an extension of 24 months, given that the applicant seems to be ready to construct a new building. Matt Routhier explained that the lag time is through updating the AoT permit. Two years would be on the low end to extend the approval. Dan Prawdzik stated that he would prefer four years, due to some of the uncertainty in the world.

Tom Silvia asked about the definition, as part of this extension, for the term active and substantial development. Matt Routhier stated that he believes it is in the Board's purview to define this as it sees fit to best vest the project.

Tom Silvia noted that, if this extension is granted, that does not imply that an extension will be automatically given in the future. Matt Routhier acknowledged this.

Cynthia Dokmo asked if the applicant would like the Board to specify what is considered active and substantial for the project. Matt Routhier stated that this would provide clarity so that the applicant does not end up in a similar situation again. He stated that the extension in 2018 did not contain any conditions. He would like the Board to consider adding some standards as to what it deems substantially complete.

In response to a question from Bill Stoughton, Dan Prawdzik stated that this building will not have a basement and will be built on a slab. Bill Stoughton suggested that active and substantial development could be defined as commencement of concrete pours for the slab. Dan Prawdzik stated that, in order to pour the slab, the entire interior design would have to be known. He would prefer this be defined as installation of the foundation. This would give more breathing room to

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design the interior properly. Bill Stoughton suggested that the definition could instead be commencement of concrete pours for the building foundation. Dan Prawdzik agreed.

Bill Stoughton stated that, if this extension is proposed to comply with existing stormwater regulations, he would require that the stormwater plans be reviewed by the Town Engineer and that construction of the stormwater features be reviewed by the Town Engineer. These items would happen at the applicant's expense, and he would make them conditions of approval.

Bill Stoughton stated that he is prepared to support an extension but is concerned that four years is too long. He believes a minimum of two years is reasonable.

Chris Yates stated that he would support the proposed extension, along with the stormwater items suggested by Bill Stoughton.

Tim Kachmar suggested an extension of 36 months as a compromise.

Mark Bender, Conservation Commission, asked if the plans were reviewed in 2014 by the ACC. Arnie Rosenblatt stated that he believes they were but does not remember comments made during that review. Mark Bender noted that the Conservation Commission may want to review the plan under the new stormwater regulations.

Bill Stoughton moved to grant an extension to the currently pending approval for CASE #: PZ16895-013023 to March 30, 2026, subject to the following conditions:

- **that the applicant obtain all required State and federal, if there are any, permits.**
- **that the applicant shall comply with the current Town stormwater regulations and shall obtain through the Community Development Office the approval of the Town's Engineer for its stormwater features and plans, and approval of its as-built stormwater management practices all at applicant's expense.**
- **if active and substantial development or building is not achieved within the extension period the approval shall lapse, and any further work must be approved pursuant to a new application.**
- **active and substantial development for purposes of this application is defined as commencement of concrete pours for the building foundation.**

Arnie Rosenblatt asked if the wording of the motion precludes the applicant from seeking additional extension. Bill Stoughton stated that it does and is intentional. Bill Stoughton stated that this item has been extended numerous times and he wants to make sure there is no reliance in the future to extend this, if active and substantial development is not achieved within the time period. At that time, the Board would review the item from scratch with the standards of the time.

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Seconded by Cynthia Dokmo.

Discussion:

Tom Silvia stated that he does not favor the language prohibiting an extension. He stated that it should be up to the future Board, three years from now, to make that decision.

Cynthia Dokmo stated that she favors the prohibiting language, asking how many times an old application can be extended.

Tim Kachmar and Chris Yates had no further comments.

Tracie Adams stated that she likes the 36-month time period and supports the prohibiting language.

Tom Quinn stated that he was going to suggest similar prohibitive language and believes the 36-month time period is a good compromise.

Arnie Rosenblatt asked the applicant if 36 months is appropriate. Dan Prawdzik stated that he would much prefer four years, due to the impending financial crisis in the world. It will take at least a year to get to a point of construction. The 36 months will handcuff him. He respects the prohibitive language. He has no choice but to develop in the back of the lot, as there is no other land nearby to purchase. This will likely cost three times what the front building cost. He will abide by whatever the Board decides on but does not believe an additional year is impactful to the Town.

Arnie Rosenblatt stated that he does not believe this language handcuffs the applicant. The Board has a sense of responsibility to the Town while trying to accommodate the applicant. Arnie Rosenblatt stated that he would try to persuade his colleagues to extend the date to four years, as he did not think this will prejudice the Town and seems a good compromise with the additional prohibitive language, which he agrees with.

Bill Stoughton noted that this project first began in 2008 and an extension is being proposed to sometime in 2027, 19 years later. The last time the project had a thorough review was in 2014. The proposal is for an extension to 2027, giving it a 13-year approval period. The Board is not here to give unlimited approvals. The Board has a responsibility to the residents of this Town to make sure that new construction complies with changing laws and regulations. This would be bending over more than backwards on the applicant's behalf. Arnie Rosenblatt stated that he would bend over backwards for the applicant, based on the conditions stated.

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Cynthia Dokmo stated that she would support the three-year approval, as proposed. In four years, the world will likely not be in a better position than three years from now.

Tom Silvia stated that he would support the three-year approval. He struggles with the inconsistency of the message that the company is growing and needs the extra building, but it is unclear as to when it can be built.

Chris Yates noted that the three-year approval is only to have a foundation in place. Arnie Rosenblatt stated that was a commitment to the project.

Tracie Adams stated that the Board approved an application with similar reasons of wanting to extend the timeframe for financial reasons, but that application had not been granted extensions, such as in this case.

Bill Stoughton stated that he would like to move forward with his motion, as presented. He does not believe the votes fall in a way to modify the motion.

**Roll Call Vote: Bill Stoughton – aye; Chris Yates – aye; Tom Quinn – aye; Tracie Adams – aye; Tom Silvia – aye; and Cynthia Dokmo – aye.
Motion carried unanimously 6-0-0.**

OTHER BUSINESS:

5. Discussion re: renewing ERZ designations

Arnie Rosenblatt explained that the Town previously had the opportunity to participate in identifying several areas of Town as Economic Revitalization Zones (ERZ). This provides certain tax advantages from the State, as incentives for commercial development owners in those areas. It is unclear who made the determinations for these ERZs in the past. In 2022, the State asked if the Town wanted to renew these designations. This request apparently did not get forwarded to either the Board of Selectmen or the Planning Board. Nic Strong spoke with the State, and the State has provided an unstated additional amount of time for the Town to respond. It is still unclear whether the Planning Board, the Board of Selectmen, or someone else should make these decisions. He stated that this discussion impacts people who own these properties, abutters of these properties, and it is unclear if the public is aware that this discussion is being had.

Tracie Adams stated that the ERZ Frequently Asked Questions for Communities webpage from the New Hampshire Economic Development Department states that an application must include reference to the public record of acceptance by the governing body of the community. This speaks to her as being the Board of Selectmen.

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Bill Stoughton stated that, if this were a new application, the Board of Selectmen would likely be the ones to accept the designations. He asked if Nic Strong could check with the State regarding if the Board of Selectmen should make the formal request to continue the extension.

Nic Strong stated that the law says a governing body, which means the Board of Selectmen. However, as this is a land use issue, within the Master Plan, and as it has been previously referred to the Planning Board, it is probably worthy of a joint discussion.

Bill Stoughton stated that the Board of Selectmen would want the views of the Planning Board before taking any action. He asked if the businesses involved get an annual or one-time credit, and if these credits would end if the extension is not granted. He would like more information on these questions first. The Planning Board could then discuss if one or more of these should be recommended to be extended, with a report sent to the Board of Selectmen.

Chris Yates stated that he sees this as a Community Development outreach from the Town to the community, as this would be a benefit to drawing businesses into the Route 101A industrial area. This would be a plus for inviting in new businesses. He stated that he does not see a downside in recommending an extension. He would like some of the additional information mentioned by Bill Stoughton.

Cynthia Dokmo stated that she knows Route 101A is all commercially zoned. She asked for more information about the zone that is near the LaBelle Winery, along Route 101.

Tom Silvia asked what the deadline is to apply for this extension. Nic Strong stated that she would ask the State. Tom Silvia stated that the program ends in 2028 and it appears this is an extension to the end of the program. He has similar questions regarding if the tax credits are an annual thing. He also has a question about the criteria that was used to set up the ERZs and if they still apply to businesses that are already developed, such as LaBelle Winery. He would like a clear understanding of the mechanism involved and the financial impact it ultimately has on properties.

Mark Bender stated that ERZs can be structured differently, depending on the use that the Town is trying to attract into a specific area. These can be more than only State tax incentives. There can also be local tax incentives, and it can extend into training and recruiting of employees.

Tracie Adams stated that she would like additional information and she would like the Planning Board to be able to send a recommendation to the Board of Selectmen.

Tom Silvia expressed confusion over the mechanism of the ERZs. It appears that the Town is designating properties to receive State money and he would like to understand the motivation.

Chris Yates stated that he believes the FAQs talk about the creation of jobs, thus this could potentially lead to a credit over multiple years.

March 15, 2023

APPROVED

Tom Quinn stated that he is unclear how some of the properties meet the criteria.

Cynthia Dokmo stated that there is a pool of money for businesses to apply to and once the money is gone there is no more. Bill Stoughton confirmed this to be \$825K per year.

Arnie Rosenblatt asked Nic Strong to gather some of the information requested and for this to be placed on a future agenda.

6. REGIONAL IMPACT:

- a. CASE #: PZ17059-030923 – Peter J. Hunter (Owner) & Justin Powers (Applicant); 6A Thornton Ferry Road I, PIN #: 016-017-001 – Subdivision Application - Final Approval.** To subdivide Map 6, Lot 17 into two building lots. *Zoned Residential/Rural.*

Cynthia Dokmo moved that there is no regional impact. Seconded by Tracie Adams. Roll Call Vote: Bill Stoughton – aye; Chris Yates – aye; Tom Quinn – aye; Tracie Adams – aye; Tom Silvia – aye; and Cynthia Dokmo – aye. Motion carried unanimously 6-0-0.

- b. CASE #: PZ17060-030923 – Legacy Building & Development LLC, c/o Robert Pace, (Applicant & Owner); 32 & 34 Merrimack Road, PIN #s: 003-166-001 & 003-166-002. Subdivision Application – Lot Line Adjustment.** Adjust the lot lines between Tax Map Lots 166-1 & 166-2, making Lot 166-1 conforming to current Zoning requirements. *Zoned Residential/Rural.*

Cynthia Dokmo moved that there is no regional impact. Seconded by Chris Yates. Roll Call Vote: Bill Stoughton – aye; Chris Yates – aye; Tom Quinn – aye; Tracie Adams – aye; Tom Silvia – aye; and Cynthia Dokmo – aye. Motion carried unanimously 6-0-0.

The Board addressed a finding of fact for CASE #: PZ16836-011023, for The Armand Living Trust, for a Conditional Use Permit. Arnie Rosenblatt stated that he believes the determination was made based on the conclusion that the proposal was not increasing the size of the structure in any way and, although it is a non-conforming lot, the proposal was not increasing the size. Accordingly, there was a conclusion that it was not having a negative material impact. Bill Stoughton stated that he believes the determination was made based on this being a lot of record and, therefore, grandfathered from compliance with dimensional requirements of the current zoning. Also, it meets the requirements for a CUP for an incursion into the wetland buffer by the septic system. Chris Yates stated that the proposal also improves the property by installing a compliant septic system onto the property.

7 . Minutes: March 1, 2023

TOWN OF AMHERST
Planning Board

March 15, 2023

APPROVED

655 **Tracie Adams moved to approve the meeting minutes of March 1, 2023, as amended**
656 **[Line 1: change “Amherst Town Hall” to “Souhegan High School”] . Seconded by**
657 **Bill Stoughton.**

658 **Roll Call Vote: Bill Stoughton – aye; Chris Yates – abstain; Tom Quinn – abstain;**
659 **Tracie Adams – aye; Tom Silvia – aye; and Cynthia Dokmo – aye.**
660 **Motion carried 4-0-2.**

661
662 **8. Any other business that may come before the Board.**

663 **Tracie Adams moved to approve the findings of fact, as stated, for CASE #: PZ16836-**
664 **011023, for The Armand Living Trust, 16 Clark Avenue. Seconded by Chris Yates.**
665 **Roll Call Vote: Bill Stoughton – aye; Chris Yates – aye; Tom Quinn – aye; Tracie**
666 **Adams – aye; Tom Silvia – aye; and Cynthia Dokmo – aye.**
667 **Motion carried unanimously 6-0-0.**
668

669 Bill Stoughton thanked Arnie Rosenblatt and Nic Strong for their work to create the Staff Report
670 for this evening and to receive advice from Town Counsel.

671
672 The Board discussed creating a finding of fact for the extension approval earlier this evening.
673 Nic Strong stated that the language of the statute is that the local land use board shall issue a
674 final written decision which either approves or disapproves an application for local permit and
675 make a copy of the decision available to the applicant. The decision shall include specific written
676 findings of fact that support the decision. She stated that she does not believe this applies to the
677 extension granted this evening.

678
679 **Tracie Adams moved to adjourn at 8:54pm. Seconded by Chris Yates.**
680 **Roll Call Vote: Bill Stoughton – aye; Chris Yates – aye; Tom Quinn – aye; Tracie**
681 **Adams – aye; Tom Silvia – aye; and Cynthia Dokmo – aye.**
682 **Motion carried unanimously 6-0-0.**

683
684
685 Respectfully submitted,
686 Kristan Patenaude

687
688 Minutes approved: April 5, 2023