

TOWN OF AMHERST
Planning Board

June 7, 2023

APPROVED

In attendance at the Souhegan High School Auditorium: Arnie Rosenblatt – Chair, Bill Stoughton – Board of Selectmen Ex-Officio, Chris Yates, Tom Silvia, and Rob Clemens (alternate)

Staff present: Nic Strong, Community Development Director

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

Rob Clemens sat for Cynthia Dokmo.

PUBLIC HEARING(S):

1. **CASE #: PZ17123-032323 – Robert H. Jacobson Revocable Trust, Laurie Stevens, Trustee (Owner) & TransFormations, Inc. (Applicant), 17 Christian Hill Road, PIN #s: Tax Map 005-148-000 & 005-100-000 – Conditional Use Permit. To depict a 60-unit Planned Residential Development per the Integrated Innovative Housing Ordinance (IIHO). Zoned Residential Rural. Continued from April 19, 2023**

Arnie Rosenblatt read and opened both Jacobson applications. He explained that each application will be discussed separately. He noted that the Planning Board will plan to meet until approximately 10:00 p.m. If certain agenda items are not addressed this evening, they will be rescheduled to future meetings.

Arnie Rosenblatt gave a brief description of the Jacobson applications. He explained that the applicant applied under the Integrated Innovative Housing Ordinance (IIHO) some years ago. The Planning Board at that time denied the first stage request under the IIHO for approval for a Conditional Use Permit (CUP). The applicant appealed that decision to the New Hampshire Superior Court. While that appeal was pending, the applicant submitted a new application for the same property also under the IIHO that was somewhat different. The Planning Board denied that application on the grounds that it was substantially similar to the first application, without reaching the merits of that application. The applicant appealed that decision as well to the New Hampshire Superior Court. The New Hampshire Superior Court affirmed the decisions of the Planning Board in both those cases. The applicant then appealed the Superior Court decisions to the New Hampshire Supreme Court. The New Hampshire Supreme Court reversed the decisions of the New Hampshire Superior Court and remanded the case to the Superior Court and to this Planning Board. The Planning Board is required under the terms of the New Hampshire Supreme Court order, and the order that was subsequently provided by the New Hampshire Superior Court, to consider the applications and to consider whether or not to grant a CUP. This order does not automatically agree to approval of the application but requires the Board to consider it under the terms of the IIHO. The IIHO does not exist anymore, as the Town decided that it no longer wanted to use it, but this Planning Board is still required to consider the application under the IIHO as it is essentially grandfathered in.

TOWN OF AMHERST
Planning Board

June 7, 2023

APPROVED

Arnie Rosenblatt explained that the applicant submitted two different applications under the IIHO. He spoke with Town Counsel whether this is allowed, and the answer was that the applicant can have two concurrent applications that are fairly different under the IIHO. Until the applicant picks one application to proceed with, the Planning Board will consider both of them.

Arnie Rosenblatt explained that the Board is not considering final approval of the applications at this time. The Board is considering whether or not the applicant has satisfied the requirements under the IIHO in order to obtain a CUP and, if so, how many units the applicant may potentially build. This does not mean that the number of units is guaranteed, but that the Board will then consider up-to that number of units. For example, in one application the applicant is requesting 60 units. The Board can make a decision as to whether or not it believes the applicant is entitled for up-to 60 units, or some lesser number.

Arnie Rosenblatt explained that these applications were continued from a previous meeting because the question was raised as to whether or not the Board believed that certain studies would be appropriate. It agreed that several studies would be appropriate, including hydrogeological, fiscal impact, and traffic. The Board has received the traffic study which has also been peer reviewed, along with the fiscal impact study. It has not yet received the hydrogeological study. The Board has also conducted a site walk of the property. The Board will likely hear the applicant's continued presentation this evening and then hold a discussion. The Board will likely not vote on a CUP this evening because there will be a lot of discussion as it is, and the Board is awaiting the hydrogeological study.

Sam Foisie, Meridian Land Services, representing TransFarmations agreed with the Chair's summary. He noted that the Board previously performed a site walk of the area and he expects some comments from that site walk this evening. The traffic study has been peer reviewed and will be sent to the applicant's transportation engineer to address comments and concerns raised. A fiscal impact study has been provided, which demonstrates that there is a net positive impact to the Town from this project. The applicant is in the process of acquiring a consultant for the hydrogeological study, recognizing that this is required.

Arnie Rosenblatt asked about the timeline for the hydrogeological study. Sam Foisie stated that the engineer was contacted immediately after the last meeting to get that on their schedule. The applicant hopes to have a proposal signed within a week or two in order to move forward.

Sam Foisie requested to hear the Board's comments and concerns at this time. The only new information to present is that there would be a net positive from this project. Arnie Rosenblatt agreed to move forward with Board comments and questions.

Tom Silvia stated that the fiscal impact study showed a net positive of approximately \$200,000. He asked if the applicant has anything to add to this information. Sam Foisie stated he was not surprised by the result of the study. He knew the proposal would be a net positive, as most developments that he has been a part of in Amherst are net positive, due to the tax base. This proposal is a bit different, due to the workforce housing component. This allows for additional

TOWN OF AMHERST
Planning Board

June 7, 2023

APPROVED

potential funds. He noted that he received questions from Nic Strong regarding if the workforce housing units will be rented or sold. In this CUP application, the workforce housing in the barn is to be rented.

Tom Silvia asked about the fact that the Investment New Hampshire Program allows the ability for the Town to have access to \$100,000 per unit for workforce housing within six months of the initial application. Carter Scott noted that the correct number is \$10,000 per unit. Tom Silvia asked if there is a deadline as to when this could be awarded to the Town. Nic Strong stated that she believes this would be based on the subdivision application.

Tom Silvia asked if there will be a response from the applicant regarding the traffic study peer review. Sam Foisie stated that the applicant recently received the peer review comments. This will be provided to the applicant's traffic consultant to respond formally. There are no additional comments at this time.

Tom Silvia noted that the Conservation Commission and other members of the public mentioned wet areas in the lower elevation area of the site. He has heard the applicant say that there is not any specific engineering in place to handle that beyond the normal requirements for the development. Sam Foisie noted that those comments have been coming from abutters or interested members of the public. As seen on the site walk, this area of the site was dry, although there is water there during rain events. Taking care of the water in that area will occur at the definitive plan level. At that time, test pits will be dug to determine where seasonal high water is and whether or not the ground will need to be raised. Some forms of stormwater management will have to be installed to make sure there are separations to seasonal high water. Engineering will be done to make sure that the units are outside of any floodplains adjacent to the developable area, do not block the flow path of the water that could create flooding issues, and that foundations are typically outside of the water table. The subdivision plans that will address stormwater concerns will be filed once a CUP is approved with a maximum density count.

Tom Silvia asked about the bonus density calculation of 60 units. Sam Foisie explained that the project narrative submitted for the first submittal included this breakdown on sheet eight. He also detailed this during the last Board meeting. Tom Silvia noted that he would review this.

Bill Stoughton stated that he is looking forward to the hydrogeological report and to the response on the traffic concerns. He noted that this proposal has a relatively long shared driveway for some of the single-family homes. He asked how many homes are off that shared driveway. Sam Foisie noted that 10 units are proposed. Bill Stoughton stated that his concern is that this should be considered a road and not a driveway. The Town ordinance defines driveway as ordinarily leading to a single residence. The only other reference he could find to more than one unit coming off a driveway is a reduced frontage shared driveway, where there are two units. Proposing 10 units off that access, each that will need access for emergency vehicles, means that this way needs to meet the standards of a road. This could be a private road and the Board has previously given relief, in some instances, for private roads, but he does not believe this should

TOWN OF AMHERST
Planning Board

June 7, 2023

APPROVED

be considered a driveway. Calling this a driveway would affect how he would judge the benefit to the Town that is provided by some of the other amenities on the site.

Bill Stoughton stated that, regarding the bonuses for the 55+ housing, he has previously mentioned that, in order to qualify under federal law, there needs to be an identifiable community. He requested that the applicant review the regulations, under the Housing and Urban Development Regulations, 24 CFR Part 100. Housing and Urban Development has also issued questions and answers concerning the final rule implementing the Housing for Older Persons Act of 1995 and question #2 may be of particular interest. It reads, "May an owner of single-family houses that are dispersed throughout a geographical area and who is not otherwise exempt under the Fair Housing Act qualify as a housing community or facility and claim the exemption? Answer: no." He would like the applicant to address this. Bill Stoughton stated that, in order for him to award bonus densities for elderly housing, he would have to be convinced that it complies with the federal requirements. Carter Scott explained that the fiscal analysis looked at placing the over 55+ units on two of the lots so that it is concentrated in one spot of the development. This is reflected in CUP2. Bill Stoughton stated that a change like that should not be buried in a fiscal report.

Bill Stoughton asked how many acres of open space are being provided in this CUP. Sam Foisie stated that roughly 63 acres on the hill side and roughly 21 acres on the farm side are proposed. Bill Stoughton asked how many of these acres are wetlands, steep slopes, and floodplains. Sam Foisie stated that he does not have that number directly but knows that the farm side is a majority of wetlands, and the hill side has a variety of landscapes. Bill Stoughton requested that answer for the next meeting. Bill Stoughton stated that a lot of open space is proposed, but not all open space is the same. As the Board considers the discretionary bonuses for open space, he looks at open space that cannot be built on anyway differently than open space that could be built on. The Town gets more benefit from one than the other.

Chris Yates noted that wells and septic systems are proposed for this CUP. He did not see the listing for the septic systems on the plan. Sam Foisie stated that rectangles with LF in them on sheet 6 show the leach fields for CUP2. Chris Yates asked if there will be enough room for the septic systems due to the vicinity of the houses, the type of soils, and the elevation on the hill side. Sam Foisie noted that this will need to be proved out during the subdivision process. The up-to unit number decided on through this process may be reduced due to this item.

Chris Yates asked what kind of "state-of-the-art" septic systems are proposed, as per the narrative. Sam Foisie stated that new systems, such as the Enviro, could be considered state-of-the-art, as they allow for a more efficient way of treating the effluent.

Chris Yates noted that the applicant previously stated that four of the workforce housing units will be rentals. He asked about the process for the other workforce units. Carter Scott explained that there are certain regulations that need to be followed for workforce housing. This starts with the median area income, Nashua in this case, and 30% of that is allowed for housing. After factoring in interest rates and other things, a purchase price is determined. This is publicized by

TOWN OF AMHERST
Planning Board

June 7, 2023

APPROVED

HUD and will be the maximum. This will be placed in the deed restrictions, typically for 25 years. Chris Yates asked if there will be any type of screening for applicants for these units. He noted that the State has a brochure out on workforce housing. Carter Scott stated that this is not the case in Massachusetts, but he is interested to see what the rules are in New Hampshire.

Rob Clemens stated that he is also interested in the hydrogeological study when it becomes available because a number of questions have been raised regarding impacts to water supplies, both availability for this development and impacts on the abutters. He noted that he heard concerns during the site walk regarding visibility on Christian Hill Road, given where the access ways are proposed to be located. The applicant has indicated that the sight lines for the driveway to the south are adequate. Visibility on the north end seems to be poor, as there is a reasonably sharp bend and excess vegetation. He asked if the applicant plans to clear any of the vegetation on the north side of the road as part of the site development. Sam Foisie noted that this would be considered if the sight lines need to be improved to make a driveway meet regulations and safety standards.

Arnie Rosenblatt noted that the Board ultimately will need to make a decision as to whether to grant the CUP and, if so, what the maximum number of units would be. The applicant has laid out the calculations with the request. The baseline calculation for net tract area divided by minimum lot size comes out to 30.9 units. The bonus requested for 55+ units is 14 units based on the ordinance. For workforce housing, there are a total of 26 workforce housing units. He asked the bonus requested for this item. Carter Scott stated that no additional bonus density is being sought for the workforce housing units, as long as the other bonuses are given. Arnie Rosenblatt asked if there is overlap between the senior housing and the workforce housing units. Carter Scott noted that some are both but not all are both. Arnie Rosenblatt noted that there are 30 attached housing units proposed, some are workforce and some are not. Similarly with single floor units. Carter Scott noted that he is not seeking the 15% density bonus for the handicap accessible units. Arnie Rosenblatt noted that there are only three one-bedroom units proposed, with limited bonuses. There are 23 two-bedroom units proposed. Carter Scott noted that there is overlap with the two-bedroom units, senior, and workforce housing units. Regarding the proposed amenities, Arnie Rosenblatt stated that the biggest bonuses sought are in this category. He believes it will be critical for the applicant to show a map of walkability, community spaces, and open space on the plan. This explanation will be important for Board members in making a determination as to whether or not a bonus is appropriate. As much information as possible would be very helpful. The Board saw the existing building structure during the site walk and he has no further questions on the proposed bonus for redevelopment of the existing structures.

Chris Yates asked if the applicant reviewed the Bicycle & Pedestrian Advisory Committee recommendations regarding adding side paths off Boston Post Road. Sam Foisie stated that he has not yet received the Town Departments comments. Chris Yates stated that he would like to know the applicant's comments on this recommendation at a future meeting.

Bill Stoughton stated that the Chair reviewed the list of the bonuses and the applicant indicated which units were being used to qualify for which bonuses. This was very helpful, and he

TOWN OF AMHERST
Planning Board

June 7, 2023

APPROVED

encouraged the applicant to consider this organization and to update the chart if things are changed. Sam Foisie stated that the main focus of this project seems to be density. The most appropriate way to move forward is to make this table a separate attachment along with an exhibit pointing to the plan. Arnie Rosenblatt agreed.

Sam Foisie noted that some Board members have expressed concerns over specific density bonuses. He asked if there are other concerns related to the bonus density categories. The applicant may be able to provide more information to address why the maximum in the categories is deserved. The applicant will be operating under the assumption that 100% of the bonus categories will be received. In order to prove that, the applicant needs to hear concerns as to why this may be incorrect. Arnie Rosenblatt stated that the applicant should not proceed under an assumption that he will receive something that is discretionary from this Board. The applicant should proceed based on the assumption that the Board will very carefully consider the request but needs to be persuaded that the applicant is entitled to a bonus up to the maximum amount. Sam Foisie agreed that the applicant needs to provide evidence for this.

Arnie Rosenblatt called for public comment at this time.

Jim Hendrix, 44 Christian Hill Road, noted that, in 2019, when the applicant brought the first CUP application before the Planning Board, the plan was to pull in Pennichuck Water from the corner of Foundry Street and Davis Lane. In subsequent CUPs, the applicant has moved to a drilled well approach. He asked why this occurred. Carter Scott stated that this proposal was priced out with Pennichuck and it was not cost effective to bring in the water as compared to wells. Jim Hendrix asked if the applicant would consider the cost to the people in nearby neighborhoods whose wells are already not regenerating when the plan is to additionally burden the system with some 60 proposed units. He would like the applicant to ask his hydrologist to consider all of the water for the site, including what the proposed CSA will require. This will likely exceed the amount of water that the housing units need in the summer months. Carter Scott stated that, from his personal experience, his well had to be refracked as it had been approximately 30 years since it was drilled. Once it was refracked, there was plenty of water. For all other questions, he deferred to the hydrological engineer. Jim Hendrix requested that the CSA be part of the hydrogeological study.

Jeanne Ludt, 3 School Street, asked what the grounds were for the Board's denial of the original application. Arnie Rosenblatt noted that this application is not the same as either of the previous applications. Regarding the grounds for the denial, there were two different applications. The grounds for the denial of the first application was essentially a determination that the applicant did not satisfy the requirements of the IIHO in order to allow a CUP. There is not a benefit to going into more detail on that application, as the Board is now dealing with a different application and is required to consider it. The second application was denied, not on its merits, but based on a determination by the Board that it was substantially similar to the first application, and, under applicable law, the Board was thus not required to consider it. The Supreme Court did not address the merits of the first application but reversed the decision based on a determination that the second application was, in fact, materially different enough so that the applicant was

June 7, 2023

APPROVED

allowed to go forward with it. Jeanne Ludt asked if this CUP is markedly different from the previous applications. Arnie Rosenblatt stated that he has not tried to compare them because it does not really matter. He believes, based on the Supreme Court's orders, even if this was an identical application, the Board would be required to consider it. Under the terms of the remand from the Superior Court, the applicant is not required to submit an identical application. Whether the application is the same or different, the Board needs to consider it fresh. The Board is required to consider the pending applications, regardless of the history. Jeanne Ludt stated that, if the application is not that markedly different, then the same problems associated with the earlier applications still exist. This seems like a fruitless exercise if that is the case.

Frank Montesanto, 55 Christian Hill Road, stated that Carter Scott mentioned that he would not be seeking bonuses in one category, provided that all the other bonuses were accepted. He asked if this would become a negotiation with the Board. Arnie Rosenblatt stated that this is a fair question for the Board to consider.

Will Ludt, 3 School Street and Chair of the Amherst Heritage Commission, noted that there is a section in the Town regulations called Preservation of Existing Features. The Heritage Commission is concerned with preserving the rural character and existing historic resources that may be on a property. He read through Preservation of Existing Features: "Due regard shall be given to the preservation and protection of existing features, trees, scenic points, brooks, streams, rock outcroppings, water bodies, high value ecological habitats, or other natural resources, historic landmarks, stonewalls, and other significant features. Originality in lot layout will be encouraged to achieve the best possible relationship between the development and existing features on the property." He asked if the applicant has considered a different lot layout than this one, which he considers to be urban/suburban. Sam Foisie stated that other layouts were considered but this layout is proposed in order to include a road that meets the Town standards, with no waivers. The two CUPs proposed have different layouts, although they appear similar. The CUP3 proposal preserves stonewalls and uses them as right of way lines where possible.

There was no further public comment at this time.

Arnie Rosenblatt suggested moving on to the next application and considering continuing both after the presentation.

2. **CASE #: PZ17124-032323 – Robert H. Jacobson Revocable Trust, Laurie Stevens, Trustee (Owner) & TransFarmations, Inc. (Applicant), 17 Christian Hill Road, PIN #s: Tax Map 005-148-000 & 005-100-000** – Conditional Use Permit. To depict a 33 Single-Family Lot, and Four-Unit Barn and Planned Residential Development per the Integrated Innovative Housing Ordinance (IIHO). *Zoned Residential Rural. Continued from April 19, 2023.*

Sam Foisie, Meridian Land Services, explained that the CUP3 application has also provided a fiscal impact study, which represents a similar fiscal benefit to the Town. The applicant has received the peer reviewed traffic comments and will review them with the traffic engineer to

June 7, 2023

APPROVED

respond to. The applicant has not yet received the hydrogeological study for CUP3. He stated that the main topic for this evening may be related to the open space that the applicant is planning to transfer to an abutting property owner through this process.

Arnie Rosenblatt asked for Board comments and questions at this time.

Tom Silvia noted that he has the same questions for this CUP as he did for the last. Regarding the open space proposed to be transferred to an abutting landowner, he asked if this should be counted toward the open space calculation if it is being given away. He does not understand the exact strategy for this open space area, and how it will be accounted for. Sam Foisie explained that, if the Board views this project without that open space land, the remaining open space acreage meets the open space minimum requirements. This is why the applicant is still seeking a density bonus for the open space requirement. Secondly, if the Board views this open space area as part of a nearby lot, he believes the Board would find it appropriate to restrict this entire area via an easement or with restrictions placed on the deed in order to preserve and protect that land. There may also be other legal ways to do this. This land would essentially still be located within the development. He asked the Board what the difference is between having restrictions on this land and transferring it to an abutting property owner.

Tom Silvia stated that he finds it difficult to consider the two applications, each with different variables to evaluate. Sam Foisie explained that the two scenarios he put forth represent why this request is appropriate. If this development did not include that open space land, it would still meet minimum open space requirements. If that open space property was part of the end lot property of the site, he does not believe the Board would have any concerns. If this is true, he asked what the Board's concerns are regarding the same type of deed restrictions placed on that land and transferred to someone else. There are likely questions regarding how to make sure this piece of property does not get grouped into another subdivision. The appropriate mechanism for this would be to place an easement over it to make sure it does not get double dipped for density and development. This open space area will have some type of restrictions placed on it to make sure it remains an open space lot, potentially allowing for farming or forestry, and would then be sold over to an abutting property owner, as it has no frontage.

Tom Silvia stated that he still has questions regarding the proposed solar farm. Carter Scott stated that the proposal for the solar farm lots is to finance them through investment tax credits. Someone will own the solar lots and they will generate electricity. Typically, after five years there will be depreciation and the investment tax credits will be received. Then the lots can be sold to another party. This portion of the farmland can be leased to a solar aggregator. Tom Silvia stated that this sounds like an energy generation business. Carter Scott stated that this is a way to produce more energy on the site than is consumed, in order for the project to be regenerative. Tom Silvia asked if this is a commercial business. Carter Scott stated that the definition of commercial solar is above 60 kW and these are all proposed to be 60 kW or less. This is only the permitting stage, and it is unclear yet who would own the arrays.

June 7, 2023

APPROVED

Bill Stoughton stated that he has similar comments as from the CUP2, including regarding the driveway. This CUP only shows three houses coming off the driveway, but he believes this could be reworked so that one of those driveways comes off the cul-de-sac. Bill Stoughton asked if the solar array lots are being considered as part of the open space for the project. Carter Scott stated that they are. Bill Stoughton read a couple of provisions from the Planning Residential Development (PRD) ordinance. He noted that the IIHO is an implementation vehicle for elderly, workforce housing, and PRD. "Provisions shall be made for the open space to be held in common equally by all the owners of the PRD." The fee simple has to be owned by the people who live there for any space counting in the PRD. With respect to the open space, "no building or construction, whether it be structures or septic systems, shall take place in the open space." Building solar arrays cannot be counted as open space. He urged the applicant to revisit the plans with that in mind. Carter Scott noted that he has more than the 40% of the open space required. He asked if it was suitable to take out the area taken up by the solar arrays. Bill Stoughton stated that he does not believe the size of the solar array is considered to determine if it is residential. If the array is being used to supply the residents, then it may be residential, but if the energy is being sold it is likely commercial. He stated that he does not believe commercial or industrial uses are allowed in this District. The power generated likely needs to be used by the residents on the site. With respect to removing this land from the open space calculation and stating that there is still more than enough to meet the 40% requirement, if the land is removed as open space then it also needs to be removed from the baseline calculation, which will lower the baseline number. If the applicant is proposing to sell the property, then it is not owned by the owners of the PRD and that acreage cannot count toward the baseline density number which is being sought in terms of bonuses. Bill Stoughton stated that he has the same question regarding the acreage proposed for open space and how many acres are wet, steep, floodplains, etc.

Bill Stoughton asked about the proposed accessory dwelling units (ADUs) in this CUP. Carter Scott explained that the architectural plans have options for ADUs. He suggested accounting for these in the bedroom count, as part of a total cap on the number of units. Bill Stoughton explained that there was a recent IIHO development in which the Board approved densities and the developer elected to use one of the units as an ADU. He would be comfortable approving an up-to number of units, with a certain number allotted as ADUs. The ADUs cannot increase the number beyond the density awarded by the Board. Carter Scott stated that the current density is 53 units by his calculation. The proposal is for 33 single family homes, and, in the state of New Hampshire, any single-family home can have an ADU. The plan will be to consider where ADUs can occur on the site. The current Master Plan talks about ADUs as an excellent way to get workforce housing. Bill Stoughton stated that PRDs in the past have included homeowners' association or condo documents with ADU restrictions included. If a higher density is allowed based on bonuses given, the Board will not allow that number to then be basically doubled based on ADUs in each unit. Carter Scott acknowledged that. Sam Foisie stated that the proposal is for 33 single family units, with six units of workforce housing. The applicant will be requesting a density total which will include the ADUs. Bill Stoughton asked about the density bonus requested for CUP3. Carter Scott stated that the total proposed is 53 units through the calculation, with some ADUs included in that count. While the calculation shows a maximum of

June 7, 2023

APPROVED

53 units, he would be happy with some number in between and believes this will come through a back-and-forth with the Board.

Chris Yates stated that he had no additional questions at this time.

In response to a question from Rob Clemens, Carter Scott stated that he does anticipate public access to the open space proposed for this CUP. The lots proposed to be sold off to an abutter will likely not be able to provide public access.

Arnie Rosenblatt explained that the applicant believes he is entitled to some number of units up to 53. This includes six workforce housing units, and a requested bonus of 0.4 for four attached housing units. There is some overlap between workforce and single floor units, as well as overlap with workforce and the one-bedroom and two-bedroom units. Walkability includes the proposed internal sidewalks. He asked about the acreage of the proposed open space for the community. Carter Scott stated that this is approximately 120 acres, including the 50 acres proposed to be sold to an abutter. The proposed open space open to the public is approximately 50 acres, which does not include the land proposed to be sold. Open space under restrictive covenant does not include the land proposed to be sold. The proposed bonus for redevelopment of existing structures is the same as in the previous CUP. Arnie Rosenblatt asked if the 50 acres being sold is being used to arrive at the baseline calculation upon which the bonuses are based. Carter Scott stated that this is correct.

Arnie Rosenblatt noted that, if the applicant was proposing a standard subdivision in two-acre zoning on 60 acres of buildable land, this could hold 30 houses. If the applicant was planning to sell off 50 of those acres for \$1M under restrictive deeds, he would be left with 10 acres. He asked if it was the applicant's position that he would then be entitled to build 30 houses in a standard subdivision in that 10 acres due to the original calculation before the land was sold off. Carter Scott noted that, in a standard subdivision, there would be a requirement to have acreage and frontage on each and every lot. This is being proposed under an innovative housing ordinance that allows more flexibility. Arnie Rosenblatt asked if it is the applicant's position that because this is an innovative housing ordinance, he is entitled to use the land proposed to be sold for a profit as part of the calculations. Carter Scott noted that the development rights will be extracted from this area. Arnie Rosenblatt stated that he does not agree with this, and it is counterintuitive to use the land being sold off to get bonuses. Carter Scott asked, if this would qualify if this area was 120 acres, with development proposed over 70 acres and 50 acres of open space. He should not be penalized for a more ecological design that only uses 20 acres of the 120 acres for construction. Sam Foisie stated that, if the lot on the end was a 51-acre lot, this proposal would still meet the open space requirements. That lot would be sold off to an individual owner and the density would have been extracted from that to come up with the density calculations, just as every other lot is sold off to an individual owner and that land is used in the density calculations. The proposal is to be allowed to remove the density from that lot, as there are 30 plus sales taking place throughout the development, with one extra sale taking place on the large lot. Arnie Rosenblatt stated that applicant is benefiting twice, by getting paid for the lot and by getting the benefit of using that land to get bonuses. Arnie Rosenblatt stated that he would need

TOWN OF AMHERST
Planning Board

June 7, 2023

APPROVED

to contemplate this. Sam Foisie stated that he could include this as a more formal request in writing.

Arnie Rosenblatt asked for public comment at this time.

Joseph Broderick, Christian Hill Road, asked who will maintain the solar farm. He is concerned regarding the operation of the inverters, as these are known to fail. He asked how the wiring will be protected from wild animals. He asked if the high voltage will be tied into the main distribution. Carter Scott stated that the company he spoke with does provide a maintenance contract. Inverters typically fail at year 15 and this will be part of the overall maintenance of the system. There are best practices in terms of protecting wires. The high voltage line comes to the pole. Joseph Broderick stated that PV systems typically have a useful life around 20-25 years. He asked who will be responsible for removing and/or replacing the array at that time. Carter Scott stated that, typically, leases have renewal periods. The guarantee from PV manufacturers is typically 20-25 years. If, 30 years from now, someone wants to put in new panels, the upgrade would be done at that time.

There was no additional public comment at this time.

Arnie Rosenblatt stated that the Board is required to make a determination within a certain number of days from the time of the application. This deadline is on June 23, 2023. He would like to discuss when to continue these hearings until and then ask the applicant to defer the deadline to that date. Sam Foisie stated that the applicant would like to continue this to the next Board meeting. Arnie Rosenblatt stated that the hydrogeological study will not be back by that time. Sam Foisie stated that, while this may not be back, the meeting could focus on discussing the density calculations. Arnie Rosenblatt stated that the Board would first like to see the hydrogeological study, the response to the peer review traffic study, and other items as discussed. He does not want to keep having meetings when all of the information is not yet available, nor rush the process. Sam Foisie suggested continuing these hearings for two months. Nic Strong stated that this would be the August 2, 2023, meeting. Arnie Rosenblatt suggested that this occur at the High School. Sam Foisie agreed that the deadline for Planning Board action would be deferred until that time.

Bill Stoughton moved to continue CASE #: PZ17123-032323 and CASE #: PZ17124-032323 to August 2, 2023, at 7pm, at the High School. Seconded by Chris Yates. Motion carried unanimously 4-0-0.

Arnie Rosenblatt noted that there will not be additional notice to abutters for this continuance.

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

3. **CASE #: PZ17315-050923 – Melissa & Christopher Parker-Christou (Owners & Applicants); 55 Broadway, PIN #: 025-052-000 – Conditional Use Permit in**

TOWN OF AMHERST
Planning Board

June 7, 2023

APPROVED

WWCD. To lessen steep slopes adjacent to Baboosic Lake with the addition of retaining walls and to repair the existing retaining wall. *Zoned Residential Rural*.

Arnie Rosenblatt read and opened the hearing. He explained that the Board will first make a determination as to whether the application is complete. If it is, the Board will enter a public hearing and the applicant will make a presentation. The Board will then have a chance to comment and ask questions. Abutters and interested parties will then be able to do the same, and the Board will then have a chance to make a decision.

In response to a question from Arnie Rosenblatt, Nic Strong stated that there are no issues with completeness.

Chris Yates moved that the application package is complete for CASE #: PZ17315-050923 – Melissa & Christopher Parker-Christou, 55 Broadway. Seconded by Tom Silvia.

Motion carried unanimously 4-0-0.

Chris Guida, certified wetland, and soil scientist with Fieldstone Land Consultants, explained that the applicant started this process by presenting to the Conservation Commission, prior to submitting for NHDES shoreland and wetland permits. The property contains a lawn area which is steep down to Baboosic Lake. There was an old retaining wall on the property that has failed and continues to erode into the Lake. This project is basically a stormwater management project to secure and repair the wall along Lake and add a retaining wall halfway up the slope to create a terraced situation to minimize erosion to the Lake and provide a flatter area for the owners. There are no additions proposed and there is no increase in impervious area. DES shoreland and wetlands permits have been secured.

Rob Clemens noted that the Conservation Commission has reviewed this proposal twice and based on the responses and the current plan, he has no further questions.

Chris Yates stated that it is always nice to see homeowners looking to improve the stormwater on a property which inevitably helps improve the Lake water quality.

Bill Stoughton asked if the applicant had any objections to the requested corrections in the Staff Report. Chris Guida stated that there are no objections.

Tom Silvia stated that he has no questions at this time.

Arnie Rosenblatt asked for public comment at this time.

A representative stated that Anne McKay, an abutter, was wondering how close the repairs will go to her land. There are existing cement steps that go down to the Lake which have been there 40 years and the rock wall abuts that. The retaining wall is proposed to be 4' deep, but this area is all ledge. He asked if the proposal would include drilling and blasting to install the four-

June 7, 2023

APPROVED

footers for the retaining wall. Chris Guida stated that the proposed retaining walls are just below 4' high. This is basically a laid fieldstone wall so there is no digging down similar to a foundation. The ledge will act as a stable base for the wall. He noted that the property line can be staked as part of the construction process. The representative stated that the new retaining wall will be built at 239 feet and the front yard is at elevation 244 feet. This slope goes down into Anne McKay's driveway and he has had to install sandbags so that this area does not erode underneath the house. He asked if the grade could be brought up to elevation 244, in order to completely level it and stop the water from running onto Anne McKay's property. Chris Guida stated that the plan is to reduce the slope on the entire back of the property. The proposed gravel material will infiltrate stormwater and retain it on the property. There should be no redirection of stormwater or groundwater flow onto the abutting property. The representative stated that this will stop the water from naturally running onto the abutting property. There is a natural slope down to Anne McKay's house, as it sits between the two higher houses. Chris Guida stated that the retaining wall will not act as a barrier, as it is fieldstone. This will improve the infiltration to stop water coming off the property and is an improvement project. The representative stated that when the ground freezes in the wintertime the water cannot infiltrate and has to go somewhere. This will flow onto Anne McKay's property. The abutter would like to see this area level with the front of the property, so that water flows down into the street. Chris Guida stated that the whole intent is to not change any flow direction from stormwater. The intention is not to have retaining walls above 4' for structural purposes and safety. The representative stated that the abutter is asking this to be increased by 4". Chris Guida stated that this can be considered, but he believes this will improve the situation overall.

There was no additional public comment at this time.

Bill Stoughton noted that one item in the Staff Report is that compliance with the Town Stormwater Regulations is required. One of the requirements of the Stormwater Regulations is that the project will not cause an increase in runoff leaving the site.

Bill Stoughton moved that the Board finds 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 (WWCD); and further to approve CASE #: PZ17315-050923 – Melissa & Christopher Parker-Christou for a Conditional Use Permit for site improvements within the WWCD at 55 Broadway, Tax Map 25 Lot 52, as shown on the plan dated May 4, 2023, with the conditions set forth in the Staff Report and the following additional condition: the Amherst Stormwater Regulations shall be complied with in this project. Seconded by Chris Yates.
Motion carried unanimously 4-0-0.

4. **CASE #: PZ17317-050923 – Brian Graziano & Victoria Atchley (Owners & Applicants); 2 Ralmar Road, PIN #: 006-035-002 – Conditional Use Permit for Accessory Apartment. To permit existing second story of detached garage as an Accessory Dwelling Unit in space currently used as an office. Zoned Residential Rural.**

June 7, 2023

APPROVED

Arnie Rosenblatt read and opened the hearing.

In response to a question from Arnie Rosenblatt, Nic Strong stated that there are no issues with completeness.

Tom Silvia moved that the application for CASE #: PZ17317-050923 – Brian Graziano & Victoria Atchley; 2 Ralmar Road is complete. Seconded by Chris Yates. Motion carried unanimously 4-0-0.

Spencer Tate, Meridian Land Services, explained that the proposal intends to convert the second story of an existing detached garage into an ADU, and retain the existing house as the primary structure. The property contains an existing 3-bedroom house, constructed circa 1986. This is a 3.09-acre lot. The living area of the existing house is 2,278 s.f., according to the municipal tax records. The existing garage was legally constructed circa 2005 with all the local permits obtained. The garage contains a partial second story that was used as a fitness room and home office. There are no plumbing fixtures, but the area was heated. The intention of this proposal is to allow that area to be converted into a detached one-bedroom ADU. The square footage of the proposed living space is approximately 500 s.f. Contingent upon approval, the applicant will pursue a septic design through the State of New Hampshire. No other waivers or relief is sought either locally or through the State. There are no proposed structural modifications, other than to the interior and potentially adding an egress window on the existing exterior wall. There is no expansion of the footprint proposed and the building still complies with all local setbacks in the WWCD.

Tom Silvia noted that the Staff Report requested clarification of the language regarding the separate conveyance of the ADU from the main house. The submittal states that a subdivision would be required in order to separately convey the ADU from the principal dwelling unit. Spencer Tate stated that this unit has only 200' of frontage and is below the minimum lot size, so there is not a lot of subdivision potential. In recognition of Section 3.5.C.4, which prohibits the separate conveyance of an ADU, a statement can be made to this effect. Tom Silvia noted that there is a similar comment regarding the septic systems for the units and making this decision more definitive. Spencer Tate agreed and noted that the proposed septic design was provided in the materials.

Tom Silvia stated that the Staff Report discussed appropriate parking for the site and noted that there is a requirement for four parking spaces. Spencer Tate noted that the existing driveway has ample space for four parking spaces. It is approximately 478' long with two parking spots in front of the garage, two to the rear of the garage, and at least three by the primary house. The septic design and survey depicts the existing driveway and parking areas.

Bill Stoughton and Chris Yates stated that they had no questions or comments at this time.

June 7, 2023

APPROVED

Rob Clemens asked if the proposed septic system is a new and separate septic system from the existing, or a revised one to serve both units. Spencer Tate stated that the existing house is serviced by an existing State-approved septic design, with all necessary approvals. The existing garage does not have any plumbing or wastewater systems. Once an ADU is installed, it will need to be tied into the existing system. In order to do so, the applicant must demonstrate to the Town and State that the lot can support the proposed use of, not only the three-bedroom house, but also 1.5 bedrooms in the ADU. The septic design approval will be enough to satisfy the three-bedroom house and the ADU. Once approved, a tie in system will be used to tie into the existing leach field. The existing system will service this building until it reaches its lifespan and then the design on file will be approved with this contingency.

In response to a question from Rob Clemens, Spencer Tate stated that the existing well is sufficient to support both units.

There was no public comment at this time.

Tom Silvia moved to approve CASE #: PZ17317-050923 – Brian Graziano for a Conditional Use Permit for a 750 s.f. accessory apartment in an existing detached structured at 2 Ralmar Road, Map 6 Lot 35-2, with the conditions precedent and subsequent as outlined in the Staff Report; with Findings of Fact as set forth in the Staff Report. Seconded by Chris Yates.
Motion carried unanimously 4-0-0.

5. **CASE #: PZ17318-050923 – Obadiah Dart (Owner & Applicant); 116 Spring Road, PIN #: 004-157-000** – Conditional Use Permit for Accessory Apartment. To retain the existing 1,080 square foot dwelling unit as an Accessory Apartment and construct a new primary single family dwelling unit on the lot. *Zoned Residential Rural*.

Arnie Rosenblatt read and opened the hearing.

In response to a question from Arnie Rosenblatt, Nic Strong stated that there are no issues with completeness.

Chris Yates moved that the application package for CASE #: PZ17318-050923 – Obadiah Dart (Owner & Applicant); 116 Spring Road is complete. Seconded by Rob Clemens.
Motion carried unanimously 4-0-0.

Spencer Tate, Meridian Land Services, explained that the proposed CUP application intends to retain the existing domicile on the site, which dates back to 1750. The plan is to convert that to an ADU and construct a new house on the lot as the primary structure. The existing house is serviced by a well and septic system. There is also an existing loop driveway. This property is a 13.02-acre lot in the Rural Residential Zone. The existing living space is 1,080 s.f. and there will be no more than two bedrooms in the ADU. The structure meets the dimensional requirements of

June 7, 2023

APPROVED

the ADU criteria. A stormwater management plan was submitted. The CUP is needed for the detached ADU but due to the size of the proposed new home, a stormwater management plan was proposed for the project. The proposed house size and dimensions bump it over the stormwater management criteria, but the CUP for the detached ADU does not. There are no impacts to the flood zone and no impacts to the WWCD or aquifer protection zone. As the gross square footage exceeds 20,000 s.f., with the driveway, septic system, well, and proposed improvements, this triggers the stormwater management plan. There are three infiltration basins proposed, along with a stone drip edge on the proposed home. The basins will have less than a 72 hour drain time, as required. All stormwater is routed to the surface infiltration basins, and these will be greater than 75' from surface water. The proposed infiltration basins and stormwater drainage items will accommodate 100% of the flows from the new impervious area proposed on the lot.

Rob Clemens noted that this property is currently surrounded by Town owned conservation land. This area is a combination of fields and forests, with no particular boundary markings. There is currently access for the Town to maintain the conservation lands and fields using mowing and forestry work behind the house. This is accessed using a right of way on the east side of the property. The Conservation Commission asked if there should be a greater setback for the proposed driveway from the Town right of way in this plan. The Conservation Commission is also concerned if the access way can be maintained so that maintenance equipment can be brought in. The Commission would also like to make sure there is no encroachment on the conservation land in the back using a survey and boundary markings. Obadiah Dart stated that Meridian Land Services staked those areas recently. There is a pile of mulch and leaves which is part of the Commission access. This can be cleared out as part of construction to make sure the Commission's access can proceed uninterrupted.

Rob Clemens asked if there should be additional setback between the driveway and the Town-owned property, Nic Strong stated that this is not a requirement. Obadiah Dart stated that the intention is to use crushed stone for the driveway. This will flow up into the access way. The intent is to keep the same accessibility. Spencer Tate stated that the driveway is fairly close to the lot line, but the intention is not to raise the grade of the area. It seemed better to be a little closer to the lot line on this side of the lot than closer to the wetland buffer on the opposite side.

Chris Yates noted that the DPW recommended that the applicant either request a waiver or close the westerly driveway on the site. Spencer Tate stated that there will be a separate detached ADU and so there is an argument to be made for maintaining access for emergency services. Removal of that driveway would trigger a secondary CUP, as it would be within the 100' buffer to the WWCD. The intent is to utilize the existing road cut and driveway cut to maintain what currently exists. Obadiah Dart stated that the access point in question is basically an ingress. The egress comes out from the easterly side. Spencer Tate noted that this is not a heavily trafficked or high-volume road.

TOWN OF AMHERST
Planning Board

June 7, 2023

APPROVED

Bill Stoughton noted that the stormwater plan would be attached to the building permit. Spencer Tate agreed that, under no circumstances does the owner anticipate more impact than what is depicted.

Bill Stoughton noted that the Staff Report states that this will need to be submitted and reviewed by the Town Engineer. Bill Stoughton asked if the infiltration basins are proposed per the State BMPs and will meet the clean-up requirements. Spencer Tate stated that this is correct.

Bill Stoughton suggested an additional condition that the right of way to Amherst Town property shall be delineated, and Town access shall be maintained. Obadiah Dart agreed.

Tom Silvia stated that he had no questions or comments at this time.

Arnie Rosenblatt asked Nic Strong if there is a maximum size to an ADU. Nic Strong stated that it must be under 1,100 s.f. Arnie Rosenblatt noted that, one could, effectively, create an additional subdivision if a property is under 1,100 s.f. Bill Stoughton stated that this is not a subdivision. The applicant could raze the existing structure, build a new house without permission from the Board, and come before the Board for an ADU through the CUP process. Spencer Tate explained that pursuant to Section 3.5.C.4., there is no intent or desire for subdivision of land as part of this proposal.

Arnie Rosenblatt asked for public comment. Obadiah Dart stated that he has an abutters letter of support that he will submit into the record. There was no additional public comment at this time.

**Bill Stoughton moved to approve CASE #: PZ17318-050923 – Obadiah Dart for a Conditional Use Permit for a 1,080 s.f. accessory apartment in an existing detached structure at 116 Spring Road, Map 4 Lot 157, with the conditions set forth in the Staff Report and the following additional condition, that the right of way to the Amherst town-owned property shall be delineated and Town access shall be maintained; with Findings of Fact as set forth in the Staff Report. Seconded by Chris Yates.
Motion carried unanimously 4-0-0.**

6. **CASE #: PZ17316-050923 –X Master, Inc. (Owner) & Jason Irish (Applicant); Overlook Drive Building B, Unit 5; PIN #: 001-023-006-B5 – Non-Residential Site Plan. Change of Use of Unit 5 from a professional office space to a wellness center. Zoned Commercial.**

Arnie Rosenblatt read and opened the hearing.

In response to a question from Arnie Rosenblatt, Nic Strong stated that there are no issues with completeness.

June 7, 2023

APPROVED

**Chris Yates moved that the application package for CASE #: PZ17316-050923 – X Master, Inc. (Owner) & Jason Irish (Applicant); Overlook Drive Building B, Unit 5 is complete. Seconded by Rob Clemens.
Motion carried unanimously 4-0-0.**

Sam Foisie, Meridian Land Services, explained that the applicant is seeking a change of use site plan for unit B5, from a professional office to a hair salon which will consist of five employees. The business would be made up of two hair chairs, a dietician, and an esthetician. The parking calculations considered this as a hair salon, as this seemed to be most appropriate. The application addresses parking and the septic system for the proposal. The rest of the work occurs inside the building. A professional office use requires 11 spaces. The proposed use's parking requirement would be 10 spaces. A lot loading calculation established that the lot would support the proposed increase in flows. The applicant is still in the process of determining whether or not the existing septic system can support these loads. One waiver requested is to remove this proposal from the Planning Board process and allow it to be handled administratively. Typically, this request would have been handled administratively if the change of use was below 2,000 square feet. This unit is larger than that, kicking it into the site plan approval process. It is believed that staff is appropriate to review this item, so as to not take up the Board's time and not delay the applicant on receiving the approval and certificate of occupancy. If the Board finds that waiver unacceptable, there are also additional waivers requested from site plan requirements, essentially all that relate to the plans. The parking has been shown to be sufficient, the lot loading has been shown to be sufficient with a caveat that the existing septic needs to be verified to have capacity, and there are no outside changes proposed at this time.

Arnie Rosenblatt asked Nic Strong if she would be okay handling this item administratively. Nic Strong answered affirmatively.

Tom Silvia stated that he would be okay with having this handled administratively.

In response to a question from Bill Stoughton, Sam Foisie stated that, if the Board approves the site plan this evening, the applicant will conditionally work out the septic system issues with NHDES. Bill Stoughton stated that he would be okay doing that, along with an additional condition to the Staff Report that the applicant either demonstrate adequacy of the existing septic system or implement a new approved septic system. Sam Foisie stated that the applicant would be amenable to that.

Chris Yates stated that he does not have any questions and would support the waiver request.

Rob Clemens asked if the proposed change of use to a hair salon involves any chemicals, dyes, or other items that may require some pretreatment versus the current use. Sam Foisie stated that he is not aware of any items like that but will follow up. This would be part of the septic system review. Jason Irish stated that materials used will be biodegradable and the sink will have items installed to help with this concern.

June 7, 2023

APPROVED

Arnie Rosenblatt stated that he would like an additional condition regarding chemicals and appropriate steps taken in order to avoid chemicals being dumped down the drain.

Bill Stoughton moved to approve the waiver requested to the site plan review regulations as the Board has determined that specific circumstances relative to the site plan, namely the lack of changes to physical characteristics, indicate the waiver will properly carry out the spirit and intent of the regulations. Seconded by Tom Silvia.

Motion carried unanimously 4-0-0.

Bill Stoughton moved to approve CASE #: PZ17316-050923 – X Master, Inc. (Owner) & Jason Irish (Applicant); for the above cited Non-residential Site Plan Review of Map 1 Lot 23-6-B5, Overlook Drive, Building B Unit 5, for change of use of 2,794 s.f. of office space to a wellness center, consisting of a dietitian and esthetician and two hairdressers, with the conditions set forth in the Staff Report and the following two conditions: the applicant shall demonstrate adequacy of the existing septic system or shall obtain approval of a revised septic system; and hazardous materials shall be properly disposed of and shall not be disposed of in the septic system; with Findings of Fact that the Board approves this application based on a finding that the applicant has demonstrated that there will not be a material change in terms of parking requirements and there will not be a negative impact on the environment based on the approval. Seconded by Chris Yates.

Motion carried unanimously 4-0-0.

OTHER BUSINESS:

7. Minutes: May 17, 2023; Site Walk May 9, 2023

Bill Stoughton moved to approve the meeting minutes of May 17, 2023, as presented. Seconded by Tom Silvia.

Motion carried unanimously 3-0-1 [R. Clemens abstaining].

Bill Stoughton moved to approve the site walk minutes of May 9, 2023, as presented. Seconded by Tom Silvia.

Motion carried unanimously 3-0-2 [With A. Rosenblatt voting; R. Clemens and C. Yates abstaining].

8. Any other business that may come before the Board.

Bill Stoughton stated that, with respect to the Clearview East Village development which was previously approved by the Board with a condition precedent that a bond be posted, the applicant stated that normally timing for posting of the bond is at the preconstruction meeting. This would not be a condition precedent, but instead the Chair would sign the plan as approved before the bond was posted. The applicant has requested this be done during that meeting. Due to this being

TOWN OF AMHERST
Planning Board

June 7, 2023

APPROVED

a relatively simple change and Nic Strong has confirmed that the preconstruction meeting is an appropriate time, he asked that this be handled administratively.

Bill Stoughton moved to authorize Nic Strong to make the proposed change to the timing, to allow for this to be addressed during the preconstruction meeting. Seconded by Chris Yates.

Discussion:

In response to a question from Tom Silvia, Bill Stoughton explained that the bonding requirement was previously a condition precedent, meaning it had to be satisfied before the Chair can sign the plans as approved. Then those approved plans can be recorded. All of that has to happen before ground breaking. The applicant is making this request, as that could lead to a lag.

Motion carried unanimously 4-0-0.

Bill Stoughton moved to adjourn the meeting at 9:43pm. Seconded by Chris Yates. Motion carried unanimously 4-0-0.

Respectfully submitted,
Kristan Patenaude

Minutes approved: June 21, 2023