

TOWN OF AMHERST
Planning Board

December 7, 2022

APPROVED

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

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

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

PUBLIC HEARING(S):

1. **CASE #: PZ16540-102822 - James & Shelley Lacaille (Owners & Applicants); 27 Bloody Brook Road, PIN #: 005-140-002 & Charles & Kathleen Wason (Owners & Applicants), 29 Bloody Brook Road, PIN #: 005-140-001 – Subdivision Application, Lot Line Adjustment – To illustrate an equal area lot line adjustment between lots 5-140-2 and 5-140-1. Zoned Residential Rural.**

Arnie Rosenblatt opened the hearing.

Tim Kachmar sat for Tom Silvia.

Tracie Adams moved to accept the application as complete. Seconded by Cynthia Dokmo.

Motion carried unanimously 6-0-0.

Tracie Adams moved no regional impact on this application. Seconded by Chris Yates.

Motion carried unanimously 6-0-0.

Arnie Rosenblatt stated that the Board will first hear from the applicant and will then have an opportunity for comment and/ or questions. The Board will then hear from any abutters or interested parties.

Gregg Jeffrey, Jeffrey Land Surveying, representing Mr. James Lacaille and Mr. Charles Wason, addressed the Board. He explained that this is a proposed lot line adjustment between two lots, #27 and #29, on Bloody Brook Road. The two applicants have entered harmoniously into an equal area lot line adjustment agreement to trade an equal 1,200 +/- s.f. to make the lot lines more conforming. These lots are, by today's standards, substandard as far as area, but this does not deal with a net change in the area of the lots. Area A is intended to go to Lot #27, and Area B is intended to go to #29.

Tracie Adams stated that this looks to be an equal swap of land. This will help with the way the applicants want to utilize the land. Mr. Jeffrey stated that the intention is to make the lot lines conform to the line that is to be recorded on the deed.

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In response to a question from Bill Stoughton regarding the staff report and the conditions listed, Mr. Jeffrey stated that he has no concern with the conditions and has already taken care of several items mentioned in the staff report. Mr. Jeffrey stated that he has brought in a revised plan and an updated abutter list.

In response to a question from Tom Quinn, Nic Strong agreed that the abutters list was originally wrong when it was submitted but was corrected prior to notification for this hearing.

Cynthia Dokmo, Chris Yates, Pam Coughlin, and Tim Kachmar had no questions or comments at this time.

Tracie Adams moved to approve CASE #: PZ16540-102822 for James & Shelley Lacaille & Charles & Kathleen Wason for the above cited lot line adjustment of Map 5 Lots 140-1 & 140-2, with frontage on Bloody Brook Road, with the conditions precedent and conditions subsequent listed in the staff report, as well as completion of any of the items listed on page three of the staff report. Seconded by Chris Yates.
Motion carried unanimously 6-0-0.

2. Public Hearing on Proposed Zoning Ordinance Amendments. See separate notice.

Arnie Rosenblatt stated that there are a number of proposed amendments to the Amherst Zoning Ordinance. These items have already been discussed by the Planning Board and the purpose of this meeting is to have a public meeting to discuss the proposed language, to determine whether or not the Planning Board will move forward with the language as it exists.

Bill Stoughton moved to enter into a Public Hearing on the proposed Zoning Ordinance Amendments. Seconded by Chris Yates.
Motion carried unanimously 6-0-0.

Arnie Rosenblatt stated that he does not believe there needs to be a discussion with respect to each of these items.

Regarding the first item on signs, Bill Stoughton stated that Nic Strong and Town Counsel have added suggestions and considerations. Arnie Rosenblatt asked Nic Strong to review her suggestions.

Nic Strong stated that, regarding the definition section for off-premises signs, on page 15, there was a recent US Supreme Court case that dealt with off-premises signs. The court upheld a definition from the city of Austin, saying that it was not content based. The New Hampshire Municipal Association suggested that towns in New Hampshire could also use that definition. She proposed that the Town consider using the Austin definition of off-premises sign, which reads as follows, "a sign advertising a business, person, activity, goods, products, or services not located on the site where the sign is installed, or that directs persons to any location not on that

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87 site.” Nic Strong stated that, in Section H. Review and Appeals, the second sentence addressed
88 getting a variance but did not convey the full scope of what the Board of Adjustment should do
89 for a variance. She suggested striking the second sentence completely. Nic Strong stated that,
90 under Existing Non-conforming Signs, in the first sentence to change “a sign” to “any sign.” In
91 Section K.4, to add commercial banners to the exception, as these are allowed in the table further
92 in the ordinance. Regarding Section I., Exempt Signs, 5.C., Nic Strong noted that this states that
93 one open flag per building is allowed. She asked what would happen in a multi-unit building that
94 may have different businesses with different open hours. Nic Strong stated that, in the table
95 under Business Sign District, she would suggest striking the word ‘portable’ in a ‘portable
96 sandwich board’, as, previously, portable signs have been prohibited.

97
98 Nic Strong stated that Scott Tenney, Building Inspector, suggested, in Section O. Sign Standards,
99 1.B. that the language require clearly legible property street numbers of the sign location to be
100 installed on the sign. He currently requests that of applicants to make it easier to find properties
101 when driving around and would like it to be codified. In the same section, item C. Scott Tenney
102 also suggests referring to the Building Code, as there is a section on wind design requirements,
103 rather than including a specific wind rating requirement. Thus, the language would read, “all
104 freestanding signs shall be designed and constructed in conformance with wind design
105 requirements contained in the Building Code.” Scott Tenney’s next suggestion is that item H. of
106 the same section refer to the Building Code, instead of the BOCA Code, which is outdated.
107 Regarding illumination, Scott Tenney suggested, instead of referring to LED’s, using language
108 that any sign illumination source shall be of an energy efficient design.

109
110 Bill Stoughton stated that, Town Counsel suggested, in Section B. Content of Signs, to strike the
111 parenthetical of the single example, and make it clear that unprotected speech is prohibited in the
112 Town of Amherst, regardless of the type. In Section I. Violations and Penalties, there is a general
113 reference to the RSA’s and Counsel suggests that it identify RSAs including, but not limited to,
114 RSA 676:15 and RSA 676:17. In Section O. General Science Standards, Counsel suggests
115 adding “...as, for example by...” at the end of the existing sentence, and then continue on with
116 the following sentence, as the following sentence lists examples of ways in which rural character
117 can be maintained. In Section P. Sign Master Plans, Counsel suggests that it be made clear that
118 one of the intents of this section is to protect the public welfare and safety. Bill Stoughton stated
119 that he agrees with suggestions made by Town Counsel.

120
121 There were no additional comments or question from the Board. Arnie Rosenblatt asked for
122 public comment.

123
124 Dave Williams, 56 County Road, regarding Section M. Temporary Signs and Item 2. Temporary
125 Signs Other than on Town Property, stated that he is concerned about political campaign signs. A
126 construction or maintenance project would be allowed one sign, 4 s.f., but additional ground-
127 mounted signs coinciding with a political campaign or other matters which residents may vote on
128 are allowed up to 32 s.f. He asked for clarification on the number of signs that would be allowed.
129 Bill Stoughton explained that a landowner could have any number of signs totaling no more than
130 32 s.f. Typical signs during campaign season are 3 s.f., so there could be 10, in that case.

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Regarding public right of ways, there is a separate section of the ordinance which addresses signs on adjacent roads. Signs are not allowed on the traveled way of roads. With the abutting landowners' permission, signs can be allowed, provided they are 3' feet off the traveled way of the road. Dave Williams asked if there could be 15 signs on an intersection from different political candidates, as long as they adhere to all of the rules in the ordinance. Bill Stoughton stated that this would generally require the permission of the landowner abutting that intersection. He suspects this is not often followed though.

**Bill Stoughton moved to incorporate the changes discussed by Nic Strong and Town Counsel, and then hold a second public hearing to address those changes. Seconded by Chris Yates.
Motion carried unanimously 6-0-0.**

The Board noted that it would discuss a date certain for this second public hearing later in the meeting.

Arnie Rosenblatt stated that proposed amendment #2 deals with reduced frontage lots. He asked Nic Strong to discuss her suggestions to this item.

Nic Strong stated that, Section B currently says that, "in the event multifamily dwellings are permitted in the District, the minimum reduced frontage lot size below shall be increased in proportion to the number of dwelling units allowed." She suggested more specific language, "...shall be multiplied by the number of dwelling units allowed."

Bill Stoughton stated that he and Nic Strong tried to make changes to address Counsel's concerns. In paragraph A, regarding the maximum number of reduced frontage lots allowed, to add the word 'original' before 'lot' in several locations, for clarity. In paragraph C, next to last line, replace the word 'may' with the word 'shall.'

There were no questions or comments from the Board at this time. There was no public comment at this time.

Arnie Rosenblatt asked Bill Stoughton if he believes the proposed changes to be substantive. Bill Stoughton agreed that these changes should be incorporated, and a second public hearing held.

**Bill Stoughton moved to incorporate the reduced frontage lot changes in amendment 2 and proceed to a second public hearing to address those changes. Seconded by Chris Yates.
Motion carried unanimously 6-0-0.**

The Board noted that it would discuss a date certain for this second public hearing later in the meeting.

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A member of the public noted that he did not hear the Chair ask for public comment regarding the reduced frontage lot item. Other members of the public agreed that this was not made clear.

Brad Westgate, lawyer with Winer & Bennett, LLP, representing Kevin and Claudine Curran, addressed the Board. He stated that his clients have appeared before the Board previously on design review applications that contemplate reduced frontage lot subdivisions. He stated that he was relieved to see the comment made, relative to the insertion of the word 'combined lot.' He stated that he believes the Board needs better definitions relative to lot size in the Subdivision Regulations Section 213.2 E. He has submitted a letter to the Community Development Director with additional comments about this item. He stated that he does not believe the changes proposed address the purposes set forth in the proposed amendment. The Board has noted that it is trying to address the ambiguity in the Subdivision Regulations, but the only changes proposed are to the Zoning Ordinance. There are no ambiguities in the Zoning Ordinance, but the Board has wrestled with Section 213.2 E. of the Subdivision Regulations which pertain to reduced frontage lots and parcel size. He stated that he is unsure if the Board is contemplating amendments to that Subdivision Regulation, but he would assume it was, if the goal is to clarify the two acre versus ten-acre lot distinction in the Rural Residential District. The basic purpose of this section of the ordinance is to preserve open space, wildlife habitat, and wildlife corridors. One of the dimensional changes proposed is to effectively double the lot size for a reduced frontage lot in the Northern District and, to change from two to five acres in the Rural Residential District.

Brad Westgate, Esq., expressed concern regarding the setback provisions and the lot separation provisions. In the proposed amendments, structures on reduced frontage lots are required to have a 300' setback from a road, however, on a two-acre lot it can be 50'. The proposal will place more development in the rear of reduced frontage lots, contradicting the very purpose for adopting these amendments, which is to preserve the back area of a lot for wetland and habitat purposes. A regular lot may have a better backyard for habitat preservation than a reduced frontage lot, even though the reduced frontage lot is bigger. Reduced frontage lots must have at least 50' of frontage but this could be 100' of frontage, and in those cases it might be logical for the house to be closer to the road than 300'. Lastly, relative to the cul-de-sac requirements, the reduced frontage lot dimensions have been tied to compliance with the cul-de-sac, based on the existing road design criteria that the Board has adopted. A waiver can be sought from the Board for a different cul-de-sac design, but the applicant would then have to go to the Zoning Board for a variance from the amended zoning provision, which states that reduced frontage lots in a cul-de-sac must only tie to the roadway design criteria. This would be a very difficult process. Subsection D, regarding separation of reduced frontage lots needs clarified language, as it contemplates a common driveway for two reduced frontage lots so long as they meet all other criteria in the ordinance, but they cannot meet all the other criteria in the ordinance because they cannot be touching each other, as previously mentioned in the ordinance.

There was no other public comment at this time.

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Bill Stoughton stated that he appreciates Attorney Westgate's concerns, but he believes the language, as proposed, is clear. He noted that regulation changes have already been drafted and will be proposed if these amendments pass.

**Bill Stoughton moved to adopt the changes the Board previously discussed for reduced frontage lots and proceed to a second public hearing to address those changes. Seconded by Chris Yates.
Motion carried unanimously 6-0-0.**

Arnie Rosenblatt stated that proposed amendment #3 deals with adding language to the minimum lot frontage requirements for scenic roads and to add additional language. Nic Strong noted that she has no proposed changes to this item. Arnie Rosenblatt asked to hear Town Counsel's proposed changes.

Bill Stoughton stated that Town Counsel suggested, in paragraph B, regarding a voluntary establishment of a 50' buffer, that it be made clear this is a vegetative buffer. He stated that he agrees with this clarification. Tracie Adams also agreed.

Arnie Rosenblatt asked for public comment at this time.

Dave Williams, 56 County Road, noted that, at a previous Board meeting, he made reference to the Master Plan survey which showed that 91% of respondents believed that protecting open space and natural resources of the Town was either a high priority or the highest priority. Protecting scenic roads is a good place to start. While the Board does not govern by the Master Plan, it does govern by the regulations and ordinances, and this ordinance amendment suggests changes for scenic roads which will help address the wishes of Amherst citizens. He agreed with placing this on the ballot in March to let the public decide.

Jason Sorens, 13 Cricket Hill Drive, asked if the Board has investigated how many lots along these scenic roads will be rendered unbuildable, or un-subdividable as a result of this change. This proposes a very significant frontage requirement. If a lot is rendered completely unbuildable, this is a substantial taking of private property rights, potentially actionable under the 4th Amendment. This is a substantial reduction in property values for those landowners, opening an issue of equity, as well as an issue of addressing the shortage of housing of various types in this Town. He asked whether a cost/benefit analysis has been completed, showing the value of scenery relative to the substantial taking of private property. Scenic roads do have value, and this should be protected. Frontage requirements and minimum lot area requirements are not necessarily the best planning tools to ensure scenic value and conservation. Purchase of conservation easements, vegetated buffers, or a form-based code could be useful. A frontage requirement does not prevent someone from logging the property and creating a massive lawn. The Board should consider the value of scenery relative to the substantial losses to private property as a result of this proposal.

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Beth Sullivan, Village Woods, stated that property value also needs to consider access to water. She stated that she believes her property values would go down significantly without the availability of well water. Someone nearby had to dig 450' recently to install a well. She expressed concern regarding massive amounts of housing and infrastructure. She noted that, if taxes become unaffordable in Town, this also makes property far less valuable as it will be difficult to sell it.

Sally Wilkins, Green Road, stated that, both the reduced frontage amendment as proposed and this amendment as proposed, are quite exclusionary in design, as well as in effect. She asked if the Board has discussed with Town Counsel whether he is prepared to defend these items. It seems that at least part, if not the entire intent of this, is to reduce the number of homes that can be built in Town. She stated that she owns a lot of land on scenic roads and would be directly impacted by this proposal. She asked about the 50' buffer that is expected to be natural vegetation and noted that it would be helpful if there was associated language excluding invasive plants from that natural vegetated buffer. The Conservation Commission has been chasing invasives throughout Town but has nowhere near the means to control it.

Brad Knight, Upham Road, stated that there is no question that the voters will approve these amendments. Limiting this to scenic roads, puts the impact on those with property along scenic roads. If this is going to be considered, it should be done Town-wide. It seems unreasonable to place all this loss of value on only the people with property along scenic roads. This will increase the size of the lots, or reduce the number of lots, along these roads. There are other ways to achieve this through zoning. He does not believe this will stand up in court.

There was no other public comment at this time.

Arnie Rosenblatt asked if Bill Stoughton considers the one change proposed to be substantive enough to defer a vote on this item until the next public hearing. Bill Stoughton agreed that he would consider it to be. Arnie Rosenblatt stated that he will defer his comments until that meeting. He noted that there is a lot of consideration currently regarding the need for more housing, the legislation that will be in support of housing, and the judicial precedent to support housing. While he wholeheartedly supports this idea, he noted that Sally Wilkins also makes a valid point.

**Tracie Adams moved to forward this proposed amendment to a second public hearing, with the changes as recommended. Seconded by Tom Quinn.
Motion carried unanimously 6-0-0.**

Arnie Rosenblatt stated that proposed amendment #4 deals with adding a new section of road to the list of roads that require a scenic setback. Bill Stoughton noted that the Board has not yet discussed this item. This is not a petition article yet. A number of the amendments the Board is considering had a genesis in proposals from citizens.

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Nic Strong explained that, at a previous meeting, the Board was discussing items to be scheduled for this evening. There was significant confusion with a proposal to be presented that appeared to deal with designating scenic roads. This suggestion, to add a road section for scenic setback, got mixed up in that conversation and so was added to the agenda for this evening. Additionally, there were actually two segments of road that were being suggested. In addition to Boston Post Road from the intersection of Boston Post Road and Mont Vernon Roads to the Mont Vernon town line, is Old Mont Vernon Road, from the intersection of Old Mont Vernon Road and New Boston Road to the Mont Vernon town line.

Tim Kachmar requested a more detailed presentation on this item. Nic Strong shared her screen to show the map in question.

Will Ludt, 3 School Street, explained that the Heritage Commission put all the verbiage in Section 3.11 onto a map, in order to see where the scenic roads and scenic setbacks are located. The only scenic setbacks proposed to be added are a section of Old Mont Vernon Road, from the intersection of New Boston Road and Boston Post Road. This is a unique area located between conservation land and worthy of having a scenic setback.

Tracie Adams confirmed that this proposal was generated by the Heritage Commission. She stated that she does not have further comment at this time.

Cynthia Dokmo stated that she has similar feelings to this proposal as she does regarding the previous amendment, so she will address them both at the next public hearing.

Bill Stoughton asked if the Heritage Commission formally voted to recommend this item to the Board. Will Ludt stated that the Commission did not hold a formal vote, but it was discussed at the last meeting, and everyone seemed to be in agreement. The Commission is also working on one or two petitions for scenic roads. Bill Stoughton expressed concern that the public and people who live on those roads have not had an adequate opportunity to be heard from. He is reluctant to advance this item, without knowing that the public has had an opportunity to be heard. Will Ludt stated that he believed scenic setback additions needed to have a petition with 25 signatures, but scenic setbacks do not require notification to abutters. Bill Stoughton acknowledged the formal requirements, but still expressed concern.

Chris Yates, Tom Quinn, Tim Kachmar, and Pam Coughlin agreed with Bill Stoughton's concerns.

Arnie Rosenblatt stated that the other provisions being considered were discussed exhaustively in public meetings, where people had an opportunity to participate. That is not true with this proposal. The Board can choose to defer it to the next public hearing, or for another year.

Bill Stoughton stated that he would like this item to be deferred for a year, absent a petition. This needs more discussion. Will Ludt noted that he tried his hardest to get this item onto the last

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agenda and was advised to bring it to this meeting. Cynthia Dokmo agreed with Bill Stoughton's suggestion for deferral.

Bill Stoughton moved to defer proposed Planning Board amendment #4 to a future election and not to move forward with it this year. Seconded by Cynthia Dokmo.

Discussion:

Arnie Rosenblatt stated that he is personally uncomfortable moving forward with this because he does not yet have a full understanding of the impact. This could be a good idea, but it needs to be evaluated and discussed.

Motion carried unanimously 6-0-0.

Arnie Rosenblatt stated that proposed amendment #5 deals with outdoor lighting and glare. Nic Strong stated that she had no comments regarding this item. It was noted that Town Counsel's concern was already addressed under Section J.

Arnie Rosenblatt asked for public comment.

Sally Wilkins, Green Road, stated that she has been trying to get this passed for 20 years. Regarding Section E., that there shall be no lighted fixtures on building exteriors higher than 20' from the ground, some people have lights on the second floor of the gable end of their house, which is more than 20' off the ground. She suggested that, if appropriately shielded, these could be allowed. Bill Stoughton agreed with this suggestion.

Tim Kachmar suggested provisions to say that these lights could be any height, if pointing directly down towards the ground. Arnie Rosenblatt stated that he would like to include a height requirement. He suggested 30' from the ground level.

Bill Stoughton moved to adopt the change to Section E., in the introductory paragraph, to change 20' to 30', and to move forward with that change to a second public hearing. Seconded by Cynthia Dokmo.

Motion carried unanimously 6-0-0.

Arnie Rosenblatt stated that proposed amendment #6 deals with modifications for language in the Industrial Zone. Nic Strong stated that she had no comments regarding this item.

Cynthia Dokmo stated that Town Counsel has a concern regarding enforcement of this item. There is language included that empowers code enforcement officers and public safety officials to enforce this provision. Code enforcement officers was added specifically to include the Police Department.

Arnie Rosenblatt stepped out of the meeting and asked Tracie Adams to continue as Chair.

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Cynthia Dokmo stated that, regarding item B.10., abutters suggested this prohibition also be included in the Residential Zone and Rural Residential Zone. She stated that she disagrees. She noted that the Planning Board is not responsible for activities on public roads; this is the duty of the Selectmen. The Planning Board may discuss the placement of a road, but the activity on the road is not the purview of the Planning Board. She suggested that item B.10. be amended to read, "any use that results in off-site parking of vehicles, while such vehicles await access to the site or otherwise..." then to strike everything until, "...if the vehicle violates the internal combustion engine idling time limits of section 4-9. E-8." Also, the paragraph that discusses the New Hampshire Administrative Rule which sets down the provisions for idling and the conditions under which vehicles can idle, needs to be more specific. The rule should be referenced specifically.

Bill Stoughton stated that many residents submitted concerns that he is trying to address using language that restricts any off-site parking, with permission, to Commercial and Industrial zones. This paragraph regulates a use that occurs within the Industrial Zone. It limits and prohibits any use within that Zone, that results in the following items listed. It is important for the Board to have that authority, because with it, the Planning Board can include conditions on an approval. He is not suggesting that the Board has authority over activities on roadsides in Town. He stated that he believes it is important for the Board to have the ability to discuss with the applicant and enforce potential changes that deal with this issue.

Cynthia Dokmo agreed that the Board should have the authority and responsibility of the use of a property, but she does not believe the Planning Board has the power to regulate activity on public roads. This is the authority of the Selectmen. She suggested that Town Counsel review this language. Arnie Rosenblatt noted that all of these items have been run by Town Counsel. Cynthia Dokmo stated that she does not have a problem with the proposed language but does not believe the Planning Board has the authority.

Chris Yates stated that the goal of item 10 is to prevent trucks and vehicles from parking on the roadway. He noted that he saw many trucks sitting on the edge of several of these roads today. He suggested adding verbiage to have an applicant include signage for 'No Parking.' Cynthia Dokmo stated that this would be up to the Selectmen, as public roads are their domain.

Bill Stoughton stated that he would like to leave the proposed language as changed in the last paragraph. He stated that his argument is that the Board is not regulating what happens on the roads, but instead the use in the Industrial Zone. This is a tool that allows the Board to impose conditions on an applicant that lessen the likelihood of an offsite parking issue.

Tim Kachmar stated that he believes the proposed language prohibits any business from having vehicles idling. The proposed language would prevent a business, such as a repair shop, from having idling vehicles as part of their services. He is concerned that this language limits what types of business are allowed in the Industrial and Commercial Zones.

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Chris Yates stated that the provision wants to ensure that applicants have appropriate parking for incoming and outgoing vehicles. Applicants would have to have enough space on their property for vehicles, instead of allowing them on the edge of the public roadway.

Tim Kachmar stated that he believes this limits what type of businesses are allowed. He understands that the goal is to get trucks off the public way.

Tom Quinn questioned whether this section is needed at all because, if the Board is doing its job properly, it should not approve projects that anticipate a lot of truck traffic being stacked up on side streets. This should be handled in the application process.

Tim Kachmar suggested language that all vehicle use must be on site.

Cynthia Dokmo stated that State regulations already prohibit idling for a long period of time. This proposal is to reinforce that there is a concern regarding trucks idling and clogging the roads in the Commercial and Industrial Zones, however, it is not the Planning Board's authority to regulate activity on a public road. She agreed that there should not be off-site parking issues if the Planning Board does its job correctly during the application phase.

Tom Quinn noted that he was referring to the parking section being struck, not necessarily the idling. He noted that this item is unenforceable by the Planning Board.

Cynthia Dokmo noted that it would be the job of the Selectmen to enforce this.

Arnie Rosenblatt asked for public comment.

Skip Dalton, 14 Summerfield Way, stated that his concern regarding the original wording for this item, was that it would open the door to allowing the Bon Terrain facility proposal. Most of this amendment #6 deals with that proposal. Either suggestion for wording made by the Board seems to do the job of not allowing the developer and owner of Lot 26-2 to be able to use that 15-acre residential lot as a parking lot. He stated that he prefers Bill Stoughton's proposal as it deals with prohibiting parking on residential land and puts the developer on notice that adequate parking is required.

Sally Wilkins, Green Road, stated that she believes B.10. could be accomplished by adding loading and unloading to E.9. The ordinance already states that a lot has to have adequate parking to avoid delivery trucks parking on the side of the road. If loading and unloading was added to that section, it will require an industrial use yard to have adequate stacking and area for tractor trailers. The Board seems to be trying to regulate use in residential areas in the Industrial Zone. The Board could have a prohibition for off-site parking facilities in the Rural Residential Zone instead. Her other concern is that a 100' setback/vegetated buffer, plus an earthen berm sufficient to attenuate noise, would likely come close to 125', which would be a significant taking on a one-acre lot.

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Barbara Staffiere, 9 Crystal Lane, stated that she is a neighbor of the Industrial lot being discussed. She noted that, in a town she previously resided in, the residential neighborhoods are inundated with tractor trailers. She stated that she prefers Bill Stoughton's suggestions for B.10. This gives the Board some authority to ask questions of an applicant regarding the proposed use. Regarding Section 4.9.E #4, she asked the Board to reconsider a 40' height requirement across all of Amherst. Neighboring towns have done something similar already.

Attorney Morgan Hollis, Gottesman & Hollis, P.A., stated that he represents the owner of property located in the Bon Terrain Industrial Park, in particular identified as Lot 2-26 and Lot 34 on Howe Drive. Both of these properties will be significantly impacted by the proposed language, in particular the amendment to Section 4.9.E.3, requiring a 100' landscaped buffer from the lot line of Residential Zone or existing residential use, and earthen berm topped by noise attenuation panels. This is the only area of the proposed amendments that his clients have an objection to. This ordinance change will affect all industrial land in Town. A great deal of that industrial land is already developed, but this will affect even developed land, in that the current regulations have a 10' setback and this is now proposed to be a 100' setback. This does not only impact Lot 26, which has a lot of focus on it, but all industrial land which abuts any residential land. Other, similar lots in Town, will not be allowed any development within 100' of their residential neighbors, while these lots likely already have structures that are much closer than this. Additions to these structures will require a variance from the Zoning Board.

Attorney Hollis explained that Lot 2-26 has residential neighbors to the west, with subdivided and condominium lots, and an abutting 12-acre residential lot, which is also owned by his client. Currently, under Article 5 of the Site Plan Regulations, Section 5.5 Landscape Buffers, requires a buffer 10' wide and 6' high. This also requires screening visibility for certain uses, such as loading areas and refuse collection. The screening mechanisms may be berms, fences, or landscaping, and have to be a certain minimum height. Section 5.7.A., requires landscaping along all sides of a parking lot or an access way abutting adjoining property, at least 10' in width between the paved area and the abutting property lines, and at least one tree every 30' of the landscape strip. The proposed change is to move from a 10' wide buffer to a 100' wide buffer the entire length. This ordinance does not make any differential as to whether these are properties in Hollis or Amherst. The ordinance affects Amherst properties but some of these abut residential properties in Hollis, and this will also impact those properties. He asked the Board to consider inserting a specific reference to abutting Amherst residential properties. The Town is not in the business of passing legislation which impacts, either positively or negatively, the next town over.

Attorney Hollis stated that, in addition to the 100' wide area, there is a requirement that a berm be established with noise attenuation panels. Noise attenuation panels, however, are not defined in this, or any part of the Zoning Ordinance. Thus, one is left to guess the definition of such. There is no set height specified for the berm or the attenuation panels. He stated that this ordinance seems to reflect that the committee ran out of time. The attenuation is to attenuate visual, light, and noise, as determined by the Planning Board. The definition of 'attenuation' in the Oxford Dictionary is, "the reduction of the force, effect, or value of something." It is left to the Planning Board to determine if a proposal properly attenuates, without proper definition of

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such. He urged the Board to consider specific language, as applicants will wonder whether or not proposed berms and the attenuation panels are adequate. He expressed concern regarding visual attenuation, as attenuation of a 40'-50' high building with a berm, fence, etc., could be confusing. He believes the section regarding the berm and attenuation panels is vague and could be declared void, as a matter of law.

Attorney Hollis stated that, in regard to the parcel in Bon Terrain which has generated a majority of the discussion, the nearest Peacock Brook condominium was measured at 700', and the nearest single-family residential property was measured at 350'. Per this proposal, a berm would have to be 5,200' long, for anyone to do anything on this lot. Depending on the height of the attenuation, if there is a 3:1 slope, this would require a berm that could be 100'+ in width, potentially taking 200'. The proposed change of 10' to 100' is a substantial impact on his client. If a berm is added, this could be up to 250'. He stated that he respects the neighbors to this property, and their concern that there could be a 50' high building located 10' from the property line, under the current ordinance. As a result, his client does not want to fight against the 100' proposed, although they feel it overkill along the westerly boundary line, given the distance to the residential properties. The Board reacted to the concern regarding the potential 10' proximity of the proposed building away from the property line, and made it into something significantly different and overkill, in his opinion. There is already a 100' setback established in the area, due to Peacock Brook.

Attorney Hollis addressed the landscape standards. In the 10' setback, the criteria are one tree every 30'. This seems to be a reasonable proportion of trees and shrubs. There are no standards for a 100' landscape buffer. The language simply reads, to be in accordance with the Landscape Standards of the regulations. His client would prefer clarity on this item.

Attorney Hollis concluded that, for the undeveloped lot on Howe Drive, with a 100' buffer and the 100' buffer setback to wetlands, a 1/4-acre lot is left. He said that there may be a way to tailor this proposal specifically to this area but warned the Board to be cautious with the wording. He stated that his client has no objection to the 100' buffer from the property line of residential use or zoned area in the Town of Amherst. His client is opposed to the berm as it is a substantial impact on what can be done on that property. The Board needs to define what attenuation is and how it will determine if a proposal properly attenuates. The Board can already impose a berm as part of its regulations. But now, the Board is proposing to require a berm with no standards and impose it in an area, in addition to a 100' buffered area. He urged the Board not to move forward with Section E.3.i.I., that states "between the 100' vegetated buffer and any building, an earthen berm topped by a noise attenuation panel shall be constructed for visual, light, and noise attenuation. The heights of the earthen berm and noise panels shall be adequate for visual, light, and noise attenuation, as determined by the Planning Board. The Planning Board may allow breaks in the berm, if necessary, for emergency access, stormwater control, or otherwise, if the overall purposes of visual, light, and noise attenuation are maintained."

A resident noted that the concern was regarding the private property, without the property owners' expressed consent, and to make sure that is not Residential Rural land. There was

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concern about the ramifications of people parking on Rural Residential land anywhere within the Town. She stated that she trusts the Planning Board regarding properly determining the breaks and height for the berms and attenuation panels. These may change based on the property and the proposed use.

Bill Stoughton clarified that there is a 100' wetlands buffer along Peacock Brook. It is not the intention to have a total of 200' of buffers; the wetlands buffer and the buffer required by the ordinance would overlap. He noted that the berm does not necessarily have to stretch the entire length of the lot perimeter. The berm has to be between the building and the 100' perimeter. A small perimeter berm around the building may suffice. The berm must be between the building and the lot line.

Arnie Rosenblatt asked what this means in practice. Bill Stoughton stated that it needs to meet the attenuation purposes, but a smaller perimeter closer to the building could meet that purpose.

In response to a question from Chris Yates, Bill Stoughton stated that a louder activity may require a much different berm from a quiet activity. Chris Yates stated that he does not believe the intention of this was to run the full length of the property line. The intention of the berm was to put distance and noise attenuation between the industrial area and the residents. Bill Stoughton noted that it was not his intention to require a berm along the entire perimeter of a site.

Arnie Rosenblatt asked about modifying the language for this item. Cynthia Dokmo noted that, as she believes was also stated by Sally Wilkins, this language affects not only the Industrial Zone, but other zones where there are public roads. Arnie Rosenblatt stated that he believed Sally Wilkins' comment was that the impact from this was with respect to the Residential Zone, so this should be considered within that portion of the ordinance. Cynthia Dokmo stated that she believes this requires an overall prohibition somewhere else in the ordinance, or to put this prohibition in each zone, and that would be the responsibility of the Selectmen. Bill Stoughton stated that the Board can prohibit the off-site parking use in the other zones. Cynthia Dokmo stated that she believes activity on public roads is a Selectmen's responsibility.

Arnie Rosenblatt stated that there has been extensive discussion and there does not appear to be consensus on this item. He asked if the Board believes that the language should be modified, based on comments from the public.

Bill Stoughton stated that, per Sally Wilkins' suggestion, he would agree to add language to paragraph 9, regarding adequate parking for loading, unloading, delivery, and pickup. He noted that Cynthia Dokmo suggested a correction to the citation for the regulatory provision in paragraph 8, and he would amend that as well. Nic Strong noted that, in other locations in the Zoning Ordinance it lists the New Hampshire Code of Administrative Rules, and this language could be included to be consistent.

Arnie Rosenblatt asked if any Board members are swayed by Attorney Hollis' argument that the language, with respect to berms, is too unclear and creates a risk of disputes between abutters

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and applicants. Bill Stoughton stated that he believes this is worth considering, however, it could be addressed in the regulations instead, if needed.

Tom Quinn stated that some vagueness is almost necessary because the Board will not know exactly what use will occur in the Industrial Zone. A use that is very noisy could require a much larger berm. This cannot be a specific, one-size-fits-all item. Applicants also always have the opportunity to seek a variance.

Tim Kachmar stated that the discussion around this item originally included height restrictions, but the Board specifically agreed to remove that and leave the language vague, in order to interpret it per project. He suggested possibly clarifying the language regarding around the building perimeter or based on the use.

Arnie Rosenblatt expressed concern regarding making major changes after this meeting. Bill Stoughton stated that he does not believe language changes are necessary at this point.

Bill Stoughton asked Cynthia Dokmo for her proposed language on item 10. Cynthia Dokmo stated that she believes it should read, "any use that results in off-site parking of vehicles (while such vehicles await access to the site or otherwise), if the vehicle violates the internal combustion engine idling and time limits of Section 4.9.E8." Bill Stoughton stated that he believes this language gives the Board tools to raise this item with the applicant and address it.

Chris Yates stated that he prefers the vague language because different activities require different things. He suggested adding a containment of the activity, as the intent is to contain that noise or activity to the industrial area. For very noisy uses, some recommendations would not suffice. The requirements need to be based on the specific activity. He noted that the light piece is covered substantially in the lighting ordinance language; this really deals with noise and activity.

Tracie Adams stated that she prefers flexible language, as applications are reviewed by the Board on a case-by-case situation.

Bill Stoughton moved, with respect to proposed amendment #6, to adopt modifications to paragraph 8: to correct the citation form; to paragraph 9: to add "loading and unloading" to "delivery or pickup;" and to paragraph 10: to adopt language that, "any use that results in off-site parking of vehicles (while such vehicles await access to the site or otherwise), if the vehicle violates the internal combustion engine idling and time limits of Section 4.9.E8." Seconded by Cynthia Dokmo.

Discussion:

Arnie Rosenblatt noted that this item will also be brought back for the next public hearing.

Motion carried unanimously 6-0-0.

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Arnie Rosenblatt stated that proposed amendment #7 deals with off-site improvements. Nic Strong stated that she had no comments on this item. Tom Quinn stated that Town Counsel's only comment, under section N.3., is that he was glad to see that there was language requiring payment as a condition precedent.

There was no public comment at this time. There were no questions or comments from the Board.

**Bill Stoughton moved to advance this item to the ballot. Seconded by Cynthia Dokmo.
Motion carried unanimously 6-0-0.**

Arnie Rosenblatt stated that proposed amendment #8 deals with administration and the Zoning Board of Adjustment. Nic Strong stated that she has no comments regarding this item. Tim Kachmar noted that this deals with a change in State law.

There was no public comment at this time. There were no questions or comments from the Board.

**Bill Stoughton moved to advance amendment #8 to the ballot. Seconded by Cynthia Dokmo.
Motion carried unanimously 6-0-0.**

3. Public Hearing on Proposed Building Code Amendments. See separate notice.

Arnie Rosenblatt stated that the next three items are amendments to the Amherst Building Code.

There was no public comment at this time. There were no questions or comments from the Board.

Bill Stoughton noted that Town Counsel suggested, under amendment #2, citing RSA 674:51 additionally. The Board agreed that this was not a substantial enough change to bring this to an additional hearing.

**Bill Stoughton moved to advance proposed amendments 1, 2, and 3 to the Building Code to the ballot, with the amendment to the RSA citing. Seconded by Tom Quinn.
Motion carried unanimously 6-0-0.**

The Board discussed timing for the next public hearing on these items. Nic Strong noted that the December 21st agenda includes a design review and the Brook Road conceptual, plus scheduling any petition zoning articles. Arnie Rosenblatt suggested scheduling this public hearing on January 4th, recognizing that the public hearing on the Master Plan will then need to be deferred by two weeks. Bill Stoughton suggested that a special meeting for the Master Plan could be held.

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696 Arnie Rosenblatt suggested placing the Master Plan review on the January 18th agenda. Bill
697 Stoughton noted that there must be a public hearing on any petitioned warrant articles on January
698 4th.
699

700 **Tracie Adams moved to reschedule the Master Plan public hearing to January 18,**
701 **2023. Seconded by Tom Quinn.**
702 **Motion carried unanimously 6-0-0.**
703

704 **Bill Stoughton moved to hold the second public hearing on the proposed zoning**
705 **amendments on January 4, 2023, at 7pm, at Town Hall. Seconded by Chris Yates.**
706 **Motion carried unanimously 6-0-0.**
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708 **OTHER BUSINESS:**
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710 **3. Minutes: November 16, 2022**

711 Discussion of these minutes was postponed to the next meeting.
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713 **4. Any other business that may come before the Board**
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715 **Chris Yates moved to adjourn at 9:20pm. Seconded by Cynthia Dokmo.**
716 **Motion carried unanimously 6-0-0.**
717

718 Respectfully submitted,
719 Kristan Patenaude
720

721 Minutes approved: December 21, 2022