

TOWN OF AMHERST
Zoning Board of Adjustment

April 19, 2022

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In attendance: Doug Kirkwood (Chair), Jamie Ramsay (Secretary), Danielle Pray (Vice Chair), Tracy McInnis, and Tim Kachmar (alternate)
Staff present: Nic Strong, Community Development Director, Nicole Stevens, Town Planner, and Kristan Patenaude, Recording Secretary

Doug Kirkwood called the meeting to order at 6:57pm. He asked that all present respect other's decisions regarding wearing masks. He explained that the chairs in the room were originally spaced 6' apart but that the spacing needed to be reduced to accommodate all present. He asked that those present wear a mask. He explained that the Secretary will read the case. Each applicant will then be asked to present the case.

Doug Kirkwood noted that on the agenda this evening are four variance requests for the same applicant. He asked if the applicant would like for all four requests to be treated as one.

Morgan Hollis, Esq., Gottesman & Hollis, P.A., representing the owner and applicant, explained that there are four proposed variances regarding use, height, floor area ratio requirements, and impacts to the Wetland and Watershed Protection District. He noted that the last item may be considered unnecessary by the Board and could be addressed separately from the other three. The remaining three items can be treated as one. If the Board denies the use variance, then the other two items are likely not needed. He asked the Board to consider if the last item is necessary.

The Board agreed to handle the items in this way.

Doug Kirkwood outlined the process of the Board. The Board will first hear from the applicant. The Board will then ask questions and make comments. The Board will then ask for public comment. If the comments become duplicative, members of the public may be asked to stop commenting and come back for a second comment later in the public comment session.

Doug Kirkwood introduced the Board members and noted that Charlie Vars was absent. He explained that Tim Kachmar could sit in Charlie Vars' place for this meeting.

Doug Kirkwood explained that there is a State RSA which governs the practice of regional impact. He has reviewed this RSA for underlying references that could be used when determining regional impact for the proposals to be heard tonight.

Doug Kirkwood read RSA 36:54 – 36:58:

“36:54 Purpose. –

The purpose of this subdivision is to:

I. Provide timely notice to potentially affected municipalities concerning proposed developments which are likely to have impacts beyond the boundaries of a single municipality.

II. Provide opportunities for the regional planning commission and the potentially affected municipalities to furnish timely input to the municipality having jurisdiction.

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III. Encourage the municipality having jurisdiction to consider the interests of other potentially affected municipalities.

36:55 Definition. –

In this subdivision "development of regional impact" means any proposal before a local land use board which in the determination of such local land use board could reasonably be expected to impact on a neighboring municipality, because of factors such as, but not limited to, the following:

I. Relative size or number of dwelling units as compared with existing stock.

II. Proximity to the borders of a neighboring community.

III. Transportation networks.

IV. Anticipated emissions such as light, noise, smoke, odors, or particles.

V. Proximity to aquifers or surface waters which transcend municipal boundaries.

VI. Shared facilities such as schools and solid waste disposal facilities.

Section 36:56 - Review Required -

I. A local land use board, as defined in RSA 672:7, upon receipt of an application for development, shall review it promptly and determine whether or not the development, if approved, reasonably could be construed as having the potential for regional impact. Doubt concerning regional impact shall be resolved in a determination that the development has a potential regional impact.

II. Each regional planning commission may, with public participation following the public posting of notice of the intent to develop guidelines, including notice published in a newspaper of general circulation in the planning region, develop guidelines to assist the local land use boards in its planning region in their determinations whether or not a development has a potential regional impact. The regional planning commission may update the guidelines as needed and provide them, as voted by the regional planning commissioners, to all municipalities in the planning region.

36:57 Procedure. –

I. Upon determination that a proposed development has a potential regional impact, the local land use board having jurisdiction shall afford the regional planning commission and the affected municipalities the status of abutters as defined in RSA 672:3 for the limited purpose of providing notice and giving testimony.

II. Not more than 5 business days after reaching a decision regarding a development of regional impact, the local land use board having jurisdiction shall, by certified mail, furnish the regional planning commission and the affected municipalities with copies of the minutes of the meeting at which the decision was made. The local land use board shall, at the same time, submit an initial set of plans to the regional planning commission, the cost of which shall be borne by the applicant.

III. At least 14 days prior to public hearing, the local land use board shall notify, by certified mail, all affected municipalities and the regional planning commission of the date, time, and place of the hearing and their right to testify concerning the development.

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IV. Notwithstanding the foregoing, when the building inspector determines that a use or structure proposed in a building permit application will have the potential for regional impact and no such determination has previously been made by another local land use board, he or she shall notify the local governing body. The building inspector shall also notify by certified mail the regional planning commission and the affected municipalities, who shall be provided 30 days to submit comment to the local governing body and the building inspector prior to the issuance of the building permit.

36:58 Applicability. – The provisions of this subdivision shall supersede any contrary or inconsistent provisions of local land use regulations enacted under RSA 155-E and RSA 674.”

Doug Kirkwood explained that there is a question as to if the Board should determine regional impact of the proposals now, or after the presentation by the applicant is complete. He asked that the Board suspend its regular meeting and discuss how best to make this determination. He explained that there is evidence within the RSA that if the Board determines there is regional impact of the case, notification must be sent to those identified as potentially impacted.

The Board voted to enter into a deliberative session to discuss the regional impact in regard to the items before it this evening.

Danielle Pray explained that the Board has, in the past, determined regional impact after completing a hearing. However, there is evidence in the RSA that the Board should act promptly on regional impact. Thus, the Board can vote on regional impact prior to hearing the case.

Danielle Pray noted that, from the documents received by the Board, these cases seem to be for an applicant looking to build a warehouse with a number of tractor trailer bays for goods to be shipped/received. These trucks will be coming to and going from the area using local and State-owned corridors. She believes there are a couple of sections of the regional impact RSA that apply to this proposal; there could also be additional sections that also apply that she has not yet determined. RSA 36:55, Section III, transportation networks; and Section V, proximity to aquifers or surface waters which transcend municipal boundaries. Danielle Pray stated that she does believe this application has regional impact, based on these items, and thus, the Town should notify local municipalities. Regarding Section III, Danielle Pray stated that she believes Hollis, Merrimack, Nashua, and possibly Milford should be notified. Regarding Section V, she believes that the same towns should be notified, with the potential for additional towns to also be notified, as determined through further discussion by the Board.

Tim Kachmar agreed with Danielle Pray’s suggestions for regional impact. He noted that, as the proposal looks to utilize the Route 101A corridor for its trucks, this would primarily impact Nashua, Merrimack, and Hollis. However, it is unclear yet how much traffic will also be coming to this site from the west. He explained that the Board would need to review a map of the aquifer to determine exactly which towns will likely need to be notified, in regard to Section V.

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In response to a question from Tim Kachmar regarding if the presentation tonight will proceed if regional impact is determined, Danielle Pray explained that the meeting will not continue if regional impact is determined. If the Board votes that this application has regional impact, the Town has 14 days to notify other municipalities identified, so that they have the opportunity to send representation to a future hearing on this item.

Tracy McInnis agreed with Danielle Pray regarding her thoughts on regional impact. She noted that the traffic along Route 101A is already busy. She also explained that this aquifer is important to not only this community, but surrounding ones as well.

Jamie Ramsay also agreed. He noted that there could be additional towns identified to have impact from Section III, coming from the west on Route 101A. Also, there could be towns impacted from travel to the east on Route 101, such as Bedford, Manchester, and others.

Doug Kirkwood stated that he is most concerned regarding the impact to the aquifer that this project could have. He has reviewed the aquifer map from the Nashua Regional Planning Commission (NRPC) and noted that there is no flat ceiling on this aquifer, but instead areas of pockets. The size of this proposal in regard to the aquifer will need to be discussed. He also noted the proximity of this project to Witches Brook and the impact that may have on the town of Hollis.

Morgan Hollis explained that the variances being requested are only for one of the lots of this project, not for the whole development. The use variance is only being requested for the warehouse use on this single lot. This will also need to go to the Planning Board for approval. Most of the proposed warehouse building will be located on the lot where this is already an allowable use. The variances are being requested for the one, 15-acre lot, which is proposed to hold approximately 180,000 s.f. of the warehouse. The Board is not here tonight to weigh in on the size and scale of the entire 1.2M s.f. proposed warehouse and its potential regional impact. This entire proposal may never come to fruition if the use variance for the single lot use is not approved. He noted that the Planning Board will also consider regional impact as part of its process. He wants the Board to be clear that it is deliberating on regional impact only for this small section of the project, but not for the entire large, proposed warehouse.

Danielle Pray acknowledged that the Board is deliberating on regional impact only for the single lot. Impacts from this single lot would still impact the aquifer and traffic of the area, due to the variance's proposal to change the use of this site to Industrial and all of the allowed uses that could thus come along with this change.

Morgan Hollis noted that the applicant is only requesting a warehouse use.

Danielle Pray moved that all four variances requested by this applicant have regional impact, under RSA 36:55, specifically Sections III and V, to the towns mentioned previously and NRPC, with the caveat that there may be additional towns impacted that the Board is yet unaware of. Jamie Ramsay seconded.

Voting: 5-0-0; motion carried unanimously.

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Doug Kirkwood noted that, due to the fact that no one, including the applicant or the public, had the chance to make presentations for or against these items this evening, there cannot be a claim of no due process. The vote for regional impact moves this hearing to the next Board meeting, with 14 days for the Town to notify the identified municipalities.

Tim Kachmar asked if the next meeting for these items can be held sooner than next month, to accommodate the applicant and abutters. Danielle Pray stated that the meeting has to be held within the timeframe listed in the RSA. The next Zoning Board meeting is May 17, 2022.

It was noted that the location for the May 17, 2022, meeting will be changed to the Souhegan High School auditorium.

**Danielle Pray moved to continue this hearing to May 17, 2022, at 7pm, at the Souhegan High School auditorium. Jamie Ramsay seconded.
Voting: 5-0-0; motion carried unanimously.**

The Board voted to come out of its deliberative session.

Doug Kirkwood reiterated that the Board voted that the proposal does have regional impact on a number of towns mentioned. Due to this, these towns will be notified of the next Board meeting to be held on May 17, 2022, at 7pm, at the Souhegan High School auditorium, in case they would like to send representation.

PUBLIC HEARINGS:

These items were previously addressed and tabled to May 17, 2022, at 7pm, at the Souhegan High School auditorium

1. CASE #: PZ15534-032122 –VARIANCE

TANA Properties Limited Partnership (Owner) & Flint Acquisitions LLC (Applicant); Hollis Road (Rear), PIN #: 002-012-002 – Request for relief from Article IV, Section 4.3, Paragraph A to construct a warehouse in the Residential/Rural District. Zoned Residential/Rural.

2. CASE #: PZ15532-032122 –VARIANCE

TANA Properties Limited Partnership (Owner) & Flint Acquisitions LLC (Applicant); 11 Northern Blvd/Bon Terrain Drive, PIN #: 002-026-000–Request for relief from Article IV, Section 4.11, Paragraph H.2 to allow by Conditional Use Permit the construction of a parking area and warehouse building in the Wetland and Watershed Conservation District. Zoned Industrial.

3. CASE #: PZ15531-032122 –VARIANCE

TANA Properties Limited Partnership (Owner) & Flint Acquisitions LLC (Applicant); Hollis Road (Rear), PIN #: 002-012-002 –Request for relief from Article IV,

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Section 4.3, Paragraph D.4 to allow a new structure to be constructed with a floor area ratio of approximately 55% where no greater than 15% floor area is permitted. Zoned Residential/Rural.

4. CASE #: PZ15533-032122 –VARIANCE

TANA Properties Limited Partnership (Owner) & Flint Acquisitions LLC (Applicant); Hollis Road (Rear), PIN #: 002-012-002 –Request for relief from Article IV, Section 4.3, Paragraph D.4 to allow a new structure to be constructed to a height up to 55 feet where 40 feet is permitted. Zoned Residential/Rural.

OTHER BUSINESS:

1. Minutes: September 21, 2021 & January 18, 2022

**Danielle Pray moved to approve the minutes of September 21, 2021, as presented.
Jamie Ramsay seconded.
Voting: 5-0-0; motion carried unanimously.**

It was noted that Charlie Vars was present remotely and he took his seat on the Board.

**Danielle Pray moved to approve the minutes of January 18, 2022, as presented. Jamie Ramsay seconded.
Voting: 3-0-2; motion carried (D. Kirkwood and T. McInnis abstaining).**

The Board noted that it would need to speak clearly and loudly at the next meeting, as the acoustics in the Souhegan High School auditorium are different. It was noted that there has generally been limited participation from other towns regarding regional impact, but that it is important to afford them the opportunity to participate.

**Jamie Ramsay moved to adjourn the meeting at 7:53pm. Tracy McInnis seconded.
Voting: 5-0-0; motion carried unanimously.**

Respectfully submitted,
Kristan Patenaude