

TOWN OF AMHERST
Zoning Board of Adjustment

May 17, 2022

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In attendance: Doug Kirkwood (Chair), Jamie Ramsay (Secretary), Danielle Pray (Vice Chair), Charlie Vars, and Tim Kachmar (alternate)
Staff present: Nic Strong, Community Development Director, and Kristan Patenaude, Recording Secretary

Doug Kirkwood called the meeting to order at 7:05pm. He explained that the Secretary will read the case. Each applicant will then be asked to present the case. Once completed, the Board will be allowed to ask questions and make comments. Then, the public will have a chance to comment. The input should be specific to what is presented this evening and not reflect the entire project. All questions/comments must be addressed through the Chair. Someone wishing to speak must be recognized by the Chair or are otherwise out of order. Everyone has a right to be heard and everyone should listen to one another. The applicant has a right to due process. He introduced members of the Board.

**Danielle Pray moved to appoint Tim Kachmar to a 1-year alternate position on the Zoning Board of Adjustment. Jamie Ramsay seconded.
Voting: 4-0-0; motion carried unanimously.**

PUBLIC HEARING (S)

Jamie Ramsay read the notice for the first case.

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. Continued from April 19, 2022.

Morgan Hollis, Gottesman & Hollis, P.A., representing the owner and applicant explained that there are three proposed variances regarding use of a warehouse in the Residential/Rural District, modifying the height restriction in the Residential/Rural District, and increasing the gross floor area ratio requirements in the Residential/Rural District. The two variances requested for height and floor area tie into the use variance. He requested to make the argument for the use variance first and then allow the Board/public to comment, before moving on to the additional variances.

Doug Kirkwood stated that he would like to hear the five variance criteria presented for each item and then to poll the Board on its votes for each criteria. He would prefer that each variance is treated separately.

Morgan Hollis first distributed a booklet to each ZBA member including all the exhibits he would be presenting, and noted that they would also be displayed on the screen for the audience to see. He stated that there were bullet points for the five criteria for each case and also a one page document containing proposed conditions to approval for the Board's consideration.

Morgan Hollis explained that the use variance application is not a rezoning petition or a request to rezone this area for a different use category. The current zoning is confiscatory for this lot, in

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that the property cannot be used as it is currently zoned, which is why relief is being requested from this item. He noted that spot zoning cannot occur through the ZBA, but only through legislative action. The ZBA acts as a relief valve to confiscatory zoning. The ZBA is also not the Planning Board and, if these variances are granted, the applicant will still need to apply to the Planning Board to do with items of impact and mitigation.

Morgan Hollis noted that there was a preliminary informational meeting held with neighbors of this project site. It was promised to these residents that, if the variances are granted, an additional informational meeting with them will be held prior to the applications being brought before the Planning Board.

Morgan Hollis noted that these applications are not regarding Lot 2-26, for the design of the entire proposed warehouse. These applications are only in regard to Lot 2-12-2. He then read from a list of suggested conditions being proposed by the applicant:

1. An impermeable membrane per the requirements of the Amherst Aquifer Conservation and Wellhead Protection District must be installed under the foundation of any structure on Lot 2-12-2 prior to construction of the foundation. This is to address concerns regarding aquifers that will need to be further considered at the Planning Board level.
2. The proposed site plan and use for Lot 2-12-2 must meet a 2-year storm volume infiltration per the requirements of the Amherst Aquifer Conservation and Wellhead Protection District (pre/post development analysis of total volume runoff).
3. Access for warehouse use on Lot 2-12-2 shall be by way of Bon Terrain and Northern Blvd with posted signage of no truck traffic from the lot permitted on Hertzka Drive to its intersection with Nashua Road. This is being suggested due to concerns regarding traffic.
4. No improvements shall be made in affiliation with development of Lot 2-12-2 within the former Cross Road or Bartlett Drive right-of-way as it abuts Lot 2-12-2.
5. Applicant shall relinquish via written document in the Registry of Deeds all easement rights of Lot 2-12-2 for access over Bartlett Drive and Cross Road rights-of-way. These are both dedicated ways and any property that abuts a dedicated, discontinued right-of-way has legal rights of easement and can build over these ways. The applicant is willing to relinquish this right.
6. The setbacks from Bartlett Drive and Cross Road as a public right-of-way along the westerly boundary of Lot 2-12-2 shall be maintained regardless of the status of the right-of-way. There are still easement rights to abutters, including the applicant, from these dedicated rights-of-way. If the applicant is required to honor certain setbacks to these ways, he is willing to give an additional buffer.

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7. Lot 2-12-2 shall be consolidated with Lot 2-26. The applicant is not proposing to build a separate warehouse on Lot 2-12-2. Both lots are needed for the entire project.

Morgan Hollis explained that Tax Map 2-12-2 is approximately 15 acres and sits adjacent to Lot 2-26, which is approximately 163 acres. The Commercial and Residential/Rural zone line intersects these two properties. Lot 2-12-2 is in the Residential/Rural Zone, which continues westerly and southerly from Lot 2-26. The most recent use of the site was as a sand and gravel excavation site. Lot 2-12-2 is higher in topography. He showed the audience and Board a number of photos of the site. He noted that there is a residential lot, Mr. Glover's, between the applicant's parcel and the Sunridge Condominium Association. Lot 2-12-2 and Lot 26-2 have been used together for years as a single parcel of land. There is a manmade wetland on Lot 26-2, just northerly of Lot 2-12-2. This is not a vernal pool. There is a nearby vernal pool, located on Mr. Glover's property.

Morgan Hollis stated that the applicant's intention is to merge Lot 2-12-2 with Lot 26-2 by title. The uses on both lots have been consistent over the years. Both lots have been owned by the same owner since 1987, and both have been owned by related parties since 1972 and have been used as a single parcel since that time.

Morgan Hollis explained that on the upper left side of Lot 2-12-2 there is a dedicated way, Cross Road. This is an extension of Bartlett Drive, which runs to Route 122. Cross Road disappears north of the site, where there is no longer a trace of the way. Cross Road is clearly defined for approximately 40'-50' within this site. This way is discontinued, subject to gates and bars, at the Route 122 entrance, which is located well over 2,500' from this site.

Morgan Hollis stated that the proposed development on Lot 2-12-2 will be consistent with Lot 26, as these will be consolidated into a single lot. There is not yet a site plan proposal for these lots, as it is first dependent on these variances. There is no desire on behalf of the applicant to build on Cross Road or Bartlett Drive. Lot 2-12-2 is part of the larger sand pit.

Morgan Hollis noted that the original concept shown for this development was a 1.2M s.f. warehouse. This has since been reduced in size to approximately 1M s.f. and relocated to be pushed further away from the Summerfield project.

Morgan Hollis explained that Lot 2-12-2 is in a Residential/Rural zone. Due to the fact that this property is affiliated with land being used for an industrial purpose and connected more to the Industrial zone than the Residential/Rural zone, requiring it to be used for uses allowed in the Residential/Rural zone presents a significant hardship and prevents reasonable use of the property.

Morgan Hollis showed the wetlands located on Lot 2-12-2. The wetlands follow along Peacock Brook and almost along the westerly and southwestern area of the property. There is a vernal pool located on Mr. Glover's adjacent property, which precludes development near it based on

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the associated buffers. There are also wetlands on the property located to the south, precluding it from development as well.

Morgan Hollis noted that any potential impacts to abutters or the Town itself from the proposed warehouse will be addressed when/if this project is heard by the Planning Board. The applicant is only before the ZBA tonight regarding variances being requested for Lot 2-12-2.

Morgan Hollis explained that Bartlett Drive and Cross Road are two different roadways. The portion running northerly is totally discontinued and the portion heading south to Route 122 is discontinued, subject to gates and bars. According to Bernie Waugh, formerly of the NH Municipal Association, regarding a discontinuance, "If a highway is completely discontinued, all town responsibility ends, and no public right of way exists any longer. The right to use and possession returns to whomever owns title (which is presumed to be the highway's abutters but is subject to whatever private easements might exist)." In this case, that would be Lot 2-26 and other abutters, for that portion of Cross Road going northerly. Abutters have a right of easement over the way, even though the public does not, and a right to build that road if they so choose.

Regarding discontinuance subject to gates and bars, Morgan Hollis again quoted Bernie Waugh, "All that's really "discontinued" is the town's obligation to maintain the highway. Otherwise, it simply becomes a Class VI highway. RSA 231:45 further says that a highway which is discontinued subject to gates and bars "shall not have the status of a publicly approved street"... this means only that it doesn't count as a street for zoning purposes." This lot does not have frontage, so the applicant is willing to treat this as a public way for purposes of setback and use. The applicant will honor this as a dedicated way.

Morgan Hollis showed the Board and audience a zoning ordinance map of Amherst from 1971. This was the first recorded zoning map in Amherst. The line between the Industrial and Residential/Rural zone runs in a north/south manner straight from Old Nashua Road to Route 122, using this parcel as the cornerstone of the most easterly boundary. The lot on this map is shown as one single parcel, with Lot 26, crossing the Brook. By title though, this was never owned by one owner and was always two separate parcels. The current zoning map shows the zone line moved to the east, wrapped around the easterly line of Lot 2-12-2. The zone line of Summerfield used to be zoned Industrial but was rezoned to the Residential /Rural zone. The north of all industrial land leads to commercial land along the highway.

Morgan Hollis explained that this parcel was the subject of a petition for rezoning, specifically in conjunction for use as an energy power plant. There was a petition to rezone Lot 2-12-2 to the Industrial Zone by legislative act presented to the Planning Board, which voted in favor 3-2. This was then put to the voters, who voted the proposal down by a large majority. This item was raised in several letters submitted to the ZBA by others. At the time of that rezoning, Meridian Land Services presented the proposal to the Planning Board. A letter from Meridian to the Planning Board in 2015 argued that Lot 2-12-2 is zoned Residential/Rural but cannot be accessed from Route 122 due to significant wetlands, lack of access on Bartlett Drive, the fact that the site is topographically higher than those around it. The only way to access it is through private lot 2-

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26. This argument holds true today and will be tied into the argument regarding the uniqueness of this parcel, the associated hardship, and the requested relief for it.

Morgan Hollis explained that the closest distances from nearby residences to the edge of the closest prospective construction on the subject parcel are: 1,180' to the Summerfield residences; 765' and 740' to the two residences west of Summerfield; 834' to Mr. Glover's property; and 860' to the closest condominium unit at the Peacock Brook condos.

Morgan Hollis reiterated that Lot 2-12-2 is approximately 15 acres, with no access through Cross Road, and no right to build anything on it other than a driveway out. The applicant cannot upgrade Bartlett Drive, thus there is no reasonable access to the lot from this way. The only access to the lot is in/out from Hertzka Drive/Northern Blvd across Lot 2-26 via a private easement through the Industrial Zone to the Residential /Rural zone parcel. The only access to Lot 2-12-2 is through industrial land which is currently vacant but will, at some point, hold uses similar to those existing along Bon Terrain Drive. Lot 2-12-2, though zoned Residential /Rural, abuts, is contiguous to, and is married as closely as possibly to Lot 2-26, zoned Industrial. He noted that, per the Town's zoning, a residential use on this lot would only require a 10' setback to the Industrial zone parcel. Thus, a housing unit would be set on the same topography with no natural buffer between itself and the abutting Industrial lot. Lot 2-12-2 is a unique residential zoned lot. Morgan Hollis explained that the use variance would allow for a proposed use of the lot to hold a warehouse, though the exact type, location, setbacks, required landscaping, and use restrictions associated will all be governed by the Planning Board through a site plan approval process. The site plan proposal will show the two lots as combined. If combined, the consolidated floor area ratio will calculate out to be much less than the minimum requirement in the Industrial zone. If the variance for use is not allowed, there could be conundrum in which a portion of the proposed building located in the Industrial zone could have to meet certain height and floor area requirements, while the Residential/Rural lot would have a completely different set of criteria requirements. Thus, variances are also being requested from the height and floor area requirement for Lot 2-12-2.

Morgan Hollis reviewed the five use variance criteria:

1) How will granting the variance not be contrary to the public interest? A residential use and an industrial use are conflicting uses. Thus, it would not generally make sense to allow an industrial use in a Residential/Rural district, as such a use would alter the character of the neighborhood. That is the opposite of what is required in current zoning. Under current zoning a residential use is required to be placed directly next to a use in the Industrial zone with no natural buffers or large setbacks.

The proposed use variance will not alter the essential character of the neighborhood. The neighborhood of Lot 2-12-2 is the Bon Terrain industrial park. Other neighborhoods include to the south the common area of a condominium with undeveloped wooded wetlands, to the west Mr. Glover's property with some open space and wet areas, and to the north an undeveloped industrial neighborhood. This lot is not located in a Residential/Rural neighborhood. It does not abut nor is near any Residential/Rural neighborhoods. Granting the use for a warehouse would

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keep with the spirit of the neighborhood, while requiring it to remain Residential/Rural would be contrary to keeping with the character of the immediate neighborhood.

The only access to the site, if developed as Residential/Rural, would be a private or public road, if the Town would accept it, on the old, dedicated way toward Hertzka Drive, driving through an industrial development. The public interest will be adversely affected if residential uses are placed on this property, directly next to the Industrial zone. There will be industrial uses to the east of this lot creating a lot of noise and other impacts. Homes on this lot would have to be built approximately 50' from industrial uses, based on current zoning.

The Board previously expressed concerns regarding the proposal and the associated aquifer and/or traffic impacts. The use variance will not threaten the public health, safety, or welfare. This property, like most others in the Industrial Zone and some in the Residential/Rural Zone, is located over the large aquifer in Town. The Town has approved and developed over the aquifer for industrial, commercial, and residential uses over the years without adverse impact. This is because the Town's regulations are very restrictive regarding appropriate infiltration for runoff. This proposal would also need to meet these regulations, no matter what the warehouse looks like. Opinion letters were submitted to the Board from Meridian Land Services' Engineering Manager that the proposed building will comply and will not adversely impact the aquifer; from SLR International Corporation, a third-party peer reviewer, which confirmed Meridian's opinion as long as the rules and regulations are followed; and from Pennichuck stating that "the well located on this parcel is no longer needed and easement rights for it will be surrendered." It continued that, "as the project will be constructed in accordance with NHDES Alteration of Terrain rules, these requirements will ensure minimal impact to the water quality of Pennichuck Brook."

Morgan Hollis explained that, while there was some concern about this aquifer by residents adjacent to it and those serviced by Pennichuck, Pennichuck has no concerns. Also, there have been numerous other warehouses constructed in the area over the years using the Town's strict regulations with no adverse impact to the aquifer. The same will be true for this site which will not draw from the aquifer.

Morgan Hollis stated that another concern raised by the Board was regarding traffic. A traffic engineer, GPI, was asked to study the potential traffic impact differences between the maximum potential Residential/Rural use and the proposed warehouse use. This study concluded that, "Assuming maximum development, the proposed zoning relief to allow the development of warehouse use would generate a maximum 26 vehicle trips during either the weekday AM, or PM peak hours as compared to residential development of the property. This represents less than one additional vehicle every two minutes on the adjacent roadway network. A capacity and queue analysis was previously prepared for a potential warehouse development on adjacent property for Hertzka Drive, Bon Terrain Drive, and Northern Blvd, which indicated that only one intersection in the surrounding area currently experiences capacity constraints, which is the intersection of Route 101A/Route 122. Approximately 50% of the traffic generated by warehouse use of Lot 2-12-2 would travel through this intersection, resulting in an increase of 13

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vehicle trips through the Route 101A/Route 122 intersection during the weekday AM and PM peak hours as compared to a residential development. This represents less than one additional vehicle every four minutes, or one additional vehicle every 2-3 cycles of the traffic signal and will likely result in negligible impacts to the operations of the intersection. GPI has performed a capacity and queue analysis at the Route 101A/Route 122 intersection that assumes a maximum development of Lot 2-12-2 with a warehouse use. The analysis was performed by adding the traffic to be generated by a maximum warehouse development of Lot 2-12-2 to the 2024 No-Build traffic condition from the traffic study prepared for the potential warehouse development on the adjacent lot to obtain the 2024 Build traffic condition with a warehouse development on Lot 2-12-2. The detailed analysis worksheets are provided as an attachment and the results are summarized in Table 2A. The results of the analysis indicate that a maximum warehouse development of Lot 2-12-2 would result in a less than one second per vehicle increase in delay through the Route 101A/Route 122 intersection and negligible changes in queues during the weekday AM peak hour. A maximum warehouse development would result in a less than two second per vehicle increase in delay through the intersection with a maximum increase in queues of one vehicle on any approach during the weekday PM peak hour as compared to the No-Build condition.”

Thus, the proposed warehouse on Lot 2-12-2 will have only a negligible impact on traffic in the area versus maximum residential development. Morgan Hollis noted that this study only takes into account Lot 2-12-2 and does not address development of Lot 2-26 and potential impacts. There will not be an adverse traffic impact regionally or locally from Lot 2-12-2.

2) How will the granting of the variance ensure the spirit of the ordinance will be observed? The Supreme Court has lumped #1 and #2 together, so that the Board should consider the general purpose, not the specific purpose, of the zoning ordinance that addresses the public health, safety, and welfare; protecting values; and not allowing irreconcilable uses to be next to each other. The zoning ordinance’s purpose is to provide for orderly growth and separate uses to protect property values. The way that this variance will not alter the character of the neighborhood was already addressed in the first criteria explanation, as was the fact that this project will not be a threat to public health, safety, and welfare. Part of the general health of the Town is its economic health.

3) How will substantial justice be done? There are two NH cases: Malachy Glen, which spoke to any loss to an individual not being outweighed by a gain to the general public as an injustice. This means that the ZBA must weigh the interests of the two parties involved. It must weigh the harm to the public, if a variance is granted, with the harm to the applicant if the variance is denied. If there is any harm to come to the public from granting a variance it should be denied. In this case, denial of the requested variance will not outweigh any potential gains to the public. This Residential/Rural lot was never developed by its owners for good reason. It will not harm the public to allow for a usage of the lot consistent with immediately adjacent uses. Access to the site creates a harm for the owner, as there is no proper use of the site due to current zoning. The second case is Labrecque vs. Salem, which spoke to a proposed development use being consistent with the current use. This site has been used as a gravel pit for years. This same

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use has existed on the two adjacent parcels for a number of years. The existing open space around this site will allow for substantial distance and buffers to nearby residential parcels. The current use is industrial, as is the proposed use.

4) How will the value of the surrounding properties not be diminished? There will be no diminution of value to the surrounding properties. The topography, wetlands, brook, etc. provide a buffer to residential parcels from this parcel. There is no real visibility to this lot from abutters; this application does not include any sight visibility to Lot 2-26. An independent appraiser, J. Chet Rogers, LLC, walked the site and abutting properties and submitted a letter and follow-up letter. The second letter submitted provides information and studies in affiliation with a warehouse development in Hudson for impacts on abutting space. The first study looked at two actual, existing warehouses, one in Raymond and one in Londonderry. It was determined that the values of residences adjacent to the warehouses, closer than the proposed location for this abutter, before and after construction was completed did not cause a diminution of value. A second study of a warehouse completed by Trimont Real Estate, concluded that the logistics centers in four communities did not cause a diminution of market value of neighboring residential values, and that the proposed warehouse in Hudson would not do so either. The study concluded that the proposed 500,000 s.f. warehouse in Hudson would not have an impact on values of abutting and neighboring residential properties. A CBRE Summary Report of impacts references the three “white papers” cited and found no profound evidence that new industrial development is in any way detrimental to neighboring residential home prices.

5) Literal enforcement of the provisions of the ordinance would result in unnecessary hardship because:

A) for the purpose of this subparagraph, “unnecessary hardship” means that owing to special conditions of the property that distinguish it from other properties in the area:

(i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:

(ii) The proposed use is a reasonable one because:

(B) Explain how, if the criteria in subparagraph (A) above are not established, and unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it: how will granting the variance not be contrary to the public interest?

Morgan Hollis stated that, regarding both items A and B of this criteria, the special conditions of the site need to be reviewed. These include the fact that no direct access or frontage exists to the lot. There is potential access via an easement, but there can be no building on this lot of any sort without first getting a variance from the ZBA and relief from the Board of Selectmen, due to the lack of frontage. The only possible access, through the Industrial zone, would be with creation of a road which would devalue Lot 2-26 and change future use patterns. This lot has always been

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used as a gravel pit in conjunction with Lot 2-26 as part of the Bon Terrain park. It is significantly topographically different from the surrounding Residential/Rural properties, as it is split off by Peacock Brook crossing to the south, and significant woodland buffers. The nearest properties to this site are industrial users. The very item of concern to the neighbors, placing an industrial building near residential properties, is exactly what would happen on this lot if it were made to be used for a residential use. This is not a residential property.

The intent of the Residential/Rural zone seems to be to allow for residential and rural uses/housing. Due to the fact that there are special conditions, no fair and substantial relationship exists between the purpose of segregating rural/residential uses away from industrial uses and enforcement upon this parcel. It has been noted that this parcel preserves a gap between the Residential/Rural and Industrial zones. That is not what zoning is allowed to do. The town of Keene tried to prevent development of a property by rezoning it to be conservation land and was quickly told by the Supreme Court that this was not a possibility. The Town cannot buy or rezone land to create a buffer unless it is going to compensate someone. This is essentially a buffer lot. It cannot truly be developed reasonably for a rural/residential use and is separate and distinct visually and topographically from other residential ones. The proposed use is a reasonable one, given the proximity to the Industrial zone, its topography and access through industrial uses and buffers. Subsection b of this item can be addressed by stating that this property cannot reasonably be used in strict conformance with the zoning ordinance and proposed relief is appropriate. The conditions of the ordinance are preventing reasonable use of this property under strict conformance. These conditions prevent any use under the rural/residential use. Thus, relief must be granted, and the Board must decide if a warehouse use is an appropriate one. He urged the Board to consider the conditions which make this a reasonable use.

Morgan Hollis stated that the other two variances requested are dependent on the use variance determination.

Doug Kirkwood asked for any questions/comments from the Board.

Tim Kachmar noted that one owner owns both properties in question and that these have clearly been use for a sole purpose over the years. He asked if the owner would consider granting a right-of-way to Lot 2-12-2 for a workforce housing development that could be used to support the new industry in this area.

Morgan Hollis noted that workforce housing is not allowed in the Residential/Rural zone.

Tim Kachmar stated that there is a workforce housing ordinance currently being discussed at the State level which might change this. Morgan Hollis stated that the applicant has a legal right to build on Cross Road, which would be the only potential access to this site. Workforce housing on this site would need to drive through the industrial zone and could sit just 10' from an industrial use on Lot 2-26.

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In response to a question from Tim Kachmar regarding a previous variance for building in the wetland buffer, Morgan Hollis explained that the proposed warehouse has been decreased in size from the original proposal and moved slightly north and west on the site. Thus, there will no longer be a wetland buffer impact on this site from the proposed warehouse.

In response to a question from Tim Kachmar, Morgan Hollis stated that there will be some tree clearing done on the site, only enough for construction. The site is very sparsely wooded currently.

Charlie Vars stated that the plan being shown now is quite different from the original plan and he is conflicted. This is only a 15-acre lot. The new proposed location for the warehouse is much better than the original and removes a large amount of the appearance of the building from the Summerfield condos. There will now be less of the building seen from those residences. He noted that the warehouse could be reduced to 750,000 – 800,000 s.f., with workforce housing included on this site, but these would likely be lousy places to live. Charlie Vars stated that the access to the site is through an approximately 800 linear foot road, which would likely cost upwards of \$160,000 to build, thus making it likely not worthwhile from a cost standpoint. He believes the new plan is better for all involved. He noted that he asked the consultant who is involved with helping the Town update the Master Plan why this lot has been left Residential/Rural and why the Residential/Rural zone cannot be considered for multi-family housing. There likely needs to be other approaches to allow for this in Town.

Morgan Hollis noted that the worst-case scenario is being shown on the plan, as the final design of the building is not yet known. This item will go before the Planning Board and their feelings will be heard on it as well. The plan was created to show a demonstration that this site will be connected to Lot 2-26. The proposed location, as shown, is the closest to any abutters that this building would be located.

In response to a question from Danielle Pray, Morgan Hollis stated that the proposed location shown is the general one, barring changes made by the Planning Board. A description of the bays and entrances cannot be quite shown yet, as these would be part of the design plan. The entrance/exit to the site will be from Hertzka and Bon Terrain Drives. Vehicles will circle around to the back of the building from there. There will be parking on all four sides, with truck bays on the longer north and south sides.

Danielle Pray noted that the plan shows a roadway in the southeast corner of Lot 2-12-2. The tractor trailer trucks will be driving around the building, near the side of the lot closest to the Summerfield residences, to get around the site. There is approximately 1,500 linear feet between that area of the lot and the closest Summerfield residence.

Danielle Pray stated that this is a difficult parcel for the Board to decide on. The potential easement information to access this site is new information and will speak toward the hardship of this site. If the site was completely landlocked, she believes this would be a stronger case toward hardship. She asked about the potential to access the site using Bartlett Drive. She asked if the

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applicant could get relief to use that way to access the parcel from Route 122. The easement from Hertzka Drive could also potentially be used to access the lot.

Morgan Hollis stated that Bartlett Drive to the intersection of Route 122 is discontinued subject to gates and bars. The applicant has easement rights over the way by law, but they would be difficult to exercise. There is no evidence that the way to the north still exists. He cannot say it would be impossible, but to do so would require a substantial brook crossing, likely with a bridge built. The width of the drive is inadequate, according to engineers, to accommodate a road and all associated infrastructure. Easements would also need to be acquired from abutters to create this way to Planning Board standards. It is unlikely that these easements would be given. This would all lead to substantial construction costs, but it is possible.

Danielle Pray asked what would prohibit the owner from creating a new easement along the road the trucks are proposed to come in on. Morgan Hollis stated that this would be up to the owner. No easements exist in that area today and it is a separate lot. If the lots became merged, this new parcel would have split zoning and would have different allowed uses, lending to a different argument for hardship. These lots could be merged at any time.

In response to a question from Jamie Ramsay, Morgan Hollis stated that the current site sits approximately 15-25' higher topographically than the sites to the west and south. However, the proposal will be to lower Lot 2-12-2 to match the topography of Lot 2-26. There is a significant topography difference in one corner of the lot. The intent will be to balance the highs and lows of the building.

Doug Kirkwood asked for public comment.

Bob Fregault, 9 Elmwood Way, read his letter to the Board into the record.

Paul Philp, 1 Beacon Lane, read his letter to the Board into the record. He then went on to say that the height of this proposed warehouse is roughly equivalent to that of the Congregational Church in the middle of the Village. He asked how the applicant plans to mitigate from the noise and light pollution and noted that there have been no answers yet given to these questions. He stated that, while this request is only for a small piece of the property needed for the larger warehouse, the height and size of the proposed building will impact all adjacent neighbors. He believes it is illogical to think that there will be no negative impact on air quality from the approximately 20,000 trucks/year this facility could harbor. Emergency vehicles and services will also be impacted. The benefit to the applicant does not outweigh the harm to the public in granting this variance, as abutters will not be allowed the quiet and peaceful use of their property. There will be significant impacts to wildlife in the stream that runs nearby. The Conservation Commission has already reported that the owners of this site have been poor steward of the land, as trees have been cut that are needed to keep this as a cold-water brook. Paul Philp noted that the appraiser used is a commercial, not a residential one. The sites mentioned for other warehouse locations, such as Raymond, are not of the same socio-economic level as Amherst. Some citations given by the applicant are over 50 years old and the world has

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since changed. It is common sense that a 55' high building with trucks with horns and lights will have a negative impact on abutters. The applicant is obligated to convince the Board that this proposal will likely not decrease neighboring property values, but they have not yet proven this. It is incumbent on the applicant to prove the case based on the five criteria and they have not fulfilled this requirement. He asked that the Board reject these requested variances.

Doug Kirkwood asked the last speaker to send along the citations for the data he provided in his letter.

Kelly Schmidt, 11 Patricia Lane, stated that the Board is being asked to consider only this one lot, while the overall project will explicitly link it with Lot 2-26. It seems contradictory to deliberate on this one piece of land, while part of the argument is that both of the lots will be developed together and used as an industrial property. It seems illogical to say that there will be no impacts from the variances requested for this site, when the whole project will clearly have a large impact.

Doug Kirkwood stated that this argument can be made.

Kelly Schmidt stated that the combined impact is more than the sum of its parts. The air, noise, and light pollution from the proposed warehouse could stem from the granting of these variances for this single lot. This will place a burden on the whole community, not just this piece of property. She believes, if the Board is to consider granting these variances, it should consider contingencies that the owners are only allowed to build separately on each parcel. She would much rather have two small warehouses located next to one another, than one gigantic warehouse. She stated that she believes the value of her lot will be lowered through this proposal, as she paid less for her current house than other similar houses in Town back in 2015, due to the proposed pipeline at that time.

In response to a question from Danielle Pray, it was noted that the Sunridge Condos were built between 1999-2003.

In response to a question from Tim Kachmar, Kelly Schmidt stated that it was disclosed to her when she purchased her property that there was industrially zoned land located nearby. She does not have an issue with industrial properties being built out. Her issue is that the lot in question is zoned Residential/Rural, which she knew when she bought her property, and she believed it would be used as an additional buffer and conservation space.

Doug Kirkwood asked the applicant to respond to the public comments made thus far.

Morgan Hollis stated that many of the comments made are based on personal feelings. The applicant however has put forth actual documentation regarding the position. The certified appraiser used has done residential appraisals as well and is MAI certified. While it is not a new concept that people believe that the value of their properties will be reduced through development, the data shows that they will not. The concerns regarding the size and scope of the

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proposed warehouse are not for debate by the Board this evening. The only item before the Board this evening is a variance for the use of Lot 2-12-2. The lot will be connected with Lot 2-26, as outlined. The applicant can put a 1M s.f. building on Lot 2-26 by right. The variance requested will actually allow this building to slide over from nearby residences. Any industrial building will have a circular transportation route on the site, which will affect and be visible by the Summerfield condos. Most of the public comments made are personal and not based on actual professional facts or research. He noted that an 80' high industrial building can currently be built in the Industrial zone. On this piece of property, a height restriction is requested to be placed for a building 15' higher than what is allowed in the Residential/Rural zone. This discussion is not about Lot 2-26, as one or multiple buildings could be placed on that site without a variance. There is an intervening residential lot, Mr. Glover's, between the Peacock Brook condos and this site. The condos are not a direct abutter to this site. This is a misunderstanding.

Kelly Schmidt attempted to clarify that she understands that she is not a direct abutter to this site. Doug Kirkwood struck his gavel and continued to let Morgan Hollis speak.

Morgan Hollis noted that he does not have any information regarding the property value issue brought up by the last public speaker. He does not know the circumstances surrounding this item. This is a Residential/Rural lot and the values of homes immediately abutting or within some proximity to it are up for discussion. There have been many concerns raised regarding if this proposal violates the zoning ordinance purpose. There is a general overall purpose, and he has already pointed out why it does not violate this. The 1.2M s.f. impacts are not relevant to this Board because it is no longer a 1.2M s.f. proposed building and there could be one or many large sized buildings on the lot.

Doug Kirkwood reopened the floor to public comments.

Steve Desmarais, local builder, stated that residents were promised years ago that the Bon Terrain area, zoned Commercial and Industrial, would be developed and lower taxes. This back piece never was. He is excited and believes the proposed warehouse is a great opportunity for the Town. The applicant could instead build 10 100,000 s.f. warehouses on Lot 2-26-2, so he does not think people should discriminate against a building simply because it's proposed to be 1M s.f. He noted that he built the Gowing Woods condos 20 years ago, and due to wording in the PRD ordinance, there were additionally two 5-acre lots located nearby. He couldn't sell the 4-bedroom houses on these 5 acre lots for a number of years because people would have had to drive through the condo development to get to them. These condos now sell for \$500,000. He believes that residential development on this site would not be possible, due to zoning, or it would be a failure. He is in support of this proposal. The Planning Board zoned this area Industrial/Commercial back in the 1960's and it's unfortunate that some other people in Town now disagree. He would like to see it developed.

Barbara Staffiere, 9 Crystal Lane, stated that she is in favor of responsible development, but does not believe that a warehouse on a Residential/Rural zoned property is responsible. She asked that the Board observe the spirit and intent of the ordinance. The Staff Report lists permitted uses

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within the Residential/Rural district, including noncommercial sports and recreation, subject to Planning Board approval. However, even these sports uses have restrictions. In Section 4-3, A, 8, g – for noise and lighting, it states that uses involving motor-driven objects producing 60 or more decibels of sound at a range of 10’ as part of the sport or recreation are prohibited. Thus, the noise for these sports is restricted in the Residential/Rural zone. It is likely that trucks and a warehouse will have a much louder noise level than this. Most sources indicate that a diesel tractor trailer is about 100 decibels. This would clearly violate the spirit of the ordinance. There is also a lighting restriction on these sports and recreation uses, that there not be any lighting between 9:00 PM and 7:30 AM. She would thus suggest that the warehouse only operate during daylight hours. Thus, the applicant has failed the variance criteria tests in terms of violating the spirit of the ordinance and also being contrary to public interest.

Kelly Schmidt stated that she was previously responding out of order, however the use of the gavel by the Chairman was a harsh way to respond. This is an emotional conversation for many involved. It is difficult for people to listen to the applicant speak for 1 1/2 hours, for the Chairman to then allow only three members of the public to speak before again allowing time for the applicant to respond. She stated that she understands that the Peacock Brook Condominium Association is not a direct abutter of Lot 2-12-2. It is a direct abutter of Lot 2-26, which the lot in question will be joined to.

Donald Sutherland, 32 Peacock Brook, explained that he has been driving semi-tractor trailer trucks since 1977 and has worked for FedEx for 38 years. He does not understand how the applicant can state that there will only be 300 trucks every day coming and going from this site. He noted that a four-axle truck is 68’ long and trucks can be up to 75’ long. He explained that once drivers get to the site, they will drop their trailers and likely stay in their vehicles running heat and/or air conditioning. Some of these trucks have generators. Some drivers nowadays have no respect, and he has heard of people defecating on local pavement, if needed as they are not often allowed to enter the facilities on site. Drivers will not go far from their trucks and will wait for their trailers to be ready. They will likely go to other businesses in the area. All of these trailers will need smaller trucks to bring them in and out of the bays, which causes a loud beeping noise. There is also the potential for fuel spills as a road trucker holds approximately 150-200 gallons of diesel on each side. The black top proposed on this site could be equivalent to about 2.6 acres of impervious surface. If the variance is granted this could be increased to approximately 12 acres of impervious surface or 4.5 times that then would be allowed through a residential/rural use. On a summer day, blacktop can get up to 160 degrees and will raise the temperature in the area by approximately 20-40 degrees. He asked what would possibly happen to the fish in the nearby brook with those temperatures.

In response to a question from Danielle Pray regarding when the Peacock Brook condos were built, it was noted that they were possibly built around 2008.

Eric Jackson, 1 Steeple Lane, stated that he is the Director of Acquisitions & Development for The Stabile Company, stated that he has experience with single, and multi-family market-rate and affordable housing. He noted that he appreciates the character of the Town and the potential

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impact of projects on the community and abutters. He believes it is important for the Town to have businesses and jobs, and that the proposal could do a lot for these if done responsibly. As a builder, looking for residential land to build on, there is a shortage. His company looked at this parcel, Lot 2-12-2, years ago and determined that there was no way for the parcel to be developed as a residential lot under the current zoning. This is an industrial area, and if there were residential units on this lot they would have to drive through the area to access the lot. This is not an area for residential housing.

Skip Dalton, 14 Summerfield Way, stated that, regarding variance criteria #1, it is clear that the public interest will not best be served by placing an industrial warehouse in a rural residential lot. This 15-acre lot would require rezoning in order to do so. In regard to the variance criteria #2, the applicant stated that this parcel is landlocked and that there is no access to it. He believes that if the owner did not want to turn this parcel into a residential site, he should have explored other permitted uses within the zone. It would be hard to find another permitted use with the same adverse impacts as the proposed warehouse. In regard to variance criteria #3, if the Board approves this variance, it will enable an oversized warehouse use, instead of pushing the applicant to be creative and use the residential lot as it was intended. The hardships discussed by the applicant are self-imposed. In regard to variance criteria #4, he explained that the new proposal looks to slide the warehouse location over from the Summerfield condos. Thus, this will now further impact the Peacock Brook condos instead. In regard to variance criteria #5, he thanked the Board for not bundling all of the proposed variances together, to instead see if each can stand on its own merit. He believes it is a dangerous precedent to link adjacent residential and industrial properties. He questioned why the owner has paid taxes on this property each year without using it, only to suddenly claim that there are no potential easements available to access the lot, as part of his hardship argument.

Roseanne H, Boston Post Road, stated that there is an industrial park located only approximately a mile away which has contaminated many wells with PFAS. She believes the proposal will create issues for all. The aquifer associated with this site goes across the highway, all the way to Honey Pot Pond and Little Honey Pot. These areas are all connected. She is concerned about the high schoolers who jog in this area, as people drive very quickly down the roads. She believes the proposal would affect the whole town.

Nancy Plourde, 6 Beacon Lane, spoke to the Board regarding potential health impacts from the proposed warehouse use from her letter. She spoke of air pollution and particulate matter. She noted that particulate matter can travel hundreds of miles by wind and cause diseases such as cancer, heart attacks, COPD, asthma, etc. There are three daycare centers located near the site and she is concerned with how the pollution could alter children's brains. She does not believe that the natural topography of this site is an effective barrier to mitigate these issues. She explained that the average decibel level in a rural environment is about 20 decibels. The average decibel for one diesel truck under a heavy load is 114 decibels. OSHA requires hearing protection for sounds above 90 decibels. She asked what the applicant's plan is to safeguard against these items. Nancy Plourde is also concerned with light pollution from the site leading to sleep deprivation. It is unclear if this warehouse will be operating 24/7. She explained that this

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could become a hot zone due to the excess heat put into the air. She also was concerned about disturbance to animals and the security risk to her property. She asked how and where the natural topography will offer adequate buffers. She does not believe the public safety will be secured by this proposal.

Deb Keough, 16 Summerfield Way, noted that the applicant stated that many other commercial and industrial buildings have been constructed on the aquifer and have not impacted it thus far. She explained that this proposed warehouse would be five times the size of the existing F.W. Webb building, and so the Town cannot yet know the impact it will have on the aquifer. Per the Conservation Commission, this area has some of the highest ranked habitat in the biological region. The proposed pollutants and heat from the site would be incredible and would likely lead to a loss of animals and plants. The proposed size of this warehouse would cast a shadow. She stated that the same owner owns two other residential parcels to the west of this site, and she believes that a path to the site could be made through these parcels. She asked why zoning is important in Town. It is important because it segregates incompatible uses and prevents new development interfering with existing uses. If this variance is approved, the zoning has failed us.

Barbara Dalton, 14 Summerfield Way, stated that approximately 20% of the women in the Summerfield condos are breast cancer survivors. They do not want this proposed warehouse in their backyard. Her home is within the association and abuts Peacock Brook. She is concerned with diminution to her property value. One realtor she spoke to about the potential impact of this proposal, stated that it could certainly affect salability of the property depending on light and noise pollution. A second realtor she spoke to stated that the proposed warehouse would definitely decrease her property value during a standard real estate market. She believes that the proposed warehouse will devalue her property value and that of hundreds of surrounding properties. She is supportive of economic growth with the exception of a 200,000 s.f. warehouse placed on a Residential/Rural zoned property, with a proposed variance for an increase in height of 15' over the 40' allowed. This is a 40% increase and is substantial. She believes the applicant should build on the adjacent 148-acre parcel and use this parcel for its intended use with a residential development. The proposal is a financial gain for the applicant while the abutters will see a decrease in value.

Doug Kirkwood asked to hear again from the applicant. He noted the time, 10:20 PM, and stated that, without a compelling reason, the Board will table this hearing to the next meeting.

Morgan Hollis stated that there is concern that a warehouse on a Residential/Rural zoned lot is not responsible development. This is not the issue at hand. The issue at hand is that the current zoning ordinance imposes an overly restrictive covenant to reasonable use of the property so that a variance is required. There has been a lot of speculative information presented from people that are not in the business. However, two people who are actually in the business chose to speak in support of the proposal this evening. He explained that one member of the public spoke of restrictions on recreational sports uses in the Residential/Rural zone. The site in question is significantly different than other Residential/Rural zoned sites, due to its access and topography. Placing a residential building on this site would back up to an industrial use. He explained that

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truck impacts can happen whether a small or large industrial use is placed on the site. All issues regarding warehouse use will be addressed during the site plan approval process with the Planning Board. While he can speak to mitigation for certain items, it is not fair to do so here while discussing variances. These items should be restricted to the site plan review. Morgan Hollis noted that yard trucks are not required by federal law to have backup alarms, in response to one member of the public's concerns regarding backup noises. The Planning Board can choose to put stipulations on the proposed warehouse. He noted that the pollution of the aquifer could occur with any lawfully permitted use of the site. He also noted that the proposed warehouse is not five times larger than the F.W. Webb building, as stated by a member of the public. One member of the public mentioned the proposed blacktop increasing temperatures in the area by 20-40 degrees; he is unclear of the source of this statement and does not believe it is responsible statement to make. He does not believe it is relevant that Meridian Land Services was also involved with the 2015 warrant article.

Morgan Hollis stated that each requested variance stands on its own. There is no precedent made by the Board in approving or denying a variance for any applicant. It is an unfair statement to make that this proposal could set a precedent for any residential and industrial parcels of land in Town to be consolidated. He explained that PFOA's are generally a result of manufacturing uses and not warehouse uses. The Town has solid regulations currently in place and, if adhered to as they have been thus far, there should be no contamination of the aquifer. A traffic study completed showed negligible impact to only one nearby intersection. He stated that there are State regulations regarding air pollution, in terms of health impacts from the site. Any trucks involved with this warehouse use will meet federal and State requirements. There are State laws regarding idling, and these will be important issues for the Planning Board to discuss during site plan review. While there are natural buffers that will help with noise pollution, a noise study is likely something that will be requested at the Planning Board level, both at the site itself and for nearby residential homes. Concerns with items such as light pollution, additional heat, and wildlife impacts are also all good concerns to be raised at the site plan level with the Planning Board.

Morgan Hollis stated that access to the site is nearly impossible via the current right of ways. Bartlett Drive is not wide enough for an access to a residential development. The other access into the site likely could not be completed using the dedicated way but could possibly be completed using additional land nearby.

Morgan Hollis stated that, in regard to separating compatible uses, the current zoning ordinance does not do this. It would allow for placement of a residential unit directly next door to an industrial lot. This is contrary to good zoning. He requested that the Board table this discussion to a future date certain and will work to supply all necessary information prior to that meeting.

Danielle Pray moved to continue this hearing to June 21, 2022, at the Souhegan High School, at 7:00pm. Charlie Vars seconded.
Voting: 4-0-0; motion carried unanimously.

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2. 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, 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. Continued from April 19, 2022.

3.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. Continued from April 19, 2022.

OTHER BUSINESS: THESE ITEMS WERE NOT ADDRESSED AT THIS TIME

1. Minutes: April 19, 2022

The meeting was adjourned at 10:36pm.

Respectfully submitted,
Kristan Patenaude

Minutes approved: August 16, 2022