

TOWN OF AMHERST
Zoning Board of Adjustment

March 19, 2024

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In attendance: Danielle Pray (Vice Chair), Jamie Ramsay (Secretary), Charlie Vars, Tony Ortiz, and Tim Kachmar.

Staff present: Nic Strong, Community Development Director

Danielle Pray called the meeting to order at 7:00 pm. She outlined the process for the meeting and introduced the Board members.

REHEARING:

1. CASE #: PZ18136-110223 –VARIANCE

Divest LLC (Owner & Applicant); County Road & Thornton Ferry Road II; PIN #: 004-142, 142-10, 142-12, 142-13 –Request for relief from Article III, Section 3.9, Paragraphs B, C & D to maintain three existing reduced frontage lots as previously approved, and from Article IV, Section 4.3, Paragraph C.2. to maintain an existing corner lot as previously approved. *Zoned Residential Rural*.

Jamie Ramsay read and opened the case.

Attorney Brad Westgate, Winer and Bennett, LLC, representing the applicant; Jaron Slattery, Divest, LLC., and David Petropulos, Etchstone Properties, Inc., addressed the Board. Attorney Westgate explained that Etchstone Properties, Inc., is a Nashua-based developer that has been in existence for approximately 40 years. This case involves an application that Divest, LLC., filed back in October. On November 21, 2023, the Board granted a variance from the sections as cited. The variance pertains to four lots on the 14-lot subdivision that the Planning Board approved in 2005. The plan was recorded timely with the Registry of Deeds including the necessary documents that were required by conditions of approval. This subdivision plan contemplated only frontage lots. No new public road or Town infrastructure was required for this project. The variance granted on November 21st gave relief from three paragraphs in Section 3.9 of the Zoning Ordinance that pertained to reduced frontage lots. These paragraphs were adopted in 2023 by the voters to make changes to the Zoning Ordinance regarding reduced frontage lots. The variance also granted relief from Section 4.3 C.2., relative to frontage requirements for corner lots. The 2005 plan approved by the Planning Board never expired, as Amherst does not have time limits on subdivision approvals.

Attorney Westgate noted that the Staff Report gives an excellent summary on the history of the process leading up to the November 2023 Zoning Board hearing. Prior to that meeting, in 2022, the applicant sought guidance from the Community Development Department on how to proceed. At that time, the only zoning change that was affecting the proposal was the corner lot provision. Up until 2022, corner lots only had to have 200' of frontage on one street. Through the 2022 change to the Zoning Ordinance, corner lots must have 200' of frontage on both streets that it corners or abuts. The applicant maintained that the Zoning Ordinance changes should not be applicable, but the Community Development Director, Nic Strong, ruled otherwise, and this was accepted by the applicant. The applicant then needed to deal with stormwater management and the changes in the Zoning Ordinance, both regarding corner lots and reduced frontage lots.

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During this process in 2023, the applicant's project engineer analyzed the stormwater management designed in 2005 against the more current regulations. The opinion was that the system met the current regulations. This was confirmed by a peer review by the Town's civil engineer, Steve Keach, of Keach Nordstrom. The applicant then needed to deal with the variance for the changes in the Zoning Ordinance relative to reduced frontage lots and corner lots, which was granted.

On or about December 21, 2023, Patricia and Gerard Pelletier, sent an e-mail to Nic Strong. The Board treated that e-mail as a request for rehearing, and, on February 20, 2024, the Board granted the rehearing. Last Friday, the applicant became aware of a memorandum that the Pelletier's counsel, Michael Harris, had filed with the Board. In granting the request for a rehearing, the Board expressed some concerns about whether the variance granted last November was appropriate in light of the changes to the reduced frontage lot provisions. The applicant began to consider possible alternatives to get in sync with the reduced frontage lot changes. One consideration involved a 13-lot subdivision, with frontage lots, and some peculiar layouts, while another involved restructuring the whole project to a Planned Residential Development. The applicant felt that the reduced frontage lot approach makes more sense. In order to deal with the reduced frontage lot issue, the applicant has agreed to merge the three reduced frontage lots from the 2005 recorded plan into one lot. This will leave the applicant with two modest variance requests.

The merged reduced frontage lot is approximately 7.5 acres in total. The reduced frontage lot changes from 2023 mandate a five-acre minimum for reduced frontage lots. The 2023 regulations also require 50' of frontage for each reduced frontage lot. Originally there was 33' of frontage, for each lot, leading to 105' of frontage for the one reduced frontage lot. The merger process would not require a public hearing before any Board but simply completing a merger document that the Planning Board created to be recorded.

The rehearing request that the Pelletier's filed focuses essentially on the five-acre lot concerns. The purpose of this change to the Zoning Ordinance is to maintain open space for wildlife habitat and wildlife corridors. When a motion for rehearing is filed by an abutter, or even by an applicant, the Rules of Procedure require that all grounds for it be submitted, and it be noted as to why the decision order was unlawful and unreasonable. The Pelletiers appropriately focused on the key issue but the Pelletiers' motion for rehearing and Attorney Harris' follow-up memorandum do not address the corner lot variance that was pending, nor the other variance that the applicant would need. If the three lots are merged, the two variances still needed would be the corner lot frontage requirement of 200' or more on each road, meaning County Road and Thornton Ferry Road II, and the 500' intersection separation requirement, per Section 3.9.D. of the Zoning Ordinance enacted in 2023. This essentially states that the access to a reduced frontage lot needs to be 500' or more away from the intersection of two Town roads. The one reduced frontage lot has frontage on County Road and will be serviced by a private, common driveway named Barrington Way. This private common driveway and the easement location was set up to serve the original three reduced frontage lots and two conventional lots, Lots 6 and 7. 495' is the approximate distance from the center line of Barrington Way, which will now service

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the one reduced frontage lot and the two conventional lots, to the intersection of Conifer Lane and County Road. The Zoning Ordinance does not describe whether this distance should be calculated from centerline to centerline or edge to edge. The requirement is 500', so the applicant is seeking a modest variance from that required distance.

Lot 4-142-10 is a proposed corner lot, which has frontage on both County Road and Thornton Ferry Road II. Extracting the distance on those frontages, leads to approximately 350' of frontage on County Road for Lot 10 and approximately 145' of frontage on Thornton Ferry Road II. In November, the Board approved a driveway for that corner lot off County Road. This removes the need to have a driveway on Thornton Ferry Road II. The conditions of approval established in November 2023 for the corner lot included that the driveway servicing Lot 10 would be no more than 125' from the corner of Lots 9 and 10, to keep it away from the nearby intersection. Lot 4-142-11 needs a driveway but does not require a variance as it is not a corner lot and has 200' of frontage. Regarding a driveway location, the condition of approval was that the driveway would not be any more than 75' from the corner of Lot 11 and Lot 4-58-1. The applicant found those conditions of approval acceptable. The plans include a 50' buffer along the backside of the complex as well as the Thornton Ferry Road II side for Lot 11.

Attorney Westgate explained that he drafted a couple of motions for the Board to consider on these topics. He asked how the Board would like to proceed. He suggested he focus on the corner lot variance and the 500' intersection separation variance. He asked that the testimony submitted on November 21, 2023, be made part of the record, though the Board is only being asked to determine whether to grant the variances for the 500' separation and for less than 200' of frontage on Thornton Ferry Road II for the corner lot.

Danielle Pray asked if, procedurally the applicant is taking the variance for the reduced frontage lots off of the table. Attorney Westgate stated that he is not and asked the Board to review his draft motions. He explained that the idea is to make the aspect of the variance for the five-acre minimum and the 50' frontage minimum moot by agreeing that, as a condition of approval, the three reduced frontage lots will be merged into one. This would mean that there is no longer any need for those two aspects of the variance to apply. If the Board felt that withdrawing those two was the more appropriate procedural standard, the applicant could consider this as well. One motion explains how the applicant agrees, as a condition of approval, that the three lots be merged. The proposed motion would vacate the November 21, 2023, grant and approve the variance application with conditions that the three lots be merged, that the driveway for Lot 4-142-10 on County Road be no more than 125' from the Lot 9/Lot 10 corner, and that the driveway for Lot 4-142-11 be no more than 75' from Lot 4-58-1.

Danielle Pray asked if the Board already vacated the November decision by granting a rehearing. Attorney Westgate stated that he is unclear of that procedure.

Charlie Vars asked if the applicant's stance is that the reduced frontage lot has merged with the 7+ acre area, so that Barrington Way has a 50' right of way and the applicant would still have a 105' right of way. Attorney Westgate explained that this is not a right of way, but a private

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common driveway. The frontage of the merged lot is 105' with a common driveway up the middle to serve both sides.

Charlie Vars stated that the merged lots would require three driveways along Barrington Way instead of the five originally proposed. Attorney Westgate agreed. Charlie Vars asked why the proposed driveway comes so deep into the lot. Attorney Westgate explained that he only replicated what the existing 2005 plan set shows. Charlie Vars explained that this would dictate distance away from Barrington Way of the front of any house on those lots. Originally it was okay for any house to be built within 100' of an existing home on Lot 4-57-17. Attorney Westgate stated that he is not proposing any setback constraints on the merged lots, other than what the Town imposes. Charlie Vars asked if what is being shown could drop back approximately 50'. Attorney Westgate explained that it could. He might then amend the declaration of common driveway to replicate the actual usage. Lots 4-142-6 and 4-142-7 have no need to travel past their entrances. There is also no need to split the end point, and this could be shorter.

Charlie Vars stated that this was the only thing brought before the Board through the rehearing request. There was no argument regarding the location of the two driveways on Lots 4-142-11 or 4-142-10. This proposal seems to meet the objection stated through the rehearing and should not require the applicant to go back to the Planning Board.

Jamie Ramsay had no questions or comments at this time.

Tony Ortiz asked if there was any discussion regarding merging Lots 4-142-10 and 4-142-11. Attorney Westgate stated that there was not. Tony Ortiz explained that the 500' separation does not concern him, but Lots 10 and 11 do. Attorney Westgate explained that the request for rehearing does not address the corner lot concern at all. Following the Board's Rules of Procedure and the statute for rehearing, there were no grounds submitted on the corner lot issue in order to discuss the correctness of the Board's decision on November 21, 2023. The lot has over 500' of total frontage, the driveway location will be on County Road, and the driveway will be no more than 125' from the corner of Lots 9 and 10. The idea of 200' of frontage for a corner lot is so that a corner lot will not end up with a driveway on the shorter frontage road. This property has 350' of frontage on County Road and the driveway can be placed there with no impact on Thornton Ferry Road II.

Tom Kachmar stated that he agrees with the points made by Charlie Vars. The reasons for this rehearing seem to be regarding the three back lots and frontage, not the corner lots.

Danielle Pray stated that the 500' intersection was proposed originally, under Section 3.9.D. Sections B., for the five acres, and C., for the 50' of frontage, are not needed. The corner lot item is under Section 4.3.C.2.

Attorney Westgate asked the Board to incorporate into the record testimony of all parties from the November 21, 2023 hearing. Attorney Westgate addressed the five criteria for the two

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necessary variances. This property is in the Rural Residential District and has a total of approximately 30 acres. This is located in a relatively developed area of Amherst, and most of the properties around it contain residential development. As noted, the common driveway of Barrington Way would now service three lots, the reduced frontage lot and two others. Planning Board approval was granted in 2005 and had a variety of conditions, such as setting up a homeowner's association, common driveway access, a drainage easement agreement, and a 100' buffer along the frontage of County Road. All of these have been completed. Divest, LLC., is dedicating 1/3 of an acre of land to the widening of County Road, as shown on the plans.

Attorney Westgate noted that the 14 lots have been taxed separately since the subdivision in 2005. He would submit that the core goals expressed by the 2023 Zoning Ordinance amendments are met by the merger of the three lots as proposed. A variance is no longer needed for those acreage and frontage requirements. If a variance is not granted tonight for the corner lot and the 500' intersection separation, the applicant will have to go back to the drawing board which is not a good planning practice contemplated for this property. The area around this property has not changed materially since 2005. Merging the lots meets the philosophy of the 2023 concerns. This proposal is not contrary to the public interest. Approval of both the corner lots and the 500' separation variances, is based on the condition that the three reduced frontage lots are merged and the additional conditions regarding the placement of the driveways for Lots 4-142-10 and 4-142-11. The spirit of the Ordinance is observed for the same reasons. The proposal keeps the good planning practices of this subdivision in place and brings the proposal in concert with the 2023 reduced frontage lot changes. It also keeps the conditions of approval of the Board from November 21, 2023. This proposal maintains the buffer along County Road. This proposal allows the driveway to Lot 4-142-10 on the road frontage that best accommodates it.

Attorney Westgate explained that, regarding if substantial justice is done, this is measured by whether the general public realizes no appreciable gain from denying the variance. If denied, the applicant must go back to the drawing board. These two variances are modest in nature, and do not injure the public if granted. The separation difference is practically not discernible to the naked eye.

Attorney Westgate noted that this proposal will not diminish the value of surrounding properties given the modest nature of the variances. A letter from a real estate professional was submitted in November 2023 stating that the proposal will not adversely affect property values.

Attorney Westgate stated that literal enforcement of the ordinance would result in an unnecessary hardship. The property has specific circumstances distinguishing it from others. The previously approved 14-lot subdivision is still in effect. It is subject to the changes in the Zoning Ordinance and this plan tries to accommodate those changes. The location of the common driveway for the reduced frontage lot is sensibly located. It is not across from another driveway or roadway. The corner lot is unique as it has 500+' of frontage on both roads, but this is not evenly divided. The Ordinance provision can be met in theory and in spirit. Regarding the two-prong test, these Ordinance provisions do not serve a fundamental public purpose when applied here, because the separation item is nominal, and the sight distance is not a question. Merging

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the three lots removes the fundamental concerns of the reduced frontage lot amendments from 2023. The use is reasonable. Stormwater management has been handled properly and satisfied by the Town's peer review.

Charlie Vars asked if the first motion regarding merging the lots is needed. Danielle Pray stated that she believes it is. Attorney Westgate noted that the three conditions proposed are agreeable to the applicant.

Danielle Pray asked for public comment.

Gerry Pelletier, 1 Newbury Drive, explained that the request for rehearing emphasizes how much of an impact the original plan had on them as abutters. The new plan agrees with the Ordinance changes and satisfies the original concerns regarding overcrowding and other items stated in the rehearing documents. In the future, he would like there to be more emphasis paid to the concerns of citizens, as he does not feel this was addressed at the original hearing for this item. The original plan did impact the community and neighborhood. The new proposal lessens the impact, and this is appreciated. Regarding the frontage issues, the Board can decide that item. The burden was placed on residents to come back to the Board and make sure the Ordinance is upheld.

Patricia Pelletier, 1 Newbury Drive, stated that the voters voted for the five-acre lot minimum which was ignored in November by the Board. As innocent abutters, it ended up costing attorney fees and legal fees in order to have this recognized by the Board. She further noted that they had decided not to have their attorney present at this meeting because of the cost.

There was no further public comment at this time.

Jamie Ramsay moved to close the public hearing for this item. Charlie Vars seconded.

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

PUBLIC HEARINGS:

2. CASE #: PZ18647-030424 –VARIANCE

Karl & Louise Norwood (Owners) & NAI Norwood Group (Applicant); 86 Chestnut Hill Road, PIN #: 011-010-000 – Request for relief from Article IV, Section 4.11, Paragraph (F)(1)b and (G) for the construction of a single-family home at the south easterly corner of the property that would involve an impact to the wetland buffer of about 1,403 square feet bringing the proposal within 21.4 feet to the wetland buffer. *Zoned Northern Rural.*

Jamie Ramsay read and opened the case.

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Tom Burns, TF Moran, stated that this lot at 86 Chestnut Hill Road is located across the street from the applicant's primary property. The parcel is approximately 4.7 acres and has been in their ownership for over 50 years. The lot is challenged by the fact that, despite its size, it is encumbered by a significant amount of wetlands on the property. As a result, it has a limited buildable area outside of the required buffers for those wetlands. The application is to allow for construction of a single-family home that would encroach within the 50' wetland buffer located along the southeast corner of the property. Some of the buildable envelope exists outside of the wetland buffer and outside of the required frontage and side setbacks of the property. This area is approximately 3,300 s.f. and has an irregular geometry. The house is proposed on the only buildable area on the lot that would not impact the wetlands directly and would minimize impacts to the buffer itself. The applicant along with the builder looked at a number of different house options. The proposed option would be complementary to this neighborhood. Nearby are very high-end homes. The road itself is a designated scenic road. The home is proposed to fit well within the neighborhood aesthetic without creating unnecessary impacts to the wetland buffer or to the wetland itself. The house would have a front entry driveway and be served by an onsite well outside of the wetland. The property would have an onsite wastewater disposal system, with a leach field located in the frontage to keep it away from the wetland and maintain the minimum setback requirements of 75' away from wetlands per the State regulations and 100' by the Town's regulations. The requested variance is for encroachment of the house in the buffer.

Tom Burns addressed the five criteria:

1. How will granting the variance not be contrary to the public interest?

Here the applicant is seeking to construct a modest single-family residence. Wetland buffer relief is needed given the proximity of the wetlands to the west of the buildable area. By granting the variance there would be no harm to the public's interest because allowing the dwelling's construction will still conform to the area's essential character, which is residential homes. There is likewise no threat to the public health, safety, and welfare for the same reason. A residential single-family home in a residential zone will not adversely impact or threaten public safety. There are no traffic concerns as the property sits along a rural road with minimal traffic. As stated, the property is quite large and other than the immediate relief being asked for, the proposal is otherwise compliant with the AZO. Furthermore, given the strict buffer requirements of the AZO involving wetlands coupled with the challenges of this property, relief would need to be sought to construct any size or manner of a dwelling. The intent of the AZO wetland buffer is to protect the wetlands and we fully recognize the need for such protections. The relief requested is minor as the closest point from the wetlands is 21.4'. In conclusion, if relief is granted to allow for this one single family residence, the essential character of the neighborhood would remain unchanged, residential, and there would be no threat to the public safety, allowing one modest house on a rural road

2. How will the granting of the variance ensure that the spirit of the ordinance will be observed?

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The spirit of the ordinance is observed for the reason that the granting the variance is not contrary to the public interest, because again, the proposal is to construct a residential home in a residential neighborhood with construction in the buffer, which is unavoidable, with no encroachment or impact of the wetland itself.

3. *How will substantial justice be done?*

Substantial justice is done because the applicant has the right to be able to make the highest and best use of their investment. The applicant has designed a reasonable and, for the most part, zoning compliant plan that will fit with the surrounding area. The public will experience no negative effects if this variance is granted because the zoned area is residential, and the applicant is proposing a residential use. Put simply, denial of the variance will not result in any gain to the public, while conversely a denial would rob the applicant of a reasonable return in their investment.

4. *How will the value of the surrounding properties not be diminished?*

The values of surrounding properties will not be diminished because the area at hand is completely residential. There is no evidence to suggest that any of the property values in the area will be negatively impacted as a result of allowing the proposal to move forward. Indeed, the proposal is for the construction of a modest and handsome single-family home that would logically enhance the property values in the area.

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

(A) *For the purpose of this sub paragraph, “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,*
and

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

Those special conditions are satisfied for the following reasons: the property is quite large at 4.768 acres, far exceeding the required size of a building lot; however, the vast majority of the property is wetland. Nonetheless, there is a small corner that is suitable to build a modest home like the one being proposed. The ask is reasonable in light of the challenges of this property. Any proposal for any size or manner of a house would require relief from the AZO wetland buffer requirements.

Skipping ahead to (c), the proposed use is residential, and the applicable zone allows for residential use. Thus, the proposed use is reasonable.

(B) *Explain how, if the criteria in subparagraph A above are not established, an 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*

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property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it:

Therefore, here the remaining question is (b) whether 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. Again, if the variance is granted, the question is if it will unreasonably frustrate the purpose of the AZO. The purpose of the applicable sections of the AZO at issue are clearly to protect the wetlands. Despite being a large lot, the buildable area is small enough that relief from the aforementioned sections of the AZO would need to be sought in order to construct just about anything. The proposal comes within 21.4' of the wetland. Therefore, the impact of the wetland buffer is minimal but unavoidable since this proposal is for one single family home.

Alternatively, even if hardship was not satisfied under NH RSA 674: 33, I (b) (1), which we contend it is, then hardship is satisfied under NH RSA 674: 33, I (b) (2), which states, "If the criteria in subparagraph 1 are not established, an 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 the variance is therefore necessary to enable a reasonable use of it." Here the property cannot be developed in any reasonable manner due to its special conditions (wetlands) without seeking relief from the AZO, despite the fact that the property is nearly five acres. As such, hardship is satisfied under both NH RSA 674:33, I, (b), (1) and (2).

Charlie Vars asked if there are test pits on the property. Tom Burns stated that these are not yet in place. A wetland scientist has reviewed the wetlands and soils of the site. NRCS soils maps of the lot have been received. Charlie Vars asked if the water table is high. Tom Burns stated that it is. His estimate, based on the elevation of wetlands and soil mapping, is approximately 24". Charlie Vars noted that this will likely be a slab on grade. Tom Burns stated that the intent is to raise the house. The grade rises as one moves south on the lot. The southeast corner is at 192', moving to 188' north along the roadway. The proposal is to raise the house elevation to create a basement and allow an elevated leach field. There may not be able to be a walkout basement, but this is being explored. The garage would be located on the northerly side of the property.

In response to a question from Jamie Ramsay, Tom Burns explained that this is a wooded lot. There is a stand of existing trees that runs along the edge of the wetland which is not proposed to be removed.

In response to a question from Jamie Ramsay, Tom Burns stated that the builder's desire is to have a gravity septic system. The proposed leach field could be slid back on the property to stay further from the road and 100' from the wetlands. An Advanced Enviroseptic system is proposed to allow a reduction in footprint of the system, 60% of a typical pipe and stone system. If this needs to be a pump system, it can still work with the septic system with bypass venting. This will be dealt with through DES.

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Tony Ortiz asked how much of the proposed building sits within the wetland buffer. Tom Burns stated that there will be approximately 1,400 s.f. of permanent impact within the buffer, or about 55% of the proposed house. Tony Ortiz noted that the applicant has said there will be no impact to the wetland itself but asked how this can be assured, as the closest point sits 21.4' away from the wetland. Tom Burns stated that the builder will put up erosion control measures, such as silt sock and silt fence, along the buffer. No trees will be removed from within the buffer. This is a tight building envelope, and the builder will have to maintain the buffer. If it is impacted, the builder will have to seek relief from the Town and State.

Jamie Ramsay stated that the building permit should contain information that the builder will erect and maintain a silt barrier throughout the construction progress. Tom Burns agreed that this will have to be maintained throughout the course of construction. He has spoken with the builder about this. The intention is that any area outside the house footprint and within the buffer will be restored to existing conditions.

Tony Ortiz asked about the plan for the backyard area below the deck and porch to the wetland. Tom Burns explained that the intention is to maintain the tree line. If an area is currently grass, it will be left as such. No impervious surfaces will be placed in that area.

Tony Ortiz asked about driveway sanding/salting, as the edge of the driveway is right near the buffer. Tom Burns stated that he has accounted for this in other projects. He could recommend other products to the owner. Jamie Ramsay stated that a directive would be better. It was noted that this could be made a condition of approval.

Tim Kachmar asked what kind of wetlands are on the site. Tom Burns explained that these are classified by DES as very poorly drained wetlands. There are some areas of standing water, but not directly adjacent to this property. The property contains an area of shallow permanent open water, including a stream, which is poorly drained. This area requires a 50' setback. The back wooded area is classified as very poorly drained and requires a 75' buffer. There are pockets of inaccessible upland in the middle.

In response to a question from Jamie Ramsay, Tom Burns stated that the intent is not to clear trees on the buffer line, though some branches on the canopy may be trimmed.

Tony Ortiz noted that, if this variance was not sought, the applicant would likely have to seek variances for the side/front setbacks. He asked if any other proposals to shift the house outside the wetland buffer were considered. Tom Burns explained that this is located on a scenic road, which usually has a 100' setback. This lot predates that requirement and has a 50' setback. The intention is to place the house back from road so as to be not as visible. This places the leach field in front, pushing the house back. The applicant reviewed a few different house options/models and considered some that straddle the front setback, but the proposed location fits better. Tony Ortiz stated that any construction activity in a wetland buffer is a concern, but building within a wetland buffer is a larger concern.

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Danielle Pray asked if the driveway, parking area, and septic system areas are buildable. Tom Burns stated that these are not buildable for structure itself. Danielle Pray asked if that is only true for this structure chosen. Tom Burns stated that the applicant could not place a house in the 50' setback but a leach field is okay. Danielle Pray asked if the applicant considered seeking relief from the front setback. Tom Burns stated that this is an option. Danielle Pray asked if the applicant could fit a house in the buildable envelope. Tom Burns stated that only limited sized houses could fit there and these may not be in keeping with the neighborhood. A 24'x36' split level house could fit, but it would not match aesthetically with the neighborhood. The proposed house is a compact size while fitting aesthetically. Jamie Ramsay stated that the proposed envelope actually has a large footprint. Danielle Pray noted that the Board must discuss if it is more important for the home to fit aesthetically or impact the wetland.

Danielle Pray asked Tom Burns if he read the email from the Amherst Conservation Commission (ACC). Tom Burns stated that he did not, but he attended a meeting with the group and was told before the meeting that the ACC could not support any impact within the buffer. However, it was noted that the applicant has a case for a hardship as it is unclear where else the house could be placed on the lot. It was recommended that the applicant seek relief from the ZBA. Danielle Pray noted that the email states that the property is part of a very large wetlands complex that serves as the headwaters for surface water drainage extending to and through the Town's Joe English Reservation. Impacts from additional wetlands disturbance, wastewater infiltration, and stormwater runoff associated with this proposal should be avoided. Tom Burns stated that, if there is significant concern with the proposal, it could be shifted 30' into the front setback. The applicant could also look at other house options. He asked the Board's opinion. Danielle Pray explained that the Board cannot give advice. The Board will consider the impact to the wetlands and buffer, concerns of the ACC, and purpose of the Ordinance, against a balance with the aesthetics and potential traffic impacts. The Board will only consider the potential wetland impacts tonight. Tom Burns noted that, if the house was slid into the front setback, there could likely still be some encroachment into the buffer with the same house design.

Jamie Ramsay asked why it is impossible to move the structure uphill and closer to the road. This would likely more than maintain the 21.4' from the deck to the wetland edge and 23.2' from the corner of the house to the wetland. This achieves many of the objectives. Tom Burns stated that the placement was to aid in sight distance from the driveway looking south along the roadway. The driveway was pushed as north as possible but could be shifted a bit. Jamie Ramsay stated that shifting this north toward Chestnut Hill Road will help with many of the concerns.

Charlie Vars stated that he would be more comfortable with a topographical map to review. Tom Burns stated that the site pitches west and north. The southeast corner is at 192'. It then pitches toward the wetland. The center of the proposed house is at 189', and the wetland is at 187'. Charlie Vars noted that there is a 50' setback off the property line at the stonewall, but Chestnut Hill Road is then 10'-12' further beyond that. He would be more comfortable with a 40' variance request, knowing there is extra space between the road and the stonewall. This would still leave a 50' visual appearance. It could also help with the septic system, as less fill would be needed.

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Tom Burns thanked the Board for its feedback and stated that the applicant would look into ways to minimize impacts to the wetland.

Tim Kachmar suggested a site walk. The Board agreed.

Charlie Vars asked if the proposed location of the well could be swung toward the house. Tom Burns stated that he would like to keep this in an open area but can relocate it a bit on the site.

Danielle Pray asked for public comment at this time.

Nicole Sperry, 90 Chestnut Hill Road, expressed support for the plans to build on this lot. This is in the best interest of the neighborhood.

Richard Szum, 82 Chestnut Hill Road, stated that he believes setting the house in the proposed location would threaten the public health, safety, and welfare, as it would block some of the view from his driveway. This creates a safety concern on the road. The speed limit is 30 miles per hour along the road but many vehicles speed. The setback of the house impacts his ability to see up the road. As he backs out of his driveway, he will not be able to see as far up the road. He stated that the requirement is a 50' setback from the road and he would not like to see this reduced. Reducing it would impact vision to the road.

Danielle Pray noted that the Board would have a site walk and retake this item at its next meeting.

Chris Norwood, who grew up in Norwood house nearby, asked if any decisions will be made on the site walk. Danielle Pray explained that no decisions will be made until the next meeting on this item.

There was no additional public comment at this time.

The Board agreed to a site walk on Thursday, April 4, 2024, at 5pm.

**Charlie Vars moved to table this application to April 16, 2024, at 7pm, at Town Hall. Jamie Ramsay seconded.
Voting: 5-0-0; motion carried unanimously.**

**Charlie Vars moved to enter deliberations. Tim Kachmar seconded.
Voting: 5-0-0; motion carried unanimously.**

CASE #: PZ18136-110223 –VARIANCE

Divest LLC (Owner & Applicant); County Road & Thornton Ferry Road II; PIN #: 004-142, 142-10, 142-12, 142-13

Jamie Ramsay moved no regional impact. Tim Kachmar seconded.

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

Jamie Ramsay stated that he believed everything was fine with the two corner lots as part of the original application. He suggested leaving this item out of the discussion. Danielle Pray stated that, as a rehearing, she believes both variance requests need to be covered. One variance request deals with the corner lot frontage, per Section 4.3.C.2.; the other item is from Section 3.9.D. for the distance from the intersection.

Danielle Pray stated that proposed condition #1 for the merger of lots should be considered as part of the variance criteria.

In response to a question from Tim Kachmar, Nic Strong stated that the proposed merger of the lots still needs to be approved by the Planning Board.

The Board reviewed the variance criteria tests:

1. The Variance will not be contrary to the public interest.

- C. Vars – true, this proposal contains a significant reduction in the number of curb cuts, and it addresses the items for the rehearing.
- J. Ramsay – true, for the reasons previously stated.
- T. Ortiz – false, the Zoning Ordinance is, in fact, the public interest. This was demonstrated when the residents of Amherst approved the amendments to the Ordinance in question. Furthermore, granting the variance would contradict the very purpose of the Ordinance.
- T. Kachmar – true, the main concern for the rehearing was the abutter's concern. The abutter stated during the meeting that this concern is allayed based on the proposal to merge the lots.
- D. Pray – true, this is not against the public interest. The siting for the required 500' distance between a driveway and an intersection is shown on the plan to be 495'. This is not detrimental to the public health, safety, or welfare. The reduced corner lot is proposed at 140' where 200' is required, but the driveway is sited on County Road which does not affect the public health, safety, and welfare.

4 True, 1 False

2. The Variance will ensure that the spirit of the ordinance will be observed.

- J. Ramsay – true, for the reasons previously stated for the last criteria.
- T. Ortiz – false, the residents in Town decide what is in the Ordinances and voted to change those in question. While this plan was acceptable when originally approved in 2005, it does not meet the current zoning standards and is not consistent with the current Zoning Ordinance as amended which includes, among other things, preserving open space.
- T. Kachmar – true, for the reasons previously stated.

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- C. Vars – true, this proposal is a step forward from what was originally proposed. Merging the three lots promotes good land use planning practices. He does not believe the Planning Board would make many changes if reviewing this.

- D. Pray – true, for the reasons previously stated for the first criteria.

4 True, 1 False

3. Substantial justice is done.

- T. Ortiz – false, the applicant has other options for developing this property to achieve the plan of development. The general public voiced their concerns when they approved amendments to the Town Ordinances.

- T. Kachmar – true, there are other development options for the property, but this was approved many years ago.

- C. Vars – true, the reconfiguration is likely close to what would happen if the Planning Board was to rehear this today. The proposal solves the problem that was brought to the ZBA's attention.

- J. Ramsay – true, the ZBA cannot predict the Planning Board's outcome, but this new proposal proposes to merge the lots to eliminate the only problem addressed by this rehearing.

- D. Pray – true, this criteria is a balancing test to review the public interest versus the applicant's interest. The corner lot frontage is a 140' encroachment into the 200' required on each side of that lot. The applicant has demonstrated that they will place the driveway on County Road and not on Thornton Ferry Road II where less than 200' is present. The 500' frontage requirement is a very minimal encroachment which does not have an impact on the public interest.

4 True, 1 False

4. The values of the surrounding properties will not be diminished.

- T. Kachmar – true, once the proposed merger of lots is approved by the Planning Board, this will be better for abutters than the previous proposal.

- C. Vars – true, testimony was provided from The Masiello Group that there will be no diminution to the value of surrounding properties. The houses to be constructed in this area will likely be more expensive than those around them.

- J. Ramsay – true, this will be a change to the neighborhood, but not a deterrent. Diminution of surrounding property value is moot.

- T. Ortiz – true, there was no information presented to show that this proposal will diminish surrounding property values.

- D. Pray – true, the letter from the real estate professional indicated there would be no loss in value of surrounding properties and there was no evidence to this point presented this evening.

5 True

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship

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- C. Vars – true, the applicant indicated a hardship, and the proposal eliminates the objections of the rehearing. There are special conditions of the lot which are reasonable to show a hardship.
- J. Ramsay – true, one hardship is that the Zoning Ordinance has changed while the property was previously approved. The Board should listen to the proposed successful solution to the abutter’s concern.
- T. Ortiz – false, the applicant can achieve planned development on the site using alternative methods. Denying this variance is not a hardship to the applicant.
- T. Kachmar – true, this location has similar PRDs and lot sizes surrounding it. The revised proposal shows a hardship.
- D. Pray – true, the property is long in shape. It received prior Planning Board approval many years ago. The property is different than others in the area as it has a lot of frontage on County Road. The applicant has situated a driveway for the two lots in this area, one of which requires 200’ and has 140’. The applicant created a combined driveway from the previous plan, which has no better position than the current location. The driveway encroaches a small amount and situating it in a different area on the road would be a considerable hardship. The proposed use is a reasonable one. The proposed plan is the least impactful to the neighborhood and to the Town.

4 True, 1 False

Tim Kachmar moved that the testimony from the November 21, 2023, hearing be incorporated into the record. Jamie Ramsay seconded.

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

Danielle Pray reviewed the proposed conditions for the Divest, LLC, variance application.

1. That lots 4-142, 4-142-12, and 4-142-13 depicted on Hillsborough County Registry of Deeds Plan #34336 be merged voluntarily by Divest, LLC, resulting in one reduced frontage lot which, as merged, would then comply with the minimum lot area requirement of Article 3, Section 3.9.B. of the Zoning Ordinance and with the minimum 50’ frontage requirement of Article 3, Section 3.9.C of the Zoning Ordinance;
2. That the driveway servicing Lot 4-142-10 on plan #34336 be no more than 125’ from the property corner of Lot 4-142-9 and Lot 4-142-10, as shown on plan #34336; and,
3. That the driveway servicing Lot 4-142-11 on plan #34336 be no more than 75’ from the property corner of Lot 4-142-11 and Map Lot 4-58-1.

Charlie Vars moved that the application be approved with the outlined conditions.

Tony Ortiz seconded.

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

Tony Ortiz moved to exit deliberations. Charlies Vars seconded.

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

Tim Kachmar exited the meeting at approximately 9:10pm.

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OTHER BUSINESS:

1. Minutes: December 19, 2023; February 20, 2024

Tony Ortiz moved to approve the meeting minutes of December 19, 2023, as presented. Jamie Ramsay seconded.

Voting: 4-0-0; motion carried unanimously.

The Board agreed to table discussion of the February 20, 2024, minutes to a future meeting.

2. Any other business that may come before the Board

The Board stated that it would hold its elections in April. The Rules of Procedure need to be updated shortly as well.

Charlie Vars moved to adjourn the meeting at 9:16 pm. Tony Ortiz seconded.

Voting: 4-0-0; motion carried unanimously.

Respectfully submitted,
Kristan Patenaude