

TOWN OF AMHERST
Zoning Board of Adjustment

September 19, 2023

APPROVED

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

Doug Kirkwood called the meeting to order at 7:00pm. He outlined the process for the meeting, including that the applicant will make a presentation, the public will then have a chance to comment and ask questions through the Chair, and the Board will have the ability to comment at any time. The Board will then move into the deliberation section of the meeting, at which time public comment will cease. The Board will review regional impact of each case and consider approval or denial with/without conditions. If an applicant does not agree with the decision, they can apply for a request for a rehearing within 30 days of this meeting. In the application for a rehearing, the applicant needs to add a letter explaining why they think the rehearing is necessary. If the applicant is still not satisfied after the rehearing, there is recourse to the Superior Court, within 30 days from the rehearing date.

Doug Kirkwood introduced the Board members.

REHEARING:

1. **CASE #: PZ17271-042623 – REHEARING FOR VARIANCE Louise Norwood (Owner & Applicant); 89 Chestnut Hill Road, PIN #: 011-007-001** – Request for relief from Article III, Section 3.15, Paragraph D to operate a private wedding venue as a Home Occupation. *Zoned Northern Rural. Continued from August 15, 2023.*

Jamie Ramsay read and opened the case. It was noted that the property owners have requested a continuance due to a conflict tonight.

Jamie Ramsay moved to continue CASE #: PZ17271-042623 to October 17, 2023, at 7pm at Town Hall, based on a request by the owner/applicant. Tracy McInnis seconded.

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

PUBLIC HEARINGS:

2. **CASE #: PZ17719-081123 – APPEAL OF ADMINISTRATIVE DECISION Sten Larson (Applicant); 14 Buckridge Drive, PIN #: 007-017-012** – Request for relief from Article IV, Section 4.11 to appeal an administrative decision of the Office of Community Development regarding their issuance of a building permit that may violate the Zoning Ordinance. *Zoned Residential Rural.*

Jamie Ramsay read and opened the case.

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Sten Larson, Buckridge Drive, explained that he has lived in Town for 19 years and, since moving to this location, there has been nothing on the lot in question. He was told that this was a wetland area that would not be built on. Recently, the land was cleared, and some building began. He reached out to the Town, who told him that the proper permits were in hand and there was no issue. He continued to investigate and reached out to Jared Hardner, a neighbor for 18 years. Sten Larson stated that the plan shows a proposed leach field very close to his well, approximately 72'. He is concerned that this may infringe on his well and also be an issue for resale in the future. Additionally, this work seems to be proposed on top of the wetlands, which could impact the surrounding area and other neighbors.

Jared Hardner, neighbor, and Chair of the Amherst Conservation Commission (ACC), explained that there are quite a number of potentially affected stakeholders here this evening, and asked to be able to present the full detail of the appeal. Doug Kirkwood agreed to allow Jared Hardner to proceed.

Jared Hardner explained that this appeal is in reference to the administrative decision issued by Scott Tenney, Building Inspector – Office of Community Development (OCD), on August 4, 2023, regarding new construction at 14 Buckridge Drive, Lot 7-17-12. There is concern that the aggressive proposed design near wetlands may result in non-compliance with the septic system ordinance and impacts to wetland buffers that are prohibited in the Zoning Ordinance. On July 2, 2023, the ACC informed Scott Tenney about perceived non-compliance with Town ordinances at this site, particularly impacts on the Wetland and Watershed Conservation District (WWCD). According to the Town of Amherst Zoning Ordinance, wetlands, surface waters, and associated buffers comprise the WWCD. On July 12, 2023, Jared Hardner stated that he and ACC Vice Chair Rob Clemens met with Scott Tenney and Nic Strong, Community Development Director, near the construction site to discuss perceived non-compliances. The ACC communicated its desire to work collaboratively with OCD to develop a clear analysis and understanding of the project in the context of Town ordinances, to promote greater consistency between the permitting and enforcement efforts of OCD versus ACC's advice to the Planning Board. The ACC's efforts at collaborative engagement continued via e-mail exchanges but were abruptly and unilaterally cut short by Scott Tenney's administrative decision on August 4, 2023. The bases of the appeal are as follows:

- 1) Scott Tenney did not receive or review a complete set of plans for the site prior to issuing the building permit. Plans should comply with Env-Wt 311.05. The only plan presented to the Town was for a septic system and that plan clearly states "use of this plan for any purpose other than the construction of the sewage disposal system shall be at the users risk." It is unclear how construction of a house and driveway so close to wetlands could be permitted without reviewing the full set of plans. Examples of missing information required by the law include the name and professional license number of the individual responsible for the wetland delineation; proposed methods for erosion, siltation, sedimentation, and turbidity control, and management indicated graphically and labeled with the type of control and the contractor responsible for monitoring the controls if known at the time of application; the location and number of the individual wetland boundary flags or other markings as located by survey or by GPS; notes that specify the dates on

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88 which the wetlands delineation was performed; and finally a report of existing conditions or U.S.
89 Army Corps of Engineers data sheets. These details do prove important in this case. For
90 example, the construction area had been fully cleared of forest with no erosion, siltation, or
91 sedimentation controls in place. These were hastily installed in the last week of July after the
92 complaint was filed with the Town. A proper site plan would have specified those controls to
93 prevent impacts to wetlands. Another example was the inability of Fieldstone Land Consultants
94 to provide any supporting notes, data, or report concerning the wetland delineation. The
95 responsible wetland scientist was not identified by a separate certified wetland scientist stamp.

96
97 2) A review of the septic design reveals several non-compliances with Section G of the Septic
98 System Ordinance. These may be attributed to the attempt to fit a house into a lot with limited
99 space given its proximity to the WWCD. Section G., Article XI., Section A., Item 4. a. states that
100 “no component of an onsite wastewater disposal system shall be situated: a) less than 75’ from
101 any existing or proposed water well.” As Sten Larson mentioned the actual distance to the
102 wellhead at his residence, 16 Buckridge Drive, appears to be less, or approximately 60’-62’ from
103 the wellhead to the property line, and according to the septic plan, 10’ from the property line to
104 the leach field, for a total of only 70’-72’. Fieldstone did not contact the resident of 16 Buckridge
105 Drive to confirm the location or to physically measure the distance to the wellhead. According to
106 Article XI., Section A., Item 5., the distance between the bed bottom of the leach field and the
107 estimated seasonal high water table must be 48”, if the perk rate is slower than 5 minutes per
108 inch. This requirement in Amherst applies to any leach field type. The septic design for this site
109 does not achieve that vertical separation; in fact, it is roughly half. It is important to note that
110 Amherst’s design requirements are stricter than the State requirement of 2.5’ for Enviro Septic
111 leach fields. Section A., Item 11., states “if and when any requirement of this Ordinance is found
112 to be in conflict with the requirements of any other applicable State or local code, the more
113 stringent regulation or code requirement shall prevail.”

114
115 3) After a complaint was filed, Scott Tenney did request more information from Fieldstone about
116 possible infringements on the WWCD. Fieldstone provided an as-built plan for the construction,
117 as of August 4, 2023. The as-built plan shows only 2.8’ between the foundation of the house and
118 the wetland buffer. This is too little to allow for construction activity or reasonable long-term use
119 of the home. The as-built plan did not address the question of whether wetland buffers had been
120 affected by construction activities, only that the foundation of the house itself was not in the
121 wetland buffer.

122
123 4) It was observed from the abutting property, 16 Buckridge Drive, that the movement of heavy
124 equipment around the construction area disturbed the wetland buffer. It appears that fill may
125 have even been placed in the buffer. During the week of August 7, 2023, when construction
126 reinitiated after Scott Tenney’s administrative decision, heavy machinery pulled rocks out of the
127 buffer towards the boundary. This may minimize the visibility of the buffer infringement that
128 occurred during construction of the foundation; nevertheless, it is still visible that vegetation has
129 been destroyed and removed, ground disturbed, and material moved in and out of the wetland
130 buffer.

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5) According to the Zoning Ordinance Section 4.11, G., and H., impacts to the WWCD, of which buffers are one component, can only occur if they are related to a permitted use or with a Conditional Use Permit (CUP). On this point, Scott Tenney stated in an e-mail of July 3, 2023, “this is just logging (and some site work). In fact, logging and tree cutting is permitted within a wetland as long as no physical ground disturbance occurs physically within said wetland.” In fact, logging, i.e., the cutting and removal of trees, is not a permitted use in the WWCD unless it is a component of forest management. Clearing a lot for construction is not forestry. The State of New Hampshire defines forestry and forest management as follows: “Forest management means the application of scientific and economic principles to conserve forest resources and obtain forest benefits. Forestry means the science of silviculture and the practice and art of managing and using for human benefit forest lands and the natural resources that occur in association with forest lands, including trees, other plants, animals, soil, water, and related air and climate.”

6) Scott Tenney also explains in the same e-mail that the buffer can be graded and converted into a lawn, and introduces the term “non-disturbance buffer,” which does not exist in the Zoning Ordinance. “There's nothing that a wetland buffer cannot be graded or a grassed area (lawn) unless it is determined by a wetland scientist as a non-disturbance buffer.” This opinion is reiterated Scott Tenney’s administrative decision of August 4, 2023. He references “a study” without citation that supports an ill-conceived notion that residential lawns are superior to natural habitat in protecting wetland ecology and hydrology. This statement runs counter to decades of established science and environmental policy. The ACC has submitted to the ZBA a letter clarifying this issue. Finally, Amherst’s Zoning Ordinance does not use the prime wetlands designation nor the “non-disturbance” designation for buffers. The Zoning Ordinance alters the width of buffers due to the importance of wetlands, but the level of protection is all the same.

7) Scott Tenney states in his administrative decision that “the Town does not have a formal definition of a buffer, nor what a buffer must be, or how it should be maintained.” This is incorrect. The Zoning Ordinance defines “buffer” in Article 9 and the level of protection offered to wetlands as part of the WWCD is clear. One cannot have land use activities in the buffer unless it is a permitted use, per Section 4.11.G, or if a CUP is received, per section 4.11.H. Scott Tenney's administrative decision runs counter to many years of Town policy and the current practices of the Planning Board. Interestingly, Fieldstone, the surveyor, agreed on public record at the ACC meeting of August 23, 2023, that the Zoning Ordinance permits zero clearance of natural vegetation without an exemption or CUP from the Planning Board.

8) The wetlands on Lot 7-17-12 may be greater than one acre, which would therefore trigger a requirement in the Zoning Ordinance for evaluation using the New Hampshire Method to determine if it qualifies as a significant or a water protection wetland, which require 50’ and 100’ buffers respectively, per Section 4.11.F and Section 9.1. Fieldstone stated in an e-mail to Scott Tenney on August 2, 2023, “based upon visual estimates and cursory desktop review of the various topographic references the size of the wetland was estimated to be less than one acre, prior to pinching out less than 50’ width on the abutting lot to the north, Lot 12. Per Amherst zoning, when classifying wetlands separate evaluation units shall be considered where the wetland narrows less to less than 50’. The wetlands off the property were not delineated or

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located by this office.” An accurate measure of the wetland is in order since an increase in the buffer size would make construction of the house non-compliant with the Zoning Ordinance. In any case it is readily observable from the street that the wetland extends over a large portion of Lot 7-17-12, which is one acre, as well as much of the adjoining one-acre lot of the same owner Lot 7-17-10. This area of the wetland alone probably comes close to one acre. If true, only a very small amount of additional wetland coverage beyond the property boundaries would satisfy the greater than one acre threshold.

Jared Hardner stated that there is a note in the Staff Report from Chris Danforth, who verified the wetlands delineation. Chris Danforth states that he cannot challenge Fieldstone’s opinion because he was not able to go off the property. Therefore, Fieldstone’s opinion prevails. Jared Hardner stated that this does not make any sense. There are rules driven by the size of wetlands, to protect the ecology and hydrology of wetlands. If a wetland goes off a particular property’s border, the entirety of the wetland must still be considered.

Jared Hardner explained that he contacted the UNH Cooperative Extension, which is responsible for the New Hampshire Method. He corresponded with the author of the New Hampshire Method, Dr. Rick Van de Poll. Jared Hardner explained in his email that the Town was struggling with an issue related to wetlands evaluation. The New Hampshire Method is required in Amherst’s Zoning Ordinance for any wetland larger than one acre and the results are used to determine the width of required buffers. The challenge being faced is that wetland scientists working in Town claim that, if the wetland crosses off the subject property from where the wetland is being evaluated they are not obligated to confirm the size, and if there is less than one acre of wetland on the subject property then they do not need to evaluate it using the New Hampshire Method. Jared Hardner noted in his correspondence that this makes little sense to him from a hydrologic or ecological perspective. Dr. Van de Poll’s response was that this sounds ridiculous and is clearly being argued by a wetland developer and not a wetland scientist. This goes against both the New Hampshire Method, the Federal Highway Method and, hopefully soon to be released, the Army Corps Method. A wetland’s functions are tied to all of what it provides, not just the sliver between the property boundary. There are ample remote data resources to make very good estimations of the total extent of a wetland assessment unit (AU), without having to set foot on anyone else’s property. This should be the basis for any functional evaluation. Dr. Van de Poll stated that he does not believe that, if this argument went to court, anyone in the State or federal regulatory agencies would favor breaking up of an AU on the basis of an artificial boundary. Jared Hardner explained that Dr. Van de Poll suggested that a LiDAR-derived 2’ contour map and the latest color infrared images be used for estimating the size of wetlands when access is not permitted by landowners. The recommended contour map shows the depression of the wetland, and this extends over 1.285 acres. The latest color infrared image available on Granit View suggest that the wetland continues to the west for some distance beyond the polygon. Based on this image, the wetland evaluation could be 2.4 acres or larger. There is a perennial stream that flows from west to east, feeds this wetland, and continues beyond this wetland across the street to Jake’s Pond. One would expect this wetland complex to have a variety of terraces, visible in the image. Fieldstone claims not to have considered the wetland as it extends onto the lots to the west because it narrows to less than 50’, but this is not

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corroborated by the maps which indicate that the wetland measures over 90' wide at its narrowest point. Any narrowing suggested in the color infrared image is caused by tree crowns, as the underlying topography shows. Even if it did narrow to 50', this is not the correct application of the current New Hampshire Method for determining wetland evaluation units. Section 9, under the definition of wetlands, states that "the latest version of the New Hampshire Method" should be used. The 50' restriction is a 1991 precursor of the current 2023 version of the New Hampshire Method. The 50' restriction does not exist in the current version, so it is no longer applicable. The direction in the Zoning Ordinance is to use the most recent version.

Jared Hardner stated that, if the wetland is over one acre, it may qualify as significant based on its evaluation using the New Hampshire Method. It is likely that the wetland could achieve an ecological integrity score of 5.7 and a wetland-dependent wildlife habitat score of 4.7. These scores are, to a large degree, supported by this wetland's well-conserved watershed and associated complex of linked wetlands and wildlife habitat. If these scores are correct, a 50' buffer is required, according to Section 9 of the Zoning Ordinance under the definition of wetland. This would make any construction of a house in this lot non-compliant with the Zoning Ordinance

9) The Zoning Ordinance requires the use of the US Army Corps Manual for Wetland Delineation, including the Regional Supplement for the Northeast. The Regional Manual includes a wetland determination data form for documenting results. In an e-mail to Scott Tenney dated July 24, 2023, Fieldstone's Christopher Guida, CWS, admitted that there were no supporting field notes or documentation for the wetland delineation. "We don't have any additional information to provide from the delineation back when it was done." In a follow-up e-mail to Scott Tenney dated August 2, 2023, Chris Guida stated that the US Army Corps data form is intended for "lay persons that are not professional or certified wetland scientists." It was also claimed that this type of supporting information is not required to be provided.

Jared Hardner stated that, an interview with the Army Corps Chief of Regulatory Division for New Hampshire and Vermont yielded a categorical rejection of Fieldstone's position. It was stated that filling out the USACE data form is "a required part of the wetland delineation procedure." It was advised that, even if a State law does not require its submission, the data form is necessary to complete the assessment and there should be no reason for a wetland scientist not to provide it if they did the assessment properly. It was noted that the Town should work with the expectation that if there are questions or concern about a delineation, the wetland scientist should be able to provide the US Army Corps data forms. A suspicion is only raised if a wetland scientist is not able to make the data sheet available. Other phone calls to New Hampshire DES and field staff at the US Army Corps corroborated this viewpoint that the data forms are a necessary part of conducting the delineation.

Jared Hardner explained that Fieldstone's Kenneth Robinson later told the ACC in a public meeting on August 23, 2023, of which meeting minutes are available for review, that it is company policy to always record wetland delineations on the US Army Corps data forms and to

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store that information. It is unclear why Fieldstone broke with company policy on this project or did not share the forms.

Jared Hardner explained that this appeal is due to concerns related to aggressive design near wetlands that may result in non-compliance with the Septic System Ordinance and impacts to wetland buffers prohibited by the Zoning Ordinance. The appellant requests that, at a minimum, Scott Tenney's administrative decision of August 4, 2023, be reversed and all work at the site remain halted until the issues raised here have been resolved. This case may require referral to the Planning Board. If the issues cannot be resolved, ecological restoration of the site should be pursued. Rigorous protection of water resources is a fundamental pillar of Amherst's recently updated Master Plan. This community priority should be reflected in the decision-making of the Town's governing and administrative bodies. Consistency between these bodies is essential for responsible and fair governance. Jared Hardner asked that Rob Clemens, Vice Chair of the ACC, be allowed to brief the ZBA on the ACC's letter. Doug Kirkwood agreed.

Rob Clemens, 13 Tarleton Lane and Vice Chair of the ACC, stated that he is here to detail the ACC's understanding of wetlands protection provided by the Amherst Wetlands Ordinance. As detailed in the ACC's September 14, 2023, letter to the ZBA, and as it specifically applies to the two Buckridge cases being reviewed this evening, he emphasized the following points. In recognition of the important functions that wetlands provide, the Town established an Ordinance to better protect its wetlands and wetland buffers in 2015. These functions include reduction of flooding, filtration of groundwater recharge, preservation of key aquatic habitats, and many more. The ACC has advised the Planning Board and the ZBA regarding wetlands CUP applications, as required by the Ordinance and consistent with the ACC's responsibilities per RSA 36A-2, since the Ordinance was established in 2015. The Town's Wetlands Ordinance is very clear in its requirements for wetlands delineation and the protection of associated wetland buffers. Wetland buffers are defined, and buffer widths are specified based on the category of wetland present. Buffers are not to be disturbed and certainly not cleared unless a CUP application has been received and approved. The ACC has confirmed its understanding of required wetlands delineation methodology in recent conversations with the US Army Corps of Engineers, the State's Department of Environmental Services, and certified wetland scientists practicing in Amherst and elsewhere in the State. The ACC is very concerned that building permits are being issued in Amherst counter to the intent of the Town's Wetland Ordinance, due to a misunderstanding or misapplication of the Ordinances' requirements and or the absence of necessary and accurate delineation information, as evidenced in these cases. The ACC wants to emphasize the importance of wetlands protection in Town and on any individual lots, for small and large development alike. The ACC has commented time and again about death by 1,000 cuts.

Danielle Pray asked if it is the ACC's position that every piece of land developed in Amherst on wetlands, unless a permitted use, requires Planning Board approval through the CUP process. Rob Clemens agreed that permitted uses, such as agricultural and forestry, are allowed, but otherwise a CUP should be required, per the Ordinance.

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Danielle Pray asked if the wetland in question appears to be under an acre on the property. The size otherwise is unknown. Jared Hardner stated that the wetland has not been physically measured or surveyed. It would have to be delineated fully onto the neighbor's property and then surveyed to get a precise estimate. A 90% estimate could be obtained using LiDAR and color infrared. If the size is over one acre using those methods, there is no need to survey and delineate the whole wetland area. If the wetland adds up to approximately an acre on the properties owned by the developer, and one can see that it continues onto other properties, it is fair to assume that it is over an acre.

Danielle Pray asked if Fieldstone used the LiDAR and color infrared images. Jared Hardner explained that Fieldstone stated that various topographic references were used, but principally it seems that Fieldstone relied on a visual estimate and the 50' rule. It may look as though the wetland is constrained within 50' somewhere off the property but the Ordinance is clear not to use the 1991 version of that document, but instead the 2023 version, which does not include the 50' rule but a different way of determining the edge of the wetland assessment unit.

Danielle Pray stated that it has been a few years since the first delineation on this site. There does not seem to be any type of documentation to support the developer's view, other than a submitted septic plan. Jared Hardner explained that he checked with Nic Strong, who checked the file, and did not find anything other than the septic plan. Apparently there was documentation regarding the specific house to be built, but nothing that would satisfy the requirements of the law for a complete set of information. There is information that the Town should be able to ask for and receive or should have received as part of the initial packet, that was never requested by Scott Tenney and not reviewed. This leaves a lot of questions and, when pressed, this information does not seem to be available.

John Bisson, attorney for Cronin, Bisson, and Zalinsky representing the property owner Michael Hanning, stated that the property owner's team does not support the appeal. He stated that it is important for the Board to focus on what is being appealed, which is the August 4, 2023, decision from the Office of Community Development and Scott Tenney, in particular. The issue in that decision was whether or not there was a violation on the site, not whether the permit had been properly issued. The Board heard a passionate plea on behalf of the ACC that the permit should not have been issued, but this is not part of the appeal. The appeal is specifically regarding the August 4, 2023, determination of whether or not there was a violation. There was mention regarding a concern for Fieldstone's work on other projects, but this appeal is not about other projects and whether or not Jared Hardner has a problem with Fieldstone's work. Attorney Bisson stated that some of Jared Hardner's comments bordered on defamation, but this is also not the issue. There are two certified wetlands scientists involved in this project, Chris Guida and Chris Danforth, of Keach Nordstrom, who works for the Town. Chris Danforth has stated that he is inclined to agree with Fieldstone's position and is not aware of Jared Hardner's qualifications to challenge the Fieldstone delineation or to make a determination of wetland boundaries or functional assessments. Chris Danforth concluded that the Fieldstone opinion should prevail. Attorney Bisson stated that, while Jared Hardner clearly does not agree with this and does not like Fieldstone, the property owner should not be caught in the middle of these broader concerns

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351 regarding if the Town properly considered this permit. A permit was issued, and no one appealed
352 it. It appears that there was activity at the site that was inconsistent with the permit, a complaint
353 was submitted by Jared Hardner, and then Scott Tenney presented an August 4, 2023,
354 determination that there was no violation.

355
356 Attorney Bisson stated that Steve Keach, Keach Nordstrom, who also advises the Town, stated
357 that, as with any zoning violation, an appropriate response by the municipality would properly
358 include the following: issuance of a cease-and-desist order, which is not in hand and which
359 would mitigate exacerbation of the violation or its effects. Steve Keach stated that the Code
360 Enforcement Officer caused work to cease and facilitated the installation of erosion controls to
361 protect the adjacent wetland property. Issuance of an order to mitigate the violation should
362 include an expectation that the owner restore the impacted portion of the WWCD. There was a
363 silt issue on the site that was addressed, as part of the August 4, 2023, response, and that order is
364 under appeal. The permit itself is not subject to challenge.

365
366 Attorney Bisson explained that, if the ZBA reverses the August 4, 2023, decision, the property
367 owner still has a permit and could move forward. There is potentially something to be addressed
368 on the site. The certified scientists have concluded that there is no issue. The previous
369 presentation made, while very passionate, was largely irrelevant because it is the August 4, 2023,
370 decision that is under appeal. The applicant, Sten Larson, stated that he was told that the property
371 was wetlands some 19 years ago and would never be built on. If the abutter did not want it to be
372 built on, he could have purchased it. However, there is a property owner for the site, who filed a
373 request for permit, followed the procedures, and received the permit. All Town officials, except
374 Jared Hardner, have supported this process. The ZBA is being asked to revoke a permit, which is
375 beyond the scope of the appeal. If the ACC has an issue with Fieldstone, it can file a complaint
376 with the licensing board that licenses certified wetland scientists. The remedy is not to malign
377 Fieldstone's reputation because of certain concerns on other projects in Amherst. This property
378 owner is trying to build a home on a property, consistent with a permit that the Town has issued.

379
380 Attorney Bisson stated that, regarding preservation of wetlands, he agreed this is important. His
381 client complied with the rules and procedures. There was a violation on the site, which was fixed
382 and there should be no further issues. He stated that there are trained, educated scientists on
383 hand, in case the ZBA has questions.

384
385 Sten Larson stated that his concern is regarding the proposed septic system on top of his well. He
386 asked if Pennichuck Water is going to run lines down, if his well becomes contaminated, or who
387 will be responsible for this. This proposal will upset the water table.

388
389 Danielle Pray asked if this item was included in the complaint. Sten Larson stated that it was.
390 Jared Hardner noted that this was not in the original complaint but is in the amended appeal,
391 dated last Thursday, under item 2. This raised a concern regarding the distance from Sten
392 Larson's well and also the fact that the separation from the high-water table is about half of what
393 is required in the Town Ordinance. No response has yet been received on this item.

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Jamie Ramsay asked about the required protective radius around wells. Jared Hardner noted that this is 75', per the Ordinance. He explained that the proposal is to install a septic leach field in a place which is not compliant with the Ordinance. This is a violation without a variance. This is proposed to be located 24' from the water table and within 75' of the abutter's well.

Bill Stoughton, 11 Pine Top Road, member of the Board of Selectmen and the Board of Selectmen's appointee to the Planning Board, emphasized the importance of protecting wetlands and the importance of the decisions that the ZBA is being asked to make. Part of Scott Tenney's decision included the concept that disturbance of this wetland buffer was a permitted use because what took place was agriculture related. Regarding this position, that the creation of a lawn is agriculture, Bill Stoughton stated that he spoke with the Chair of the Planning Board and the Planning Board would be happy to consider this issue and review it with the ZBA. Bill Stoughton stated that he believes this is an important issue and he hopes the ZBA will take the Planning Board up on the offer.

Chris Guida, Certified Wetland Scientist and Soil Scientist with Fieldstone, explained that it was previously stated that the leach field is proposed to be 72'-73' away from the abutter's well, when the requirement is 75'. This is three feet of separation and not right on top of the well. He stated that Fieldstone is happy to locate the well and get an exact measurement to make sure this meets the requirements. There is room to adjust the leach field as part of the septic design. There are also waivers that can be requested from the State for this item. The proposed leach field will not contaminate the well by being 73' away. Fieldstone can verify and rectify this issue. Regarding the concern with the distance of the water table, the plan meets the regulations for the State and Scott Tenney clearly felt it met the regulations for the Town. This can also be reviewed with more thorough investigation, and any necessary adjustments can be made. Regarding the issue with the Wetlands Ordinance, the Ordinance is, at best, cumbersome and is quite challenging when it comes to the Town's planning. The Ordinance contains 25', 50' and 100' distances for a buffer depending on the type of wetland. The New Hampshire Method is great but is subjective to the wetland scientist using it. Any number can be plugged into the calculation to get the result sought. When Fieldstone delineates wetlands, it tries to be accurate, as it is not fair to the clients and the Town to be subjective. Reviewing items over property lines is a sticky issue and could be a trespass issue without proper permission. Many abutting owners do not want wetlands delineated on their property. Regarding the area of wetlands for this site, Chris Guida stated that Fieldstone did use LiDAR, but did not go into detail on every specific method that was used in the report. It was determined that the wetland area on the site was under one acre in size and therefore the appropriate buffer was applied. Chris Guida stated that he respectfully disagrees with not being able to use the 50' rule, as the Ordinance states that the 50' rule shall apply. It does not talk about using the updated version of the New Hampshire Method. Chris Guida stated that this is a cumbersome ordinance. It is not easy for homeowners, and even some professional wetland scientists and soil scientists to understand. Fieldstone has worked on many projects with the same people that wrote the New Hampshire Method, and it is too subjective regarding exact numbers. GIS accuracy is not to the thousandths of an acre, as was discussed in the appeal. The Ordinance should be reviewed closely if changes are proposed, as it is detailed and scientific, however, it is also extremely subjective to the wetland scientist doing the work.

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The Town requires the certified wetland scientist to do this work, but anyone can file an appeal. He explained that Jared Hardner selectively chose pieces of what people said. Chris Danforth and Steve Keach also reviewed this and seemed inclined to agree with Fieldstone's position. There was a statement that, if the wetland is close to an acre, it is better to be conservative and make the buffer size larger, but this is not accurate. He recommended that a standard buffer be established by the Town. Chris Danforth visited the site and corroborated the wetland delineation; this came from the Town's third party, independent reviewer. Regarding the Army Corps of Engineer data sheets, Fieldstone does have these documents and will happily provide them.

Danielle Pray stated that Fieldstone is doing its job, ACC is trying to do their job, and the developer has the right to develop the property. Regarding the difficulty of entering other people's properties, she asked if the abutters of this lot were asked for permission to enter in order to make the delineation. Chris Guida stated that there were no trespassing signs nearby and he does not typically ask permission from every abutter that has wetlands on nearby property. This was a delineation for setbacks but not a full study. In-depth studies are not appropriate for the delineation that was done. The initial delineation was completed at least 2-3 years ago. The State has a rule that, if the delineation goes more than five years, it should be reverified. Another Fieldstone wetland scientist, Ken Robinson, who is also a septic designer, completed the test pits at this site after the initial delineation. Ken Robinson went to the site again when this issue was brought up and Chris Danforth also reviewed the site and corroborated that the delineation was accurate.

Danielle Pray asked if the initial delineation was done for the current developer. Chris Guida stated that it was for a different owner at that time. The existing septic design was also completed for the previous owner.

Danielle Pray asked if there were any other wetlands reports or documentation submitted to the town. Chris Guida stated that information was submitted on the septic plan only.

Danielle Pray stated that the letter from Chris Danforth was from August 21, 2023, and states that he was inclined, unless arrangements can be made with property owners, to allow the Fieldstone opinion to prevail. Chris Danforth also sent an email on August 10, 2023, that he visited the site yesterday and found the delineation to be correct based on the flagging. He stated that the wetland appears to be large, likely over an acre, and he would classify the wetland as a significant wetland. Chris Danforth stated that he was going to call Chris Guida as a professional courtesy. Chris Guida stated that he did not meet with Chris Danforth on site, but they did speak regarding how the delineation was done relative to the Ordinance. They discussed the 50' cutoff for those delineations and Chris Danforth agreed that the Ordinance specifically states to use this rule, because all wetlands are connected all the way down to the ocean and all the way up to the mountains. Thus, all wetlands are larger than an acre.

Jared Hardner stated that he is confused by the statement that, without using the 50' rule there is no way of determining the assessment unit. There is an entire chapter of the New Hampshire

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Method dedicated to that specific topic and it does not include the 50' rule. The Ordinance states to use the most current version of the New Hampshire Method and Chapter 2 of the New Hampshire Method specifically addresses this issue of how to determine the cutoff on the assessment unit. There is a reference to an earlier version of the document, right after it states that one should use the most current version of the New Hampshire Method. The Ordinance could likely use some cleanup, but it states that the most recent version should be used, as it was revised because these methods become more accurate, leading to it being more practical for landowners and protective of the environment.

Chris Guida stated that the Zoning Ordinance separately states that one shall, for the purpose of this Ordinance, use the 50' rule. Danielle Pray asked if the 50' rule applies in this case. Chris Guida stated that it does not affect the delineation. It affects the size of a wetland unit, in terms of applying setbacks. This item drastically changes setbacks and is difficult to determine if someone does not own all of the property. Danielle Pray noted that this may come into play once an accurate delineation is in hand. She asked if the 50' rule impacted the assessment of the size of the wetland, and what the size would be if it was not used. Chris Guida stated that it would impact the assessment of the wetland. He would have to review the LiDAR and follow the wetlands up to where they start or stop. Danielle Pray stated that she believes this is a decision for the Board to make regarding interpreting the Ordinance. Chris Guida stated that the issue still exists regarding the size of the wetlands and how extensive it is. Depending on where this stops, the wetland could be outside of Amherst. Danielle Pray stated that there are methods to be used, as mentioned by Jared Hardner. Chris Guida stated that the color infrared map looks at vegetation and the new LiDAR maps are much more accurate. LiDAR is a GIS tool that is only as good as the maps plugged into it. Danielle Pray stated that the question is whether to include the wetlands on the next lot over, which it sounds like probably should be included in some fashion.

Jared Hardner explained that the pinch point, as shown on the LiDAR map, is 90'. He asked why a 50' pinch point is mentioned. Chris Guida explained that there are 2' contours on that map. The 2' of vertical difference can include upland areas and island/hummock inclusions in the wetland areas which have not been removed. Jared Hardner noted that Chapter 2 states that hummocks and upland islands must be included within the wetland. Chris Guida stated that he is trying to get to the bottom of everyone's understanding of the ordinance. It is up to the Board's decision to determine where to go from here.

Jared Hardner asked Chris Guida if he physically measured something on the site that was 50'. Chris Guida stated that he already explained how the measurement was made. Jared Hardner stated that Chris Guida said he used LiDAR, but the LiDAR shows this to be 90'. Chris Guida stated that he can look at the measurement too, but it could be anywhere between 49'-95'. He stated that all Jared Hardner did was click on the screen.

Tracy McInnis noted that the test pits were completed for a previous owner of the site. She asked why that owner did not develop the site. Chris Guida stated that the property was in the family, and it was handed down.

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Jamie Ramsay asked the length of time between the test pits and when the property was purchased by the current owner. Chris Guida stated that this was approximately a year. Jamie Ramsay stated that it seems clear that the intention of designing the septic system was to make the property saleable.

Tracy McInnis asked if there is a different place on the property for the leach field in order to not interfere with the abutter's well. She stated that she would not want to drink water from a well with a leach field located that closely to it. Chris Guida stated that it can be adjusted, but, based on the measurement provided by the abutter, there is a 3' separation. Many leach fields are located much closer to wells. There are also new regulations regarding distances that reduce it from 75' based on the casing, the depth, and the existing bedrock. Tracy McInnis noted that the property owner does not know how old the abutter's well is though. Chris Guida stated that he suspects it is a drilled well which is in bedrock and a whole separate aquifer than a surface water well. He stated that he also believes this is upgradient of the 75' requirement. He stated that he is unsure who came up with the 75' requirement.

Tracy McInnis stated that, without a recent test pit and knowing how this would affect the abutters well, she does not feel comfortable. Chris Guida stated that this is a recent test pit, and the septic design was to determine the soil type. The site has well-drained sandy soils to sandy till, which is good for septic system treatment.

Tony Ortiz noted that, on August 4, 2023, Scott Tenney indicated that the developer should install erosion control measures to protect the wetland. He asked why these were not installed prior to this being pointed out. Chris Guida stated that sediment erosion controls are not always installed. This depends on the situation. These are typically required for items such as shoreland permitting or those in the proximity of steep slopes. The lots in question are relatively flat with some sloping areas, but there is not a lot of energy leading to erosion into the wetlands. The buffer was impacted, and it was requested to mark the buffers. Fieldstone staked out the buffers with placards. Regarding the buffer's function being degraded, there were only a couple of small areas closest to the foundation and these areas can be revegetated with lawn or native vegetation. Tony Ortiz asked if a stop order was placed on the project when these controls were noticed to be missing. Chris Guida stated that he is not sure of the exact timing of that.

Tracy McInnis asked if a lot of rain would affect the wetlands and the water table. The test pits were done last year and that was a very dry year. Chris Guida explained that the test pits look for the seasonal highwater table, depth to ledge, and the type of soil in order to determine the size of the leach field. The highwater table is based on the redox amorphous features in the soils. Even when the season is dry, the water table can be determined by the marks and the soil.

Charlie Vars disclosed that he has used Fieldstone and Meridian Land Services for many years. When he speaks to an engineering firm, he requests drawings to meet all the regulations. From this plan, it appears the applicant meets those regulations as they exist. He would prefer to review a full plan in detail. He is concerned that there has been input from Fieldstone and Keach

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Nordstrom and he is being asked to make a decision that shuts down work on this property. It appears there is already a foundation on the site, and he is amazed this project got that far before being challenged. He does not believe this is a decision for the ZBA, other than to discuss the Building Inspector's decision; this is a legal issue.

Jared Hardner noted that the initial concern was raised June 6, 2023, which was the day the construction began. It takes time to go through this process. The ACC attempted to engage Scott Tenney in a collaborative and capacity building exercise, similar to the way it does with other parts of Town government. He stated that the ACC was previously engaged with the Master Plan Steering Committee, the Planning Board, and the Board of Selectmen. It is in the ACC's DNA to work in a collaborative fashion. It attempted to do so with Scott Tenney in June at the moment the construction began. The foundation was poured in the four days between the administrative decision being issued by Scott Tenney and the time that the appeal was filed, which was as fast as possible. Jared Hardner noted that a number of people contacted both the builder and Scott Tenney to indicate concerns. This did not just come out of nowhere.

Charlie Vars stated that he believes this is at a point now where it is a legal battle. He does not believe the Board should be acting as the jury or the judge to make the decision. When a developer is provided with a permit and it ends up at this point, something needs to be done either through the court or in a separate personal conversation, but not through this Board. He does not believe the Board should resolve this part of the issue without knowing all the details. He would like to suggest the Board enter deliberative session and table this item.

Jamie Ramsay stated that he is fiercely protective of protecting wetlands. This is critically important. However, he heard the testimony of certified engineers, and he is not qualified to determine what the standard should be. He heard expert testimony on one side and testimony from laypeople on the other side that are not certified soil scientists. He is not qualified to rule until he hears expert testimony on both sides.

Jared Hardner explained that the expert testimony, as hired by the Town, Steve Keach confirms the allegation that the wetland buffers were impacted in violation of the Ordinance. Danielle Pray noted that there are items that the Board is charged with. The Board has the authority to determine interpretations of the Ordinance, and one of these is the interpretation of if a CUP is required for wetlands project. There was an interpretation from a Town employee that it was not needed and now there are varying opinions. The Board needs to decide this. There may also need to be an interpretation regarding the Wetlands Ordinance for the Board to decide. Other issues may not be in the Board's purview, but some of them are still related to Scott Tenney's interpretation. She stated that the Board was offered an opinion from the Planning Board, and she would like to hear this interpretation.

Tracy McInnis asked if the Board could request an independent evaluation from the Army Corps of Engineers. Danielle Pray stated that the Board needs to interpret the Ordinance.

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Tracy McInnis noted that she also has a concern regarding the lawn area. She asked if fertilizing the lawn area would affect the wetlands. Chris Guida stated that there is an appropriate amount of fertilizer to place depending on the vegetation. Excess fertilizer applied could run into the wetlands. Doug Kirkwood halted the discussion and noted that it needs to be germane to the Board's purview.

Sheri Doucette, 20 Old Coach Lane, stated that she continues to see more wetlands in Town being developed. There is one on Old Coach Lane that will likely go through this same process. She suggested the Town do more to protect the wetlands and have more stringent rules. Doug Kirkwood stated that if there is a structured a set of rules, there will also be a person looking for ways to get around them. Sheri Doucette stated that she does not want to see the wetland areas in Town lost, as it is part of the rural nature of this Town.

Jamie Ramsay moved to close the public hearing on this case. Danielle Pray seconded.

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

- 3. CASE #: PZ17765-082523 – APPEAL OF ADMINISTRATIVE DECISION
Hal Amadon (Applicant); 33 Buckridge Drive, PIN #: 007-017-033 – Request for relief from Article IV, Section 4.11 to appeal an administrative decision of the Office of Community Development regarding their issuance of a building permit that may violate the Zoning Ordinance. Zoned Residential Rural.**

Jamie Ramsay read and opened the case.

Doug Kirkwood asked how different this case is from the previous one. Harold Amadon, 35 Buckridge Drive, stated that there is one key issue of difference. The wetlands next to his home on the property currently being developed stays full of water throughout the winter and spring into early summer, acting as a habitat for wildlife, a breeding ground for woodland frogs, and storage for excess runoff from snow melt and rain. This past winter was not particularly snowy, so the potential for a larger amount of pooling exists and development of this property so close to the wetland area has potential to cause water intrusion into his property and neighboring properties. The concern is the development of this property as currently planned with regard to proposed placement of the septic system, with no consideration to the natural function of the wetlands and the total disregard of location of neighboring wells. There are ordinances in place to allow for the responsible development of property adjacent to wetlands. He is concerned this development does not appear to be in accordance with these established ordinances and that it will adversely affect the function of this natural area, pose a direct threat to the wells of abutters, affect property values and future sales of abutters in the future, and cause potential water intrusion into the properties. He explained that he was advised to contact Jared Hardner, Chair of the ACC, and asked that Jared Hardner now speak on his behalf.

Jared Hardner, 15 Woodland Drive, stated that there are the same concerns regarding septic system ordinance violations and impacts to wetland buffers, as prohibited in the Zoning

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Ordinance for this lot. There is also a similar issue with incomplete plans being submitted. Regarding the septic design, there is potentially the same issue of distance to the existing wellhead at 31 Buckridge Drive and, according to the residents here tonight, they were not contacted to identify the location of the wellhead nor grant permission to measure the distance from the septic system. There is a concern that the required 48" vertical separation between the bed bottom of the leach field and the estimated seasonal highwater table is not respected in this plan. There appears to be a 24" separation. The key difference between the two Buckridge properties is that this property actually sits inside the wellhead protection area for Gowing Woods. In this case, there has to be a 100' separation between septic system and the wetland. It is not indicated on the plan that there is a wellhead protection area there and there is no 100' line shown on the plan. It is possible that the proposed septic system is within the 100' separation boundary of the wellhead protection area to the Gowing Woods development.

In response to a question from Jamie Ramsay, Jared Hardner explained that the homes in Gowing Woods have a community well. The 100' boundary is likely proposed due to there being a high pressure on the community well. The 100' distance is required between a septic system and any surface water or wetland. Jamie Ramsay stated that he has difficulty believing that the proposed septic system for this lot and the Gowing Woods condominium community well are not at least 100' apart. Jared Hardner explained that this is not the rule. The rule is that anywhere within the wellhead protection area, any septic system has to be 100' from the closest wetland. This is per the Town ordinance. Jamie Ramsay stated that he would like to see the measured distance from the wetland to support this allegation, though it may be true. Jared Hardner stated that it is a requirement that the developer identify on the plan that the lot is located in the wellhead protection area. By looking at the existing plan, one can verify that that has not been done, so this is not just an allegation but a simple fact. There is also no 100' line marked on the plan. Jamie Ramsay stated that he would like it confirmed that the 100' separation is being respected, as it looks pretty close from the map. Jared Hardner explained that he is not asking anyone to make a decision on this item but is simply pointing out that the submitted septic design does not provide the correct information to allow a permitting decision that confirms that the proposal is in compliance. Jamie Ramsay stated that he will not argue that, but it is still subject to verification. Jared Hardner stated that the appellant's request is that the issues raised be resolved. For example, if the septic tank is the wrong depth, the proponent needs to come back with a different design that meets the ordinances. He would consider reversing the original decision that everything has been confirmed for this project because serious concerns have been raised that need to be addressed. On this property, as with the other, it has been confirmed that there are impacts in the wetlands buffer, which is part of the WWCD and is prohibited in the Zoning Ordinance. This has been confirmed by the Town's wetland scientist and engineer. This is a violation of the ordinance that needs to be dealt with.

Doug Kirkwood asked if the septic plan was reviewed by the State. Jared Hardner stated that it was. There are sets of rules from the State and the Town. The Town has stricter rules than the state and the ordinance specifies to use the stricter rule. The State's rule is for a 2.5' separation from the water table and the Town's is for a 48" separation, and per Town Ordinance the stricter should be followed.

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Danielle Pray noted that the Notice of Decision for these two cases seems to be combined, but it sounds like it applies to 14 Buckridge Drive. She asked Jared Hardner for his understanding of the Notice of Decision as it relates to 33 Buckridge Drive, as nothing specific seemed to apply to 33 Buckridge Drive. Jared Hardner explained that the same grass and the lawn issue from 14 Buckridge Drive applied in this instance. There has not yet been a foundation laid on 33 Buckridge Drive, but the area has been dug. There is wetland tape hanging from trees on the site, which is very close to being above the silt fence. This would be the start of the wetland buffer which should then extend at least 25' out. Much of that area has been impacted and the vegetation has been cleared. This is what triggered the initial concern. The wetland buffers appear to be impacted and the Town Engineer and wetland scientist confirmed this. There is a statement from Town Counsel stating that it is not allowable to clear those wetland buffers and put in a lawn. Danielle Pray asked if there is an intention by the homeowner to install a lawn. Jared Hardner stated that this is yet unclear, but it does not matter what the intention because they cannot do this to begin with.

Charlie Vars noted that the Meeting Place had a well radius of 1000' and, if there had not been an understanding amongst people within the Town, the medical facility across the street would never have been built. The Gowing Woods radius of 100' which goes over these lots renders those lots, which were approved long before Gowing Woods went in, unbuildable, which is taking away a person's property rights. This is a legal issue that the Board should not be dealing with. Jared Hardner disagreed. He stated that the radius is not 100'; the radius is much greater than 100' and within that radius the rule is to keep contaminants out of the wetlands and surface waters. A property owner is welcome to develop the property but instead of a separation distance which is normally 75' for a septic to a wetland, this is now 100'. This is not a taking; it is normal environmental protection.

Jamie Ramsay explained that, as zoning ordinances have been developed, approved, and amended through the years, this specific situation was not envisioned. That would be an unrealistic expectation. While he does not disagree, this is not the way the rules were envisioned when created. Jared Hardner stated that this rule exists, and it probably is implemented on a quite regular basis by the Planning Board. If someone goes before the Planning Board with a plan to build a subdivision and it is in the wellhead protection area, that builder must abide by the 100' separation rule. This happens fairly frequently because there are wellhead protection areas all over Town. Danielle Pray stated that the Board is not here to decide that the Board is here to interpret the ordinance.

Rob Clemens, 13 Tarleton Lane, stated that, responding to Charlie Vars' comment regarding the Limbo Lane example, he was on the ACC when that came before us because it required a CUP. The ACC reviewed it and counseled with the Planning Board on a number of issues related to its location relative to that that wellhead protection area. The types of items like those in front of the Board this evening, typically come before the ACC in the context of a CUP. Items that are not going before the Planning Board are also not coming before the ACC for a CUP review, unlike the case mentioned by Charlie Vars.

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Anne Howe, 41 Buckridge Drive, asked if, between now and the time that the Board will render a decision, the developer could go to the site and start building a foundation. Doug Kirkwood stated that the Town would have to post 'nightwork only' because the Board will make its decision tonight. Danielle Pray stated that the Board does not know if it will be making a decision tonight. Anne Howe stated that a foundation has already been installed on the other Buckridge site and she is concerned that this will occur on this site before the Board can make a decision. Doug Kirkwood stated that the Board will come to some sort of decision tonight. Danielle Pray stated that it is unclear if the Board will make a decision this evening. Jamie Ramsay suggested consulting Nic Strong. Doug Kirkwood stated that the Board may decide to table this item. Anne Howe asked, if the Board decides to table this item, the developer can go in and install a foundation. Nic Strong stated that, statutorily this appeal stays all construction on the property.

Attorney Bisson, on behalf of the property owner, explained that the actual appeal before the Board is the August 4, 2023, decision. Whether or not the septic design is compliant is not an issue. The issue is whether or not the Town's employees, who went to the site and issued this decision, did it correctly and consistently with the ordinances. The Board can discuss the 100' issue, or if the Army Corps of Engineers should give an opinion, or if this should be discussed with the Planning Board separately. If there is an issue with the lawn proposed, the remedy is a cease and desist to remove the lawn from the buffer, not to go back and redesign the plan. The issue at hand is the decision made by the Code Enforcement Officer and if it was made correctly. He does not believe the Board can reexamine the permit that was already issued. The opportunity to appeal the issuance of the permit is past, similar to the prior application. There are specific restrictions on how things are brought to the attention of the Board and how they are challenged. There are 30 days to appeal a decision of an administrative officer. When reading the August 4, 2023, decision letter, the word 'permit' is not in it. The concerns raised by Jared Hardner to try to revoke this permit are not the issue at hand and not part of the original decision. All of the other items discussed are very important issues but not for this meeting. Today's issue is an appeal of an administrative decision. If the Board starts considering tabling this for Army Corps of Engineers or Planning Board review, this is not the Board's job. Attorney Bisson stated that one of the Board members noted that he is not comfortable being the jury, but this Board is the judge and jury, and it has to decide if the August 4, 2023, decision is wrong. It should set aside the permit and all other discussions. The Board heard from Chris Guida that he can make the plan clearer and fix some items on it, but that it not before the Board this evening. When the Board discusses its Findings of Fact, it needs to say what is wrong with this decision, not discuss the permit application. The Board needs to state what is wrong with the decision.

Sten Larson, 16 Buckridge Drive, stated that his issue is why the permit was issued in the first place. The permit was issued without any proper documentation. There is an old plan for the septic system. He asked what will happen if his well becomes contaminated. This permit should never have been issued because the owner did not do the homework and submit the proper documentation.

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Bill Stoughton, 11 Pine Top Road, reiterated his offer to have the Planning Board weigh in on this item as well. To frame this in context of the Notice of Decision, the Notice of Decision states that, while site construction activity did encroach within the buffer, the activity and disturbance of the buffer does not appear to constitute a violation. Scott Tenney then goes on to say that there is no definition of buffer in the Ordinance and also that as an agricultural use, the creation of the lawn, would be permitted. The Board already has information on these items in the record, but the Board may find it helpful to have the Planning Board's view on those issues before it decides whether Scott Tenney was correct or not.

Doug Kirkwood stated that the Board's job is not to have everyone listen and not contribute. Part of the Board's job is to listen to the citizens. This is why the Board is not a judicial body; it is a quasi-judicial body. Hearing from the public is one way that the Board can understand when judgment is required. The Board cannot stop listening, simply because one person says it is a waste of time.

Jared Hardner stated that, with regard to the attorney's comments which sought to denigrate his knowledge of this topic as the attorney compared him to a learned scholar, he stated that he has a graduate degree from Yale University School of Environment, he is a 32-year professional in the environmental field, and he is the Chairman of the ACC whose responsibility among others per RSA 36:A-2 is to advise Town bodies on the protection of wetlands.

Danielle Pray moved to close the public hearing on this case. Jamie Ramsay seconded.

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

4. CASE #: PZ17766-082523 – VARIANCE

William R. & Susan M. Frenette (Owners & Applicants); 13 Aglipay Drive, PIN #: 002-170- 010 – Request for relief from Article IV, Section 4.3, Paragraph D.2. to construct a structure within the 25' rear setback with the proposed structure only 14.5' from the rear property line. Zoned Residential Rural.

Jamie Ramsay read and opened the hearing.

William Frenette explained that, in 2002, he and his wife pulled the permit for a garage addition and some additional work on the existing garage. At that time, a monolithic slab was poured 48'x 24', but at the time he was only able to install 24' of the 48' structure. The second half was proposed for a later time, but he was injured and was unable to go back to work. As he was recently restarting this project, he was told that the setback has been changed to 25', where it was previously 15'. He stated that he believes this project should be grandfathered in. Susan Frenette stated that the foundation was built at the same time the permits were originally pulled. This was a three-car slab with a two-car garage built on it.

Jamie Ramsay asked if the permit has lapsed. Susan Frenette explained that the permit was marked completed. The intention now is to complete the third bay. The garage is a pre-existing,

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non-conforming structure by today's current standards, with the setbacks being at 25'. There is an existing garage wall, but the garage foundation extends straight through because this is one continuous monolithic slab. There are already bolts for the foundation. This was never intended as a parking area, which is what it is being interpreted as today by Scott Tenney. It has never been a parking area. Up until a few years ago, there were temporary shed structures on the space, but there is now an opportunity to create a full-fledged addition on that space. The issue is the setback.

Susan Frenette addressed the five criteria:

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

Granting the variance is not contrary because it does not unreasonably interfere with the Town's capacity for planned orderly development. The variance does not threaten public health, safety, or welfare. This is simply an addition to a two-bay garage on the existing monolithic slab. The slab foundation was poured in October of 2002, and it was the intention to build a three-car garage, but at the time, there was not sufficient funding to complete this third bay. The intention was to complete the addition the following year but, due to hardships such as a serious injury to her husband and the closing of a business, the impact financially was too great, and the project was extended until this year.

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

Granting the variance allows the owners to have remedy to cure deficiencies with existing buildings that do not restrict usual and customary use of residential owners. The garage is not intended for any other purpose but to be a garage and to have some storage above. This will not present any problems for the Town.

3. How will substantial justice be done?

The proposed variance ensures substantial justice because it does no harm to the general public or to abutting neighbors or the Town of Amherst. The intention is to complete the addition.

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

The proposed work is in keeping with the style and aesthetics of the existing two bay garage. The property value will increase with this new addition, and it will cause no ill effect to the neighborhood. The property has beautiful perennial gardens and mature trees that are very well maintained. She explained that she has resided in Amherst since 1986 and is a member of the Garden Club.

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

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(A) For the purpose of this sub paragraph, “unnecessary hardship” means that owning to special conditions of the property that distinguish it from other properties in the area:

(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, owning 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:

Literal enforcement of the provision would result in unnecessary hardship because this property is one of the older homes, built in 1960, on a three-quarter acre lot, which is not considered buildable by today's standards of 2023. There was no plot plan at the time the house was built. The proposed garage will cause no detriment or harm to the neighbors. Without a variance, the only recourse would be to buy property from the neighbors directly behind the property and initiate a lot line adjustment to be in compliance with the 25’ setback. This would be at considerable expense.

Tony Ortiz asked if there is a fence separating this property. William Frenette stated that there is, and it is 6’. He noted that the abutters have expressed no issue with the proposed addition and have offered to sell him land if the variance is not granted.

Danielle Pray asked what is between the two properties and the fence. Susan Frenette stated that there is gravel dirt on her side of the fence and lawn on the other side.

Danielle Pray asked how far back the house is from the street. William Frenette stated that the house is approximately 100’ from the street. The garage is in the far back corner of the lot.

Charlie Vars asked if the driveway is to the south of the lot. Susan Frenette stated that the driveway comes straight to the front of the house and then curves to face the two-car garage. William Frenette explained that he can angle four vehicles in the area in front of the building. Susan Frenette explained that this is another reason for the garage addition, to place two cars inside it. Danielle Pray noted that the application mentioned this also being used as a workshop. Susan Frenette agreed.

Charlie Vars noted that when these lots were developed the setbacks were 15’. The current measurement is 14.5’ and he does not believe anyone will notice the 6” differential. Otherwise, the Board could allow the garage to be 23’6” to meet the regulations, although this does not work with the current slab. There is 27.1’ from the front of the garage to the property line, which is a tight turn around.

There was no public comment at this time.

Jamie Ramsay moved to enter deliberations. Charlie Vars seconded.
Voting: 5-0-0; motion carried unanimously.

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CASE #: PZ17719-081123 – APPEAL OF ADMINISTRATIVE DECISION

Sten Larson (Applicant); 14 Buckridge Drive, PIN #: 007-017-012 – Request for relief from Article IV, Section 4.11 to appeal an administrative decision of the Office of Community Development regarding their issuance of a building permit that may violate the Zoning Ordinance. Zoned Residential Rural.

Charlie Vars moved no regional impact. Jamie Ramsay seconded.

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

Doug Kirkwood stated that the Board needs to make a decision as to whether there was an error in the interpretation of the Ordinance, by the decision made by the administrative official, in this case it would Scott Tenney. The Board can make a determination on this item this evening, or table it to the next meeting.

Danielle Pray stated that input from the Planning Board would be beneficial to her and she would like to take them up on the offer from their representative. The Planning Board usually deals with the CUP applications for wetlands and their advice may be useful. There are likely some other legal process issues that may need to be consulted on with Town Counsel as well. Jamie Ramsay stated that he agreed.

Danielle Pray moved to continue this appeal to October 17, 2023, at 7pm at Town Hall, in order to gather more information. Jamie Ramsay seconded.

Discussion:

Jamie Ramsay stated that there should be back and forth between the ZBA and Planning Board before the next meeting. The ZBA could attend the Planning Board's meeting.

In response to a question from Doug Kirkwood, Nic Strong stated that the next Planning Board meeting is October 4, 2023.

Danielle Pray suggested a memo from the Planning Board regarding its discussion on this topic prior to the next ZBA meeting.

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

CASE #: PZ17765-082523 – APPEAL OF ADMINISTRATIVE DECISION

Hal Amadon (Applicant); 33 Buckridge Drive, PIN #: 007-017-033 – Request for relief from Article IV, Section 4.11 to appeal an administrative decision of the Office of Community Development regarding their issuance of a building permit that may violate the Zoning Ordinance. Zoned Residential Rural.

Jamie Ramsay moved no regional impact. Charlie Vars seconded.

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

Jamie Ramsay moved to continue this appeal to October 17, 2023, at 7pm at Town Hall, in order to gather more information. Tracy McInnis seconded.

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

The Board discussed meeting ahead of 7:00pm with Town Counsel to discuss this item on October 17, 2023. The Board agreed to meet with Town Counsel at 6:15pm on that evening.

CASE #: PZ17766-082523 – VARIANCE

William R. & Susan M. Frenette (Owners & Applicants); 13 Aglipay Drive, PIN #: 002-170- 010 – Request for relief from Article IV, Section 4.3, Paragraph D.2. to construct a structure within the 25’ rear setback with the proposed structure only 14.5’ from the rear property line. Zoned Residential Rural.

Jamie Ramsay moved no regional impact. Tracy McInnis seconded.

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

The Board reviewed the variance criteria tests:

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

- T. McInnis – true, the applicant pulled a permit and poured the foundation 21 years ago. Due to issues beyond the owner’s control, the project could not be completed at that time. The setbacks have since changed.
- C. Vars T– true, there is no threat to the public health, safety, or welfare.
- J. Ramsay – true, this building permit was released under a 15’ setback regulation which has since changed. The slab was already set to continue construction but was delayed until this time, due to unforeseen circumstances. It is a reasonable expectation on behalf of the owners.
- D. Pray – true, this will not threaten the public health, safety, or welfare and it also does not change the character of the neighborhood. A three-car garage is not unusual in Amherst or in this area, especially as a slab has already been poured.
- D. Kirkwood – true, for the reasons previously stated.

5 True

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

- C. Vars – true, this is a request for a remedy to cure a long-term issue with a minimal encroachment. The spirit of the ordinance is adhered to.
- J. Ramsay– true, this was originally considered under an ordinance with a different setback and unfortunate circumstances caused it to be delayed. This would have already built. Granting of the variance is reasonable.
- D. Pray – true, this will not threaten the public health, safety, or welfare and it also does not change the character of the neighborhood. A three-car garage is not unusual in Amherst or in this area, especially as a slab has already been poured.

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- 1007 • T. McInnis – true, the spirit of the ordinance allows for full enjoyment of the property
1008 and, due to unforeseen circumstances, this project could not be completed earlier.
1009 • D. Kirkwood – true, if the applicant had to go by today’s regulations, this would be
1010 more of a hardship than allowing them to simply complete the project.

1011 **5 True**

1012 **3. Substantial justice is done.**

- 1013 • J. Ramsay – true, substantial justice would be done because this will now realize what
1014 was originally envisioned as a complete project. This has been deferred for 20+ years
1015 and a variance will allow for substantial justice.
1016 • D. Pray– true, this test looks to balance the public interest and the public interest does
1017 not outweigh the applicant’s interest in completing the project, especially as a slab
1018 was previously poured for the project
1019 • T. McInnis – true, this will not harm the abutters or neighborhood and should have
1020 happened years ago.
1021 • C. Vars– true, the benefit to the applicant outweighs any impact to neighbors or the
1022 Town. The applicant will also have to start paying taxes on this structure.
1023 • D. Kirkwood – true, for reasons previously stated.

1024 **5 True**

1025

1026 **4. The values of the surrounding properties will not be diminished.**

- 1027 • D. Pray – true, no evidence was shown that values of surrounding properties will be
1028 diminished and adding onto the garage will likely increase values.
1029 • T. McInnis – true, there is an existing two bay garage with a slab. This will increase
1030 the property value along with surrounding property values likely.
1031 • C. Vars — true, if this keeps with the style and aesthetics of the existing home, it will
1032 add value to the neighborhood and Town.
1033 • J. Ramsay – true, there will be no adverse impact from this proposal.
1034 • D. Kirkwood – true, for the reasons already stated.

1035 **5 True**

1036 **5. Literal enforcement of the provisions of the ordinance would result in an**
1037 **unnecessary hardship**

- 1038 • T. McInnis – true, literal enforcement would result in unnecessary hardship as the
1039 slab has already been poured. If denied, the slab will sit there and likely diminish the
1040 value of the property. The original proposal was under a 15’ setback and this was
1041 approved.
1042 • C. Vars — true, for the reasons already stated.
1043 • J. Ramsay– true, for the reasons already stated.
1044 • D. Pray – true, some special conditions of the property that set it apart from others
1045 include the already built slab, the fact that the area is set back far from the road, that it
1046 does not affect the general health, public, and safety purposes of the ordinance, that is

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1047 does not crowd the property or diminish light and air in those areas, and that the
1048 proposed use of three car garage is certainly a reasonable one.

1049 • D. Kirkwood – true, for the reasons already stated.

1050 **5 True**

1051 Doug Kirkwood stated that the application, having passed all of the tests is granted.

1052

1053 **OTHER BUSINESS:**

1054

1055 **1. Minutes: June 20, 2023; and July 18, 2023**

1056

1057 The Board agreed to table discussion of the meeting minutes to a future meeting.

1058

1059 **2. Any other business that may come before the Board**

1060

1061 **Tracy McInnis moved to adjourn the meeting at 10:19pm. Jamie Ramsay seconded.**

1062 **Voting: 5-0-0; motion carried unanimously.**

1063

1064 Respectfully submitted,

1065 Kristan Patenaude