

TOWN OF AMHERST
Planning Board

December 04, 2019

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In attendance: Michael Dell Orfano- Chair, Arnold Rosenblatt, John D'Angelo-Selectman Ex-Officio, Marilyn Peterman, Sally Wilkins, Cliff Harris, Rich Hart, Brian Coogan (Alternate), Christy Houpis (Alternate), and Lisa Eastland (Alternate).
Staff present: Nic Strong, Community Development Director, and Kristan Patenaude, Minute Taker.

Michael Dell Orfano called the meeting to order at 7:37 pm at the Souhegan High School and noted that the Board would start with the second item on the agenda first.

2. CASE #: PZ11990-110519 – Mike Isabelle (Owner & Applicant), 4 North End Lane, PIN #: 008-067-000 – Submission of Application/Public Hearing/Conditional Use Permit – To add a garage onto an existing non-conforming structure. Zoned Residential/Rural.

Mike Dell Orfano opened CASE #: PZ11990-110519.

Tom Carr, of Meridian Land Services, explained that this is a CUP application for a garage addition. The structure is an existing, non-conforming one and the lot has no direct frontage to the Lake. A shoreland permit has been received. He noted that the required setbacks for accessory structures in this zone are 50' from the front and 20' from the side. The decks in this case control the non-conformance issue. The east side of the deck is 8.8' from the property line and the west side of the deck is 9.5' from the property line. The proposed garage east side will be 16.4' from the property and the west side will be 18.8' from the property. Thus, the proposed structure is not increasing the degree of non-conformity. It is also believed that this proposal is consistent with the intent of the ordinance, as the garage addition will allow the owner to keep his tools and truck inside.

Tom Carr noted that, in regards to section 4.11 Wetland and Watershed Conservation District, the ordinance seems to allow for expansion on predeveloped lots of land provided the intent of the regulations is met. He noted that the ordinance was written for site plans and subdivisions and calls for lots that meet regulations for new development. Tom Carr stated that he thought this expansion of a structure applies to the ordinance.

Tom Carr explained that there will be a reduction in the amount of impervious surfaces on site, due mostly to a large section of driveway being reworked into lawn area. This will allow for more absorption than runoff. The proposal also aims to add some stone infiltration and drip edges. The owner will also be putting in a new septic system which will increase the water quality dramatically. He noted that the Amherst Conservation Commission (ACC) has reviewed the applications and recommended its approval. The ACC did ask that there be some shrubs planted in the area where there will be new lawn. There will be no change in intent for the use of the household.

Tom Carr stated that the couple of notes from Community Development Director, Nic Strong, can be added to the plan (abutters' names, noting that there is not a wetland within 50' of the proposed structure). There can also be a note added to the plan regarding the use of fertilizer and

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deicing compound use on site. There is a final issue with the floor to area ratio. The tax assessment card shows 1,148ft² of net heated living space. The owner has measured this area to be 858ft². The gross amount of living space being proposed above the garage is 787ft². The applicant is okay with having a condition of approval be for Scott Tenney, Building Inspector, to come and measure the area to obtain an exact number.

Discussion:

Rich Hart stated that the ACC appreciated the proposal and there was a general consensus of the group that this would improve the health of the Lake by reducing runoff and improving the septic handling.

In response to a question from Lisa Eastland, Tom Carr stated that the original building was built in the late 1800's. He also stated that, per section 3.2D of the zoning ordinance, "a structure which does not comply with zoning setbacks may be repaired or structurally altered provided the repairs or alterations do not increase the degree of non-compliance."

Sally Wilkins stated that this appears to be an improvement to the existing conditions of the site. She also noted that all of the lots at the Lake are non-conforming, and that anything that can be done to improve the runoff into the Lake is a good thing. She also requested that the prevention of deicing material use be put in the deed, as well as on the plan.

Tom Carr noted that there is a notation on the plan with the specific strengths of fertilizer allowed by the Wetlands Bureau.

Mike Dell Orfano stated that the Board should consider the CUP criteria and asked if there were any outstanding questions regarding the CUP. There were none. Mike Dell Orfano asked if any abutters had questions about the application.

In response to Rick Boyd, 2/A North End of Lake (an abutter), Tom Carr pointed out exactly where the garage will be located on the property. Rick Boyd had no concerns once he understood the location.

Sally Wilkins moved to approve the CUP for this addition within the Wetland and Watershed Conservation District with the following conditions:

- Abutter info to be placed on the plan
- Inclusion of deicing material information on the plan and future deeds
- Regarding the 15% floor area ratio – to allow the question of this number to be satisfactorily resolved and administered by the Community Development Office

Marilyn Peterman seconded.

All in favor.

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- 88 **1. CASE #: PZ11604-080519 – Robert H. Jacobson Revocable Trust, Laurie Stevens**
89 **Trustee (Owner) & TransFarmations, Inc. (Applicant), 17 Christian Hill Road, PIN**
90 **#s: 005-148-000 & 005-100-000 – Public Hearing/Conditional Use Permit. To depict a**
91 **Planned Residential Development per the Integrated Innovative Housing Ordinance**
92 **(IIHO). Zoned Residential/Rural. Continued from November 6, 2019**
93

94 Mike Dell Orfano opened CASE #: PZ11604-080519.
95

96 *Sally Wilkins recused herself. Brian Coogan sat for her.*
97

98 Ken Clinton, LLS, of Meridian Land Services stated that he is representing the Jacobson
99 Revocable Trust and TransFarmations, Inc. in this application. The applicant is seeking a
100 Conditional Use Permit (CUP) for a Planned Residential Development (PRD) under the IIHO.
101 There was a previous site walk of the area which was well attended. The applicant has seven
102 topics to follow-up on, due to previous comments and questions: IIHO incentives and bonuses;
103 farming scale, impact and oversight; wildlife report; traffic study; Pennichuck water; wetland
104 buffer; and CUP criteria.
105

106 Carter Scott, of TransFarmations, Inc. went through the IIHO incentive bonuses.
107

108 In the demographics section: for Senior housing (55+), there will be 12 units spread throughout
109 the development. This equates to a 15% bonus, or 1.8 units. On the Town Master Plan, page 24,
110 it was noted that household demographics in town over the age of 64 were expected to increase
111 from 7% in 2000 to 16% in 2030. As of 10/31/19, MLS showed 14 units of new construction
112 55+ built and sold over the previous 12 months. Thus, this type of housing would meet a need
113 and be a benefit to the town.
114

115 Also in the demographics section: for Affordable housing, this is not a required type of housing
116 in the development and the bonus for it is not being sought; however, there are 17 units being
117 proposed that will be price-restricted and match the HUD income limit for the Nashua, NH area.
118 Per the Master Plan, page 24, the average sales price for a home in Amherst in 2006 was
119 \$402,827. 80% of people living in town at that time could not afford the average sales price. It
120 was also noted that the availability of small units that cost less could help to keep some young
121 adults in town.
122

123 In the housing type section: for Attached Housing, 24 units are being sought, for a 10% bonus of
124 2.4 units. The Master Plan notes that, in 2000, 90.4% of the housing in town is single-family,
125 detached housing. Also, a goal of the Plan was to encourage diversity in housing types in order
126 to meet many needs. As of 10/31/19, MLS showed that 44 attached units sold in the previous 12
127 months at an average price of \$336,676, and with a median of 21 days on the market. All of this
128 demonstrates a strong demand and benefit to the town for this type of housing.
129

130 In the unit type section: for Single Floor units there are 20 units yielding a 10% bonus, or 2 units.
131 Data from MLS shows, over the previous 12 months, that 57 single floor units sold in town, with

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an average price of \$329,841 and a median of 15 days on the market. This, again demonstrates a strong demand and benefit to the town for this type of housing.

In the unit size – bedrooms section: for Zero Bedrooms/Studio units, there are currently none of this type of housing in town. There are four units being proposed in order to add to the housing diversity in town, for a 0.4 unit bonus. Carter Scott shared an article on tiny houses and noted that this type of housing would be a benefit to the town and possibly help to keep young adults in town.

Also in this section: Two-Bedroom units, there are 30 units being sought, for a 10% bonus, or 3 units. In the Master Plan, it is noted that one and two-bedroom units have a positive fiscal impact on the town budget. MLS shows that 65 two-bedroom units have sold in town in the previous 12 months, with a median of 17 days on market and at an average price of \$332,785. This information shows a strong demand, a positive impact on the budget, and thus a need for this type of housing.

Under the Proposed Amenities categories: for Walkability, a 10% bonus, 3.09 units, is being sought for the various footpaths proposed throughout the development. The Master Plan encourages walkability as a benefit to the town.

For Community Space Open to Public, a 25% bonus, 7.73 units, is being sought for first floor space in the barn that can be used for CSA pick-up, produce for the public to purchase, and possible environmental education or outreach events.

For Open Space under Restrictive Covenant, a 20% bonus, 6.18 units, is being sought. The Master Plan encourages cluster housing as a way to maintain the existing character of an area. The development of greenways and trails throughout town is also mentioned as being a benefit to the town.

For Type of Ownership, there are six proposed rental deed restricted units, for a 30% bonus of 1.8 units. The Master Plan notes that 92% of the housing in town is owner-occupied. Some of the goals mentioned are to encourage housing diversity and meet the needs of the residents. As of 10/31/19, MLS shows that the vacancy rate in Hillsborough County for rentals is 1%, and for the previous 12 months the median rental rate was \$2,050. This shows a strong demand for this type of housing.

For the Redevelopment of existing structures, a bonus of 4 units is being sought for the redevelopment of Jacobson Farm. The Master Plan notes the importance of the preservation of historical and cultural resources in town. The farm building is originally from the 1830's and is worthy of redevelopment as a benefit to the town.

Finally, for the category of Utilities and Public Way Betterments, a 10% bonus, 3.09 units, is being sought for the project's proposed expansion of Pennichuck Water up Christian Hill Road and the addition of new fire hydrants along the way. This would be a benefit to the town.

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Carter Scott stated that, as these bonuses are calculated, this gives a total density of 66.39 units. He is proposing 64 units in the development.

Discussion:

Cliff Harris noted that MLS is not a good resource to use to examine rental unit information in Amherst. Many owners rent their units by other means. The MLS data may not be a valid depiction of this information.

Marilyn Peterman stated that she believes there is an anecdotal need for rental units throughout the town, county, and state. She would be interested in seeing even more than six rental units proposed.

In response to a question from Marilyn Peterman, Carter Scott explained that, in general, smaller units show a different income-to-expense ratio. This is money that might not be spent in schools and services and thus could contribute to a positive fiscal impact to the town.

John D'Angelo agreed that MLS is probably not a great primary source to use for data, but noted that similar data is coming from the state that shows comparable needs. He believes this presentation was done well to show support for these needs.

In response to a question from Christy Houpis, Carter Scott explained that, while there is a need in town for workforce housing, a choice was made to call this type of housing "Housing that is Affordable" in this project. 17 units in the development will have a price limit, based on the HUD data set at that time. Currently, the HUD data shows a price limit of \$336,500 for this area, but this price will change will change and these units will match that price. There is a caveat that the solar and battery storage options are excluded from the price cap units.

In response to a question from Christy Houpis, Carter Scott noted that some elderly units will be two-floors and some will be one-floor. One-floor units are more desirable for handicap accessibility and senior living. He doesn't believe that these units are out in the marketplace as much as they could be.

Christy Houpis noted that the proposed improved walkability is only intended to be within the development but not on Christian Hill Road itself, where there will be increased traffic.

Ken Clinton agreed that no sidewalks or additional road improvements are currently proposed, but there can be additional discussions with the DPW in regards to this at a later date. He also explained that the ordinance is not set up to satisfy different kinds of walkability.

Marilyn Peterman explained that when the ordinance was set up walkability was discussed in terms of being able to access places in town. The proposed location for this development is close to town and could allow the ability for residents to travel to town. Other projects have not been able to provide the type of intended walkability due to their distance from the center of town.

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Ken Clinton stated that isolated stretches of sidewalks in front of new developments were not necessarily a good idea. He noted it may be possible to create a path along the frontage of the property off the road, although there are wetlands along the toe of the slope.

In response to a question from Christy Houpis, Ken Clinton stated that he has no concern with the fact that the Master Plan is currently 10 years old because it is currently the only Master Plan that can be relied on as a reference material.

Arnold Rosenblatt noted that it is entirely the applicant's burden to demonstrate that the bonuses are deserved. He explained that the applicant has done a good job manipulating the Master Plan data and language, but he's not convinced that the data alone is enough to persuade him in respect to some of the bonuses. He stated that it is apparent that this ordinance is being used to take large tracts of open space in order to exploit them for more than they would ordinarily be. He asked that the Board be sensitive to that. The Board's job is to determine whether the criteria have been satisfied as to if the town is receiving a benefit.

Ken Clinton stated that this project is far and above any other project he's seen come before the Board under the PRD ordinance. He believes that this project is exactly what the ordinance was written to create. He believes that a legitimate and thorough job has been done on this project under the ordinance.

Brian Coogan stated that the housing statistics shown demonstrate a clear demand for these types of housing. However, he has an issue with the proposed amenities demonstrating a benefit to the town versus the development alone.

Carter Scott stated that abutters have many trails going through the land and that the project will work to expand trails in the area. The project will also allow for access to certain landlocked town parcels, such as the Rough Diamond lot.

Brian Coogan stated that he would like to see the types of community outreach projects articulated in order to understand the proposed frequency and structure, and thus their benefit to the town. Carter Scott stated that there may be afterschool workshops; a CSA would operate supplying local vegetables and produce. Brian Coogan stated that he still needed more details.

In response to a question from Brian Coogan, Carter Scott explained that the existing character of the land will be maintained by preserving 80% of the open space and protecting the farming culture of the land.

In response to a question from Brian Coogan, Ken Clinton explained that Pennichuck Water will not draw from the aquifer on this land, but will be brought in, probably along the full frontage of the property. The leach field design will comply with and satisfy state and town regulations. Stormwater management will be in compliance with Alteration of Terrain standards.

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In response to a question from Christy Houpis, Ken Clinton stated that the project aims to add three hydrants along Christian Hill Road up to the proposed development.

In response to a question from Lisa Eastland, Ken Clinton explained that the construction for the waterline will not dig up the whole road, but will instead only require a skinny trench along the road and this would not be the opportunity for a multimodal foot path construction project.

Lisa Eastland expressed concern over the proposed tiny houses keeping with the environment of the area. She also expressed concern over the benefit of proposed walkability in fields surrounding the development versus the ability for residents to actually walk into town.

In regards to a question from Rich Hart, Carter Scott explained that the first floor of the proposed redeveloped barn will allow public access, the second and third floors will contain rental units, and the basement floor will be used as cold storage.

In response to a question from Christy Houpis, Carter Scott stated that it will probably cost about \$300,000 to redevelop the farmhouse. Christy Houpis expressed concern with the requested four unit bonus for redevelopment of the structure for communal space.

Rich Hart commented that this proposal is probably one of the best he's seen for Amherst in terms of the things it's offering: community space, open space, paths and trails, etc. His issue is that this development would be perfect in almost any other part of town than where it's being proposed.

Marilyn Peterman commented that the Master Plan is a ten year plan. It can't be projected as to what the next plan will look like; the applicant has to use what the town currently has for a Plan.

Arnold Rosenblatt stated that the current Master plan never was in-date. It uses broad, vague language and shouldn't be used as a document to support this project.

Carter Scott quoted from the IIHO ordinance, "In order to achieve the purpose of the IIHO, an applicant may propose to incorporate any of the following restrictions and amenities which have been determined to be desirable to the Town in accord with the Amherst Master Plan," to explain that that language is what is given for the applicant to work with.

Mike Dell Orfano stated that he needed to move the discussion along and explained the CUP process and stated that the applicant will later come back for a Non-Residential Site Plan Review (NRSPR) to prove that the up-to number of units, potentially given by the Board tonight, is physically possible.

The Board next heard the information for the Conditional Use Permit (CUP) from the applicant.

- 1) **3.18 C. 1. a.** The property in question is in conformance with the dimensional requirements of the zone, or meets Planning Board standards for the reduction in

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dimensional requirements, and that the proposed use is consistent with the Amherst Master Plan.

Ken Clinton explained that the project is in conformance with the requirements of the zone and is consistent with the Master Plan. The lots substantially exceed the required acreage and frontage. The IIHO is derived from the Master Plan and thus looks to protect the town's natural, cultural, historical resources, and its existing character. This project is proposing housing diversity, with many ages and demographics considered. It also proposes open space, community space, and trails.

- 2) **3.18 C. 1. b.** The proposal meets the purposes of the ordinance under which the application is proposed.

Ken Clinton explained that this project offers a unique approach due to the agrihood concept, and the use of the farm. It looks to preserve the traditional, rural aesthetics of the area, utilizing farming, open space preservation, pods and clusters of homes, and different unit types.

- 3) **3.18 C. 1. c.** There will be no significant adverse impacts resulting from the proposed use upon the public health, safety, and general welfare of the neighborhood and the Town of Amherst.

Ken Clinton stated that the project will be controlled by regulatory authority. It will feature state approved septic designs, water brought in from Pennichuck Water, lower farm pollutants due to best management practices (where there are none currently), and low and net zero objectives. Everything on site will be well-engineered and designed and based on town and state regulations. For the upcoming traffic study, a consultant is being considered to work jointly with this proposal and another current proposed development in town, in order to get joint data that can be extrapolated to show how each affect traffic singularly and together.

Mike Dell Orfano stated that the DPW Director is asking that the applicant provide the scope of the traffic study prior to its commencement for his review.

Ken Clinton agreed that the scope is already underway. He also noted that the stormwater design will be professionally engineered, reviewed by the state, and a third party town engineer will crosscheck it. The public health, safety, and welfare is thereby safeguarded.

- 4) **3.18 C. 1. d.** The proposed use will not be more objectionable to nearby properties by reason of noise, fumes, vibration, or inappropriate lighting than any use of the property permitted under the existing zoning district ordinances.

Ken Clinton explained that the proposed development is consistent with nearby properties and will be no more objectionable to nearby properties than they will be to this development. The land offers a significant buffer. Regarding the farming component of the land, the small tractor will not generate enough noise as to be objectionable.

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Ken Clinton also noted that the town has adopted a Right To Farm ordinance (3.12 Farming section) and read the intent (A.) of this ordinance.

- 5) **3.18 C. 1. e.** The proposed use will not adversely affect the ground water resources of Amherst, in particular the Aquifer Conservation District.

Ken Clinton explained that the proposed development will thoroughly comply with all town and state regulations. The development will not draw on the aquifer, as water will be brought in by Pennichuck Water. He also noted that erosion and stormwater management will be reviewed by DOT and the septic systems by DES Subsurface Bureau.

In response to a question from Mike Dell Orfano, Ken Clinton explained that there are lines on the plan to denote where the aquifer conservation district is. The majority of the proposed homes are not within this area.

- 6) **3.18 C. 1. f.** The application shall file a Non-Residential Site Plan Review application in accordance with the "Non-Residential Site Plan Review Regulations" with the Amherst Planning Board.

Ken Clinton stated that this application will be filed as the next step in this process.

Public Comment:

Mike Dell Orfano stated that, although the Board's written policy was that abutter testimony could be limited to two minutes, and previously the Board had limited it to three minutes, he was not going to do so this evening, as long as everyone stayed on track and allowed the next person to speak.

Mike Dell Orfano read a letter from Jack Child into the record, as requested. [This letter can be found as an attachment to these minutes.]

Mike Dell Orfano stated that many other letters had been submitted that said basically the same thing. He noted that Jim Hendrix had commented on traffic and the Board would consider those studies at a later date. Mike Dell Orfano went on to say that he did not think there were any conflicts of interest among the Board members.

In response to a question from Frank Montesanto, 55 Christian Hill Road, Mike Dell Orfano explained that the breakdown for each category of housing type will be more clearly defined in the NRSPR.

Frank Montesanto questioned who is keeping track of all of the bonuses given for each of the currently proposed developments. He noted that it is possible that the bonuses being given to each proposal are taking care of the need. He doesn't believe that each proposal should be given a clean slate when seeking density bonuses. Mike Dell Orfano stated that the Master Plan update

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will be looking at housing needs, as will the NRPC Regional Housing Needs Assessment, which will be updated soon.

Brian Coogan commented that he doesn't believe this information is currently being tracked. The Board understand that there is a gap here and is looking to address it.

Jim Hendrix, 44 Christian Hill Road, stated that he is glad to see that there will be a hydrological study done. He noted that the septic mounds will probably be quite unsightly in the fields. He also noted that the potential residents of this development will have to deal with a lot of mud each year, due to the wetness of the area.

In response to a question from Jim Hendrix, Ken Clinton explained that there are a variety of regulations and design criteria for the proposed roads on the property. It is unlikely that the road up to the old ski hill will be 8% grade the whole way. If the Fire Department is okay with the grade being approximately 9.5% in some short sections and 8% in others, the applicant will pursue that.

In response to a question from Jim Hendrix, Mike Dell Orfano explained that he mentioned the idea of having a third party oversee the traffic study to DPW Director, Eric Hahn, who respectfully disagreed with the idea. DPW Director Hahn stated that there will be a benefit to having the applicant submit a scope for the study and keep that scope consistent across the currently proposed developments. NRPC has also suggested that they get involved with the scope of the study. There will be multiple experts looking into this aspect.

Sally Long, 24 Ponemah Road, stated that she is currently a school crossing guard at the intersection of Boston Post Road and Foundry Street. She has concerns regarding the additional traffic on these roads during busy school hours.

John Silva, 3 Davis Lane, stated that the Board is ignoring the elephant in the room – offsite impacts. As a community planner for 45 years, he believes that to not permit community involvement prior to issuing a not-to-exceed number of units prejudices the whole process. He also believes that there should be no number issued until the required studies are completed, if the process is being done correctly.

Mike Dell Orfano explained that the ordinance reserved the right for the Board, subsequent of the completed studies, to reduce the up-to number.

John Silva stated that this process prejudices the project. It leaves the community to argue down the up-to number, instead of involving the community in establishing the number in the first place.

Brian Coogan explained that the Board may set a maximum unit value tonight, or not. Data will then be collected and the applicant will have to present to the Board again. The determined number can only go down. This is an iterative process.

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Jason Osborn, 14 Bloody Brook Road, stated that Merrimack is currently building a lot of rental housing that would probably address the needs for this type of housing. He stated that tiny homes are simply mobile homes or RV's and should be treated as such. He believes there is an issue with sight distance down Christian Hill Road, which this project could add to. He questioned the tax impact of the project, and also who will maintain the solar and other equipment. He also noted that the fields where corn is proposed to be grown would make great ball parks or playing fields for the town. The town should give the land the use it demands.

In response to a question from Shannon Gascoyne, 5 Parker Farm Lane, Lisa Eastland explained that, out of the 64 proposed units, 24 of them are going to be attached.

Shannon Gascoyne explained that the 2010 Master Plan, on page 33, notes that the town school buildings are overcrowded. She requested that a socio-economic study be added to the list of impact studies for this project, and any other proposed project that is not permanently age-restricted. She also stated that, though many of the units proposed for this project are small, it is the life experience of many to squeeze families into small spaces, especially in a town with good schools and infrastructure. Ken Clinton noted that the various studies and reports listed in the subdivision and site plan regulations, plus studies as the Board deemed appropriate, had not been determined yet. Mike Dell Orfano stated that these would be determined NRSPR level.

Bryan Galante, 32 Boston Post Road, stated that he has concerns regarding the additional electrical load from the proposed development on an already fragile town distribution system. He believes that net zero housing is not possible in New Hampshire due to the number of no-sun days. He questioned who will be responsible for the cattle/animals on the land. He also questioned how the high taxes of town will be addressed for low-income residents in this new development. He noted that new construction in town is not currently selling well, and wonders how the applicant will address that issue. He has concerns regarding the effect on the local aquifer with the number of new septic systems needed for this development. He requested that an electrical power load study be added to the list of impact studies for this project.

Tim Kachmar, 15 Mack Hill Road, read a letter from Scott Stimpert, 7 Brimstone Hill Road, to the Board. Scott Stimpert's letter noted that the applicant must conform to the existing use of the area, but is instead looking for a non-conforming use. Absent any compelling benefit to the town, the Board should deny the application. He stated that the CUP application is lacking in detail and incomplete in many ways. It is incumbent on the applicant to show no adverse impact to the town. The letter mentioned the applicant's past financial decisions, as demonstrating a public track record of failure on smaller and less complex projects than this one. The land will be forever changed for the worse if this project fails.

Mike Dell Orfano asked that the Scott Stimpert letter be sent to the Community Development Office for inclusion in the application packet.

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Tony Yakovakis, 22 Eaton Road, stated that he believes the Board giving the applicant an up-to number that can be reduced, takes the burden off the applicant and puts it onto the town. He explained that the data presented in the application is easy to come up with and can be made to look contradictory by anyone. He doesn't believe that this project aligns with keeping the historical feel of the town. He noted that the schools in this town are good and he believes people here hope that their children aspire to more than a tiny house.

Tom Quinn, 30 Christian Hill Road, stated that the applicant has provided very little data to prove the case. He believes that most of the housing data was given by the two real estate members of the applicant's group, who have a financial interest in the project. He stated that the Board's job is to control growth and protect the town's residents. The Board doesn't have to give any density bonuses. He noted that concerned citizens have property rights as well, and that he has never heard that idea mentioned by the Board. He told the Board that it is okay to vote no. He explained that the number of units, the layout of the project, and the mix of housing information have all changed since the original application. As the original application was accepted as complete by the Board, they should only be looking at the submitted application. He noted that the Board thought that it was okay to not take minutes on the site walk for this proposal, which violates RSA 91-A. He believes the Board is doing the applicant's heavy lifting for him, and is thus, not impartial. He noted that there have been serious procedural and legal errors so far in this process, and that the rights of property owners have been violated. No bond will fix this mess if it fails and the town will have a large problem on its hands. He believes that in order for the applicant to be granted a CUP, certain points must be proven now, not later.

Dan Muller, Esq., 13 Holly Hill Road, of Cronin, Bisson, & Zalinsky, noted that he is representing about 33 residents.

In response to a question from Dan Muller, Esq., Mike Dell Orfano explained that the Board sets a not-to-exceed unit number for the CUP phase. Per the ordinance, the applicant then has an opportunity to prove that the number is physically possible on the site during the NRSPR. All of the required studies are also covered during the NRSPR. If the Board feels, after hearing the data and facts, that the site doesn't suit the original number, then the Board will roll back the number at that time.

Dan Muller, Esq., stated that, per the ordinance, there are certain items that need to be satisfied before a CUP can be granted that the applicant has not done. He also doesn't believe that the studies can be deferred to another day. He drew the Board's attention to ordinance section 3.18 A – Conditional Use Permits.

Mike Dell Orfano stated that the CUP requires that a NRSPR be filed, but doesn't say that it has to be filed before a CUP is issued. Dan Muller, Esq., disagreed that it does.

Dan Muller, Esq., also noted that the federal definition of senior housing does not allow for units interspersed throughout the development, and thus the bonus for that section should not be awarded. He also noted that, per the elderly housing section 4.20, the cluster neighborhoods are

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not as intended, and thus the bonus for this section shouldn't be awarded. He also believes that there are elements of the application that will require relief from the ZBA.

Mike Dell Orfano requested that Dan Muller, Esq., submit these items to the Community Development Director for review.

Bill Stoughton, 11 Pine Top Road, stated that he is a member of the ACC and that the ACC has not yet reviewed the request for waivers to the wetland buffers on this project.

Ken Clinton explained that the applicant presented to the ACC in July and indicated that they would be back before them for possible buffer impacts in the future. He explained that there will be a need for an additional CUP application at the same time as the NRSPR, for this buffer impact. This does not require a waiver, as it is allowed under certain circumstances.

Bill Stoughton explained that there is a tension between giving an up-to number of units right now per a benefit to the town, and a future step that may require encroachment to a wetland buffer. This is a very sensitive location, due to the associated aquifer and wetlands.

Dean Collura, 32 Christian Hill Road, agreed that the number should not be defined without all of the actual facts. He believes that cluster housing and heavy traffic will be very impactful and could deter many from moving to the town.

Kelly Mullin, 48 Christian Hill Road, stated that she struggles with the idea that the proposed development will have no adverse impact to health, safety, and public welfare. She believes there are serious safety concerns on Christian Hill Road. She understands that some Board members have an allegiance to the IIHO because they wrote it, but it is poorly written and that should be the problem of the Board to dissect and figure out. The ordinance is written backwards and should be looked at more carefully before an up-to number is given. She also questioned why the Board and the Board of Selectmen are able to pick and choose which ordinances to enforce (IIHO versus impact fees). She finds it ridiculous that other towns have found ways to enforce the impact fee ordinance.

Mike Dell Orfano noted that the Board of Selectmen recently received proposed changes to the impact fee ordinance, in order to allow the town to enforce the fees. These changes will be seen on the ballot in March.

Doug Chabinsky, 89 Boston Post Road, stated that there are three developments currently being built in town and another three that are proposed. He doesn't believe that the ordinance was written to consider six projects occurring simultaneously. If each project is treated as a stand-alone, and not looked at within the fabric of the community, the latter will probably be eradicated to a point that no one will want to move to town anymore. The Board needs to look at the entire picture to make an assessment.

There being no one else to speak, Mike Dell Orfano closed the public hearing.

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Discussion:

Marilyn Peterman suggested that the application be tabled until the Board can meet with Town Counsel for an opinion on how to proceed regarding the issues of ordinance legality that were brought up.

Arnold Rosenblatt questioned what Counsel would be asked. He understands the opposition to the project, but believes he is able to have a view of the project based on the ordinance and vote on it.

Mike Dell Orfano pointed out that there were statutory deadlines in place for the Board's action on this application.

Marilyn Peterman noted that, in fairness to the applicant and the town, it is important to get answers to the questions that arose regarding the legality of the ordinance, and the procedural process.

Mike Dell Orfano stated that the ordinance was reviewed by Counsel before it was voted on and was deemed okay.

In response to a question from Lisa Eastland, Ken Clinton stated that the development will have some sort of an association, probably in several sub-associations/clusters.

In response to a question from Mike Dell Orfano, Carter Scott stated that the project is not looking to use senior housing per se, but will simply note this restriction in the deeds for these units.

Christy Houpis noted that there are clear questions regarding the process that the Board followed, the frameworks and tools used during the hearings, and this specific project itself. He believes it would be imprudent for the Board to make a decision at this time, as it may leave the town in legal jeopardy.

The Board discussed that the applicant could agree to extend the deadline for the application. The next available date at the high school is February 19th.

Ken Clinton explained that the applicant requested to table at the last Board meeting on November 6th because of a letter from Dan Muller, Esq., dated October 24th, received October 30th, regarding legal challenges. The applicant's attorney reached out to Town Counsel at that time and decided that there were legitimate issues in the letter and that the Board should continue on with the process. It is unfair to the applicant to table this application until February 19th. The Board reviewed the CUP criteria.

Rich Hart stated that he has concerns regarding item 3.18 C. 1. c., due to the traffic study not yet being complete. Mike Dell Orfano explained that the traffic study will be scoped by NRPC and

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DPW, and if the data proves a life safety issue with the proposed development, then the Board will roll back the number of up-to units, without recourse from the applicant.

Lisa Eastland noted a concern regarding the cluster neighborhoods on the slope-side of the development. She doesn't believe that there has been a lot of evidence given to show that all of the requested bonuses are required.

Marilyn Peterman moved to accept the Conditional Use Permit. John D'Angelo seconded.

Discussion:

Brian Coogan stated that he doesn't understand the project and how there is a benefit to the town to deserve the requested bonuses.

Arnold Rosenblatt stated that the comments regarding the integrity of the Board from the public are unfortunate. He believes that even Board members he regularly disagrees with always act on the best interest of the town and not out of self-interest. He also believes that there is an apparent problem with open space being taken in town. Regardless of this, there is a right to develop open land. If the town wants to preserve land it needs to do so. He will vote against the motion as he does not believe the applicant sustained the burden of proof in this case. He does not believe the applicant satisfied item 3.18 C. 1. b. and does not wish to award bonuses in a vacuum. He further does not believe the applicant satisfied the burden of 3.18 C. 1. c., with regard to lack of adverse impact. This doesn't mean that the applicant cannot still develop the land in some way.

Christy Houpis stated that the applicant failed to ensure that any and all of the items listed in 3.18 C. 1. c. will be impacted. He believes that the Board is having issues with their hearings, the ordinance use, and specific issues with this project itself. The Board must look to ensure the safety and health of the neighbors in town. He stated that certain Board members have voiced their opinions on social media, leaving the Board and town open to legal scrutiny. He believes that the limited public comment time at a previous Board meeting was arbitrary. He stated that the Board should decline the application and wait until it has the proper tools in place, including impact fees. Christy Houpis stated his concerns were with the pitch of the proposed road, increased drainage, runoff, grazing, traffic volume, financial viability, and a lack of Amherst-specific data. If the Board does approve the application, he hopes that it will be made conditional upon having a substantial bond, firm construction plans for the renovation, possible impact fees, pending a look holistically and cumulatively of the town, and studies completed by third parties. He believes it would be in the town's best interest to not approve the application, or at least to take 20 units off the proposal, based on the data.

John D'Angelo stated that he believes the application met the CUP criteria and will vote yes for it.

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Marilyn Peterman stated that she has been on the Board for a long time and has consistently seen the town vote to preserve open space, and to provide a diversity of housing. Housing for the elderly wasn't provided for a long time and there continues to be a need for it. Many people also can't afford to live and work in town, and thus affordability should also be addressed. Suggesting that Merrimack is creating enough rental properties to meet the need isn't a solution to Amherst's housing problem. She also doesn't believe that all developers come here to fleece the town, as many have worked with the town to provide the housing needed. She stated she would approve the CUP.

Cliff Harris stated that he sides with Arnold Rosenblatt.

Rich Hart stated that he would vote no on the motion, based on his previous explanation.

Voting: 2-0-4 (2 in favor: M. Peterman, J. D'Angelo; 4 opposed: R. Hart, A. Rosenblatt, B. Coogan, C. Harris).

Mike Dell Orfano stated that there were things in the process that have been identified and considered and may cause the project to fail. He stated that the Board had to evaluate the housing mix under the PRD regulations and fine tune the housing available and number of bedrooms, etc. He stated this would be part of the NRSPR, which would take care of almost all the concerns that were alluded to this evening. Mike Dell Orfano stated the purpose of this stage was to reduce the cost to the developer at this stage. Mike Dell Orfano stated that, in his opinion, this project offered the town an innovative approach. He was not sold on the farming concept, but likes the idea of clustered houses and variety of housing. He believed this was an opportunity lost.

Arnold Rosenblatt asked that the record be clear that he was not voting consistent in any way to Christy Houpis' comments, but for his own reasons previously articulated.

Mike Dell Orfano explained that the applicant can reapply for a CUP with more information.

In response to a question from Ken Clinton, Mike Dell Orfano stated that he historically doesn't have to vote as Chair, and didn't vote on this motion.

Marilyn Peterman left the meeting.

OTHER BUSINESS

2. Minutes: November 6, 2019; November 20, 2019

The Board agreed to defer review of these minutes to the next meeting.

3. Zoning Ordinance Amendments

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The Board reviewed the proposed changes to the zoning ordinance.

John D'Angelo explained that the town reached out to Bruce Mayberry, an expert on impact fees, and the following items were suggested.

- 1) From Section 4.19, subsection G. Impact Fee Establishment Procedure:
Remove this sentence: "In order to establish an impact fee, the Selectmen shall identify projects eligible for impact fee funding as indicated in the Capital Improvements Program, as, from time to time, amended.

Subsection G ties impact fees to a specific item in the CIP and thus makes enforcement very restrictive.

In response to a question from Rich Hart, John D'Angelo stated that the Planning Board will still decide which projects can be tied to impact fees, but they will not be required to be tied to the CIP.

In response to a question from Sally Wilkins, John D'Angelo stated that Bruce Mayberry will help the town dictate how to calculate impact fees.

- 2) From Section 4.19, subsection G. Impact Fee Establishment Procedure:
In the next sentence from the one previously suggested for removal, remove the word "then."

This is a housekeeping item.

- 3) From Section 4.19. Impact Fee Ordinance:
Remove this sentence: "G. 1. A determination of the number of building permits that will need to be issued in order to finance the impact fee. (3-10-09)."

John D'Angelo explained that this removes the requirement to get a number of building permits in order to get an impact fee.

- 4) From Section 4.19. O. Applicability of Impact Fees.
Remove this sentence: "1. Any person or agent, who after the effective date of this ordinance, seeks to undertake new development within the Town of Amherst, New Hampshire, by applying for site plan approval, subdivision approval or a building permit and who is not vested pursuant to RSA 674:39, is hereby required to pay the appropriate Impact Fees in the manner set forth in this ordinance, in accordance with any Impact Fee Schedule adopted by the Board of Selectmen."

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Replace it with this sentence: "1. Any person or agent, who after the effective date of this ordinance, seeks to undertake new development within the Town of Amherst, New Hampshire, by applying for site plan approval, subdivision approval or a building permit, and which is not covered under an exemption pursuant to RSA 674:39, is hereby required to pay the appropriate Impact Fees in the manner set forth in this ordinance, in accordance with any Impact Fee Schedule adopted by the Board of Selectmen."

John D'Angelo explained that this is a rewording to broaden the wording to include any kind of exemption.

Lisa Eastland sat for Marilyn Peterman.

**Arnold Rosenblatt moved to merge the four proposed amendments into one single amendment for placement on the ballot. Cliff Harris seconded.
All in favor.**

The Board reviewed the other two proposed amendments.

- 5) Amend Article VI, Administration, Section 6.3 Board of Adjustment, Sub-section G. Time Limits of Special Exceptions and Variances, to add a sub-section entitled Scheduled Termination of Variances, that would provide for the termination of all variances that were authorized before August 19, 2013, and that have not been exercised, as follows:

Scheduled Termination of Variances

Pursuant to RSA 674:33 I-a. (b), all variances that were authorized by the Amherst Zoning Board of Adjustment pursuant to the Amherst Zoning Ordinance and RSA 674:33 before August 19, 2013, and that have not been exercised, shall terminate according to the following procedure:

1. **Upon adoption of this amendment, the Planning Board shall post notice of the termination in the Town Hall. The notice shall be posted for one year and shall prominently state the expiration date of the notice.**
2. **The notice shall state that variances authorized before August 19, 2013, are scheduled to terminate, but shall be valid if exercised within two years of the expiration date of the notice or as further extended by the Zoning Board of Adjustment for good cause.**

- 6) Amend Article VI, Administration, Section 6.3 Board of Adjustment, Sub-section G. Time Limits of Special Exceptions and Variances, to add a sub-section entitled Scheduled Termination of Special Exceptions, that would provide for the termination of all special exceptions that were authorized before August 19, 2013, and that have not been exercised, as follows:

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Scheduled Termination of Special Exceptions:

Pursuant to RSA 674:33 IV. (c), all special exceptions that were authorized by the Amherst Zoning Board of Adjustment pursuant to the Amherst Zoning Ordinance and RSA 674:33 before August 19, 2013, and that have not been exercised, shall terminate according to the following procedure:

- 1. Upon adoption of this amendment, the Planning Board shall post notice of the termination in the Town Hall. The notice shall be posted for one year and shall prominently state the expiration date of the notice.**
- 2. The notice shall state that special exceptions authorized before August 19, 2013, are scheduled to terminate, but shall be valid if exercised within two years of the expiration date of the notice or as further extended by the Zoning Board of Adjustment for good cause.**

**John D'Angelo moved to merge the last two proposed amendments into one single amendment for placement on the ballot. Cliff Harris seconded.
All in favor.**

The meeting was adjourned at 11:54pm.

Respectfully submitted,
Kristan Patenaude

Minutes approved as amended: January 15, 2020