

TOWN OF AMHERST
Planning Board

April 7, 2021

APPROVED

In attendance: Arnie Rosenblatt - Chair, Dwight Brew-Selectman Ex-Officio, Bill Stoughton, Mike Dell Orfano, Cynthia Dokmo, Marilyn Peterman, Brian Coogan, Tracie Adams (Alternate), Chris Yates (Alternate), and Christy Houpis (Alternate).

Staff present: Nic Strong, Community Development Director; Natasha Kypfer, Town Planner; and Kristan Patenaude, Recording Secretary.

Arnie Rosenblatt called the meeting to order at 7:01 p.m., with the following statement. As Chair of the Amherst Planning Board, I find that due to the State of Emergency declared by the Governor as a result of the COVID-19 pandemic and in accordance with the Governor's Emergency Order #12 pursuant to Executive Order 2020-04, as extended by various Executive Orders, this public body is authorized to meet electronically.

Please note that there is no physical location to observe and listen contemporaneously to this meeting, which was authorized pursuant to the Governor's Emergency Order.

However, in accordance with the Emergency Order, I am confirming that we are:

Providing public access to the meeting by telephone, with additional access possibilities by video or other electronic means:

We are utilizing Zoom for this electronic meeting.

All members of the Board have the ability to communicate contemporaneously during this meeting through this platform, and the public has access to contemporaneously listen and, if necessary, participate in this meeting through dialing the following phone #312-626-6799 and password 827 9518 3926, or by clicking on the following website address: <https://zoom.us/j/82795183926> that was included in the public notice of this meeting.

Providing public notice of the necessary information for accessing the meeting:

We previously gave notice to the public of the necessary information for accessing the meeting, including how to access the meeting using Zoom or telephonically. Instructions have also been provided on the website of the Planning Board at: www.amherstnh.gov.

Providing a mechanism for the public to alert the public body during the meeting if there are problems with access: If anybody has a problem, please call 603-341-5290.

Adjourning the meeting if the public is unable to access the meeting:

In the event the public is unable to access the meeting, the meeting will be adjourned and rescheduled.

Please note that all votes that are taken during this meeting shall be done by roll call vote.

Let's start the meeting by taking a roll call attendance. When each member states their presence, please also state whether there is anyone in the room with you during this meeting, which is required under the Right-to- Know law.

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Roll call attendance: Dwight Brew; Bill Stoughton; Mike Dell Orfano; Brian Coogan; Tracie Adams; Cynthia Dokmo; Marilyn Peterman; Christy Houpis; Chris Yates; and Arnie Rosenblatt; all alone and present.

PUBLIC HEARINGS

- 1. CASE #: PZ12164-121619 – MIGRELA and GAM Realty Trust (Owners) & MIGRELA Realty Trust (Applicant), Carlson Manor, 153-159 Hollis Road, PIN #s: Tax Map 1, Lots 8 & 8-2, Tax Map 2, Lots 7, 7A, 7B, 3-1 & 3-2 – Public Hearing/Subdivision & Non-Residential Site Plan. Proposed 54-unit condominium style development. Zoned Residential/Rural. *Continued from March 3, 2021***

Arnie Rosenblatt read and opened the case.

Arnie Rosenblatt noted that this item is also listed as an item under Completeness Review of Application in the next section. Natasha Kypfer stated that, while completeness for this item has been determined, the Board has not yet heard or determined completeness for the CUP for wetland impacts for the same parcel.

Chad Branon, Fieldstone Land Consultants, and Gerry Prunier, applicant's attorney of Prunier & Prolman, P.A., joined the Board representing MIGRELA and GAM Realty Trust, owners and applicants. Chad Branon explained that revised site plans have been submitted since this application was last before the Board in March. The revised plans include a revised site plan, a revised phasing plan, nine different configurations for architectural plans for the proposed units, revised declarations of condominium and covenants, easements and restrictions. The site plan was revised with feedback from the Board and public. The site plan no longer proposes a 55+ development. The current plan is consistent with the development presented to the Board during the CUP process. The layout of the plan has changed in terms of increasing the separation between the units, repositioning the orientation of some of the units, altering the distance from some of the units to the streets, and changing the look of some of the driveways by making them common driveways to change the look from the street. These modifications have led to a reduction in the density, for a new proposed total of 49 units.

Chad Branon explained that the current site plan still reflects the largest possible units to be placed on each lot, for spacing purposes, however smaller units are available as well. The density table has been corrected and is also consistent with the applicant's previous CUP approval. This table reflects the increase in 65+ units from 10 to 14, and four 1-bedroom units, as discussed at the last meeting.

Chad Branon noted that there were many comments during the March meeting about this proposed development not being consistent with the neighborhood and not protecting the rural aesthetic. There were also comments made regarding the possibility of revisiting the already approved up-to density. He explained that this comment is concerning because it is inconsistent

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with the Planning Board's process he is accustomed to. This applicant is more than two years into the process for this application. Chad Branon explained that the applicant went through the CUP process to start, during which the Board evaluated proposed concepts and layouts, and their associated densities. This included discussions on units, unit sizes, unit separations, and jurisdictional areas. At the end of the process, the Board voted to approve the applicant's CUP application, and thus, it was believed, the proposed layout. The applicant then went onto the design stage, during which the layout needed to be vetted and the density needed to be proven. The applicant has spent a lot of time completing road, septic, water, and utility designs. The applicant has had reports prepared, including environmental, wildlife, hydrogeological, traffic, and fiscal impact. These were all based on the layout that was previously approved by the Board during the CUP process. Since he submitted this preliminary information to the Board, the applicant has worked to address the design details. The applicant has reviewed the Town Staff, Planning Board, and Keach-Nordstrom comments and has steadily made improvements to the plan in order to address these. The applicant modified the stormwater management system in order to move any proposed items outside of the buffer, while also modifying the layout in order to make sure there is an appropriate buffer restoration plan to control the temperature running into the nearby brook. Chad Branon explained that the comments at the March meeting regarding concerns about the layout thus seem untimely, as the applicant is more than two years into this process.

Chad Branon explained that the applicant believes that this proposal does preserve the rural aesthetic of the area because it meets all of the necessary requirements as it has gone through the process. The proposed layout adheres to the 100' scenic setback requirement, has increased the buffer areas, increased the proposed vegetation on site, maintained stone walls, proposed new stone wall construction, closed some of the existing curb cuts, and maintained structures along the frontage of the site in order to preserve the historic aspects of the site, based on comments made by the Heritage Commission. The current site plan also maintains the rural aesthetic in keeping with the layout that was previously approved by the Board in the CUP process.

Chad Branon presented a map that shows how this development will fit in with the surrounding neighborhoods. He explained that, heading from this site towards the Hollis border lies the Summerfield development, a large elderly housing project. Across the street from that is the Peacock Brook development, an affordable housing project. Heading towards Town, on the left, sits Pendleton Farms, the first approved IIHO project approved by the Town. Next to that is Adams Ave., an affordable housing project, and across the street is Patricia Lane, a Planned Residential Development (PRD). Further down the street are some commercial properties and Standish Way, another PRD. Thus, there are lots of neighborhood developments surrounding this area that are similar to this proposed project. These developments are also similar based on densities, on a per acre basis. In fact, he noted, that this proposed development is possibly a less intense use than some of these other projects.

Chad Branon stated that there have been continued concerns regarding stormwater temperatures and the potential impact to onsite wetlands. The applicant heard these concerns and responded by reaching out to an environmental consultant to create a report regarding temperature readings of

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surface waters on site. That consultant found no surface waters on site to test. The stream on site is seasonal and dries up each year. The applicant did not stop there though. The applicant next contacted the UNH Stormwater Center and revised their stormwater plan based on the recommended best management practices. The way that the applicant designed the site, the layout of the site infiltration, and the spacing of the systems may not be required but was still incorporated. The applicant followed the Amherst Conservation Commission's (ACC) recommendation to remove the stormwater systems from the buffers and also improved the buffer restoration areas that run through the center of the project; there are no local or state requirements for this. Chad Branon noted that the applicant has done all that can be done for this item. He believes the stormwater design for this site is better than others already approved by the Board.

Chad Branon explained that bonding was discussed at the March meeting. He does not believe this is appropriate at this time, as the design has not yet been finalized. There may still be changes made in order to address additional comments. Typically, bonding is decided when a design is complete. The amount of a restoration bond is a function of the details of the design. Eventually, the plan will be engineered, reviewed, and approved. Usually, bonding is a condition of approval. The applicant looks forward to addressing the bonding issue at the proper time and is open to posting a restoration bond.

Chad Branon also noted that a revised phasing plan was submitted due to the proposed reduction in units. The phasing by way of the road has remained the same, but some of the interior unit numbers have changed in the phasing plan.

Gerry Prunier noted that the applicant has been working to get all work on the application complete. He believes the applicant has done all that's been asked in order to accommodate questions and comments.

Arnie Rosenblatt explained that the Board will now ask questions and comment on the application, the public will then have a chance to do the same. The Board will then discuss the application again and take any actions deemed appropriate.

Chris Yates stated that he reviewed the declaration of the covenants and he is not convinced that having one charter for the subdivision is correct. He looked up Title 24, 100.303 and the examples discuss a community of 62+ and that it can only contain the ages of 62+. He is not convinced about the density; he feels it looks more like an urban than rural community. Peacock Brook has 18 homes on 27 acres, versus 49 units proposed on 28 acres of land. He believes this is too high.

Chad Branon asked if he could comment. Arnie Rosenblatt stated that Chad Branon could answer questions but not comment on each comment made.

Cynthia Dokmo stated that she had no questions at this time.

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In response to a question from Tracie Adams regarding the density of the site, Chad Branon explained that the applicant went through the CUP process and received a Planning Board approval for up-to 54 units. During the design stage, the applicant proved the project for up-to 54 units but chose to reduce the density based on other items. Chad Branon explained that comparing this proposed development to others nearby is difficult, because others came in under different regulations. For example, Peacock Brook has 14 acres of upland on site, and the rest is wetlands. There are 19 units built onto this site. There is comparable density on the Peacock Brook site to this proposed development per buildable acre, but in a different style. Peacock Brook has no 55+/65+ or IIHO regulations to prove out. The applicant has followed the rules in calculating the density for this project. Chad Branon noted that the Summerfield development is denser (16 units), per buildable acre. The proposed density of this site fits with the equation used and meets the necessary regulations. He noted that the Board has discussed the density of this site, but not what should be changed.

Chad Branon stated that, at the last meeting, the Board noted the desire for seeing more imaginative orientation of units and increased separation of units; the applicant responded to these notes by altering the plan and thus, further reducing the density of the site. The applicant has continued to be mindful of what's been said by the Board and public. The applicant's plan has continued to meet the criteria to support the layout, plan, density, and density bonuses proposed. The Board previously voted on all of these items during the CUP phase, which is why the proposed layout hasn't changed. He noted that the Board makeup and regulations have changed over time, but the project hasn't. The applicant has continued to be sensitive to comments and concerns and has looked at the surroundings to make sure the proposed project fits, and it does.

Gerry Prunier explained that the applicant's first step was to create a plan and get a proposed number of units approved by the Board. This occurred, and the same plan has been kept all along. He noted that this proposal meets the character of the area and is comparable to other developments in the area.

Mike Dell Orfano noted that the Peacock Brook neighborhood was developed under the affordable housing ordinance. A huge part of that site is wet, and Witches Brook was a huge concern during that project.

In response to a question from Mike Dell Orfano, regarding page 9 of the revised plan, note 7, Chad Branon showed the proposed unit count listed in that note.

In response to a question from Mike Dell Orfano, regarding Attorney Dan Mueller's comments about the integrity of the 65+ structure proposed in these plans, Gerry Prunier stated that he is comfortable with this item. Gerry Prunier noted that he brought in someone specialized in condo work to draft the documents due to this item.

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In response to a question from Mike Dell Orfano, Chad Branon stated that the current proposed plan follows the original configuration from the CUP, minus a few units. The five units that were recently proposed to be deleted were all market rate units/units with no restrictions.

In response to a question from Mike Dell Orfano, regarding language in note 7 that the applicant reserves the right to alter units where restrictions are satisfied, Chad Branon explained that this note is to deal with if someone wants a 65+ unit on a different lot than currently planned. The applicant is looking for freedom to shift the restrictions on site, as long as all the CUP needs are still satisfied.

In response to a question from Mike Dell Orfano, Chad Branon stated that he believes the applicant has satisfied all of the items that have come from the ACC and that there is an email acknowledging such.

Marilyn Peterman stated that she sees significant differences in the layout of the revised site plan. She believes the applicant did a good job changing the parameters for the shared driveways, and the locations and orientations of the units. She believes the changes will add to the overall look of the community. She also noted that she had no problem with the flexibility of a buyer being able to choose a particular lot as long as the number of units in each category remains the same.

In response to a question from Marilyn Peterman regarding approval of the density for this project, Arnie Rosenblatt noted that, although he wasn't present at the meeting when the CUP was approved, that when the ordinance was applied to similar projects, an up-to number was given, but this was not a statement that the applicant is entitled to this amount – it was the maximum amount allowed.

Marilyn Peterman noted that she recalls that this applicant has continually been given a moving target in terms of unit numbers. In her opinion, the Board needs to at some point present the applicant with an understanding of where it's at with regards to this item. Instead, she believes that the number has changed at each meeting, after which the applicant has tried to accommodate what the Board wants. She believes this is an unfair approach for the applicant.

In response to a question from Marilyn Peterman, Chad Branon stated that a restoration bond is required of the applicant, and that the applicant is willing to post this. The Town consulting engineer also recommended a road bond, which is not required by the regulations.

Marilyn Peterman explained that it is difficult for a bond amount to be determined without having a complete set of information. She stated that she was not uncomfortable waiting to get the bond when all the information was gathered.

In response to a question from Christy Houpis, Chad Branon stated that the applicant is not opposed to any of the conditions listed in the Staff Report, except for the proposed road bond.

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In response to a question from Christy Houpis as to whether there had been any changes to the structures or the views of the structures, Chad Branon explained that the applicant has incorporated a few additional building plans with new architectural elements, such as duplexes and a two-story design, in the revised site plans. The applicant is also open to looking at an option without a garage in the future. The applicant is also happy to revisit any of the architectural elements and work with the Board on possible modifications.

In response to a question from Christy Houpis about whether there had been any substantial changes to the phasing proposal, Chad Branon stated that the borders of the phasing has not changed, but due to the reduction of three units the notes and unit numbers had been modified accordingly. Chad Branon noted that the road design has not been changed, as this would have been very difficult within the time span from the March meeting, and the fact that the road design has been the same for approximately two years during this process. The changes made around the site were mostly to break up the unit structure and not significant infrastructure changes.

Christy Houpis noted that he is sensitive to the process of receiving the CUP approval and then creating the design. He is also sensitive to the fact that the applicant has been working through this process for the past two years, however, there have been some delays due to postponements made by the applicant and COVID-19 related items. He also noted that there have been changes to the Board during this time. He explained that the applicant has been grandfathered in under the IIHO regulation. Christy Houpis stated that he has substantial issues with the traffic, water, stormwater impacts, etc. He explained that it is the Planning Board's job to look at future impacts and residents' concerns. The IIHO worked to balance the benefits received by the Town from a proposal, the rights of the applicant/owner, and the safety of the resources of the Town. His concern is for the proposed density as it relates to these items.

Bill Stoughton stated that the applicant has done a lot of work in the last month and that many of the changes made were in regard to comments made by him. He noted that he is satisfied with the stormwater approach being proposed by the applicant. He believes the applicant has done all he reasonably can in terms of maintaining the cold water of the stream on site, to make sure it maintains as minimal temperature as it can as it reaches the nearby brook. He does not believe the ACC has an issue with this item.

Bill Stoughton questioned when the bonding will be addressed, if the Board does not do so now because this is the last time the Board will act on the application. Chad Branon explained that the Planning Board usually approves an application with the condition of a bond being in place and approved by the Town engineer. Chad Branon stated that the bonding review and exercise is a technical review of numbers published by DOT. This is usually an engineering calculation. This is not usually done in front of the Board, but as a condition of approval.

Bill Stoughton stated that he was sensitive to the comments made about the Board continually revisiting the unit number and did not think it was fair for the Board to go back through the density calculation worksheet and change the number. He did think that the Board needed to

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look at whether the applicant has complied with the CUP approval for 54 units or less. Bill Stoughton explained that the Board is obligated to determine if the applicant has met every other requirement of the applicable ordinances. This includes if the application preserves and protects the rural aesthetic of the Town. He believes the Board should vote yay/nay on this application as proposed tonight and not continue to go back and forth with the applicant on a density number. He believes the time for going back and forth in this process has passed. Regardless of whether each current Board member was on the Board when the applicant's CUP was first approved, if a vote is taken tonight each member should vote based on whether s/he believes the applicant has satisfied each part of the ordinance, including preserving the rural aesthetic of the Town. He has not yet made up his mind on this item and would like to listen to his fellow Board members' thoughts.

Dwight Brew acknowledged that the applicant has made another slight reduction in number of units, and also slightly rotated some of the units so they are not now all in a row.

In response to a question from Dwight Brew regarding how the age and rental restrictions proposed will be complied with and verified into the future, Gerry Prunier explained that the association will need to take a count each year and make sure these numbers are meeting the requirements of the site plan. This is listed in the condo docs.

Dwight Brew stated that it looked as if the association had the ability to modify the condo documents. Gerry Prunier confirmed that the association can modify the condo docs with a 2/3 vote.

Dwight Brew stated that it is his recollection that for developments of this type, all members of a household must be of the correct age, 62+ or 65+. However, in these condo documents it looks to be that only one member of the household must be 65+ to comply. Chad Branon noted that the legal documents have been submitted and are currently being reviewed by Town Counsel. The applicant will be happy to address any questions that arise from this review.

Arnie Rosenblatt stated that regarding the relative density of other projects in the area, he is not persuaded that those are dispositive in regard to if this application satisfies the conditions of the IIHO, including the requirement of the rural aesthetic. He does not believe that doing a direct comparison is correct for this matter.

Public Comment:

Linda Sutherland, 32 Peacock Brook Lane, explained that the Peacock Brook development was originally considered affordable housing, but that this was lifted about two years ago. She doesn't believe the development was ever considered age-restricted housing. She noted that the Peacock Brook development is 19 units on 26 acres; this is not at all similar to 49 proposed units on 33 acres, per the applicant's proposal.

Linda Sutherland asked if the Planning Board members have ever seen a development constructed by the proposed developer. Chad Branon stated that there are a couple of

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developments done by this developer in nearby towns. Gerry Prunier agreed that this developer has created developments in Nashua, Milford, Manchester, Concord, and in Massachusetts.

Linda Sutherland asked why there is still a need for the proposed community gardens as part of this development. She explained that this property is zoned for 14 units and thought that 26 units maximum would be fitting to the rural aesthetic of the area.

Jim Hendrix, 44 Christian Hill Road, noted that Ashwood Homes, the proposed developer for this site, seems to be a prolific developer in cities. Although Milford is not a city, and Ashwood Homes has developed there, Milford also has town water and sewer, which Amherst does not. He believes that Chad Branon and Gerry Prunier have been jamming down people's throats that this proposal meets the rural aesthetic of the Town. Jim Hendrix explained that, although this application is grandfathered in under the IIHO, the Town has since voted that ordinance out. He doesn't believe people want this kind of a development, with maxed out bonus densities, but the developer will do it anyway.

Tom Quinn, 30 Christian Hill Road, asked the Planning Board to consider if the number of units proposed to be unrestricted on the current site plan represents a material change from the original CUP approval.

Donald Sutherland, 32 Peacock Brook Lane, stated that the character of this area, if Chad Branon gets his way and rapes the land to construct 49 homes, will no longer be rural by any means. The last thing he wants to see as a taxpayer is a massive development across the street from his house. He does understand the applicant's rights. He believes that, since Marilyn Peterman and Mike Dell Orfano brought in the IIHO, it has been killing the Town. He believes Amherst is turning into Derry.

Susan McIntosh, 171 Hollis Road, explained that she moved to her home in 1998 and noted, at that time, that the area around her consisted of 2-acre zoning. This is part of the reason she chose to move to this area. She believes that the proposal only fits with the character of this area because of all the other developments that have recently popped up. She believes these detract from the nice rural entrance into Amherst. She believes that 19-26 single homes would look okay on this property. The proposal is not rural in character at all, and she objects to the high density proposed on this project.

Gail Ashour, Rocky Hill Road, stated that she is concerned about the proposed density of this project. She believes Route 122 is becoming "condo alley." The number of houses trying to be crunched onto this site is unimaginable. This area used to be open space, and the proposal will certainly change what she is accustomed to seeing there. She believes wildlife will also be displaced. She believes developments like this are turning Amherst into Nashua.

Arnie Rosenblatt noted that there were no other hands raised by the public at this time and went back to the Board.

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Mike Dell Orfano stated that he would like to hear his colleagues' interpretation of the word "rural." "Rural", to him, means a lot of distance between homes. While an area like Maine is considered a sparse community, Amherst is not, with a population of approximately 12,000. He explained that "rural" was interpreted years ago by the Town when 5-acre zoning was created in the Rural zone. That is not the case in this part of Town. He believes that if the Town does not manage change, change will take its own course. He believes that if the Board is going to make choices based on "preserving the rural character of the Town," then he would like to hear each member's definition of that.

Arnie Rosenblatt stated that he is unsure how productive that discussion would be. There are varying perspectives on the Board as to what the language, both in the Master Plan and the ordinances, means. He noted that Board members are welcome to respond to Mike Dell Orfano's question but are under no obligation to as it is not tied to a motion.

Chris Yates explained that he believes the number of proposed unrestricted units of this project, and thus the potential number of 35 3-bedroom homes, is significant. He is not against development, in general, but the number of potential 3-bedroom units proposed on this site would take a toll on the community and its resources.

Mike Dell Orfano thanked Chris Yates for his explanation. He stated that he wants to hear other member's expectations and interpretation of the ordinance.

Marilyn Peterman stated that she shares the same concerns as Mike Dell Orfano. She noted that, not long ago, this road was filled with flea markets, farms, and little housing, except for single-family units. This is no longer the case. She asked Bill Stoughton if he believes the Summerfield development seems particularly residential.

Arnie Rosenblatt stated that he will not allow Marilyn Peterman or Mike Dell Orfano to cross-examine other members of the Board.

Marilyn Peterman noted that there are 80 units in the Summerfield development – not a particularly rural development. She explained that the Peacock Brook development was built as affordable housing, although people didn't like this at the time. The developments along this road were put on the market and did so under the guidance of the regulations. In defining the "rural character" of the area, she would be shocked if people believed that this area is considered "rural."

Arnie Rosenblatt stated that the Planning Board's decisions need to adhere to the language of the Master Plan and the ordinance that this application is being grandfathered in under. The character of this road may have changed over the years, but the Planning Board still needs to apply the language from the ordinance and Master Plan. His perspective is that the choices made by the Board in the past were not always necessarily appropriate. This Planning Board does not need to do as was done previously.

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Mike Dell Orfano stated that the Planning Board's role is to enforce the law. The concept of "rural character" is part of the law. It is thus relevant how each member interprets the definition of the word "rural." The proposal is located near a number of other developments and is comparable in density to these. It is thus hard for him to understand how this proposal is considered an exception to those around it and how it violates the rural character. This is why he would like to hear each Board member's interpretation of the ordinance and Master Plan language in terms of the rural character aspect.

Arnie Rosenblatt stated that he would be happy to discuss this as part of a proposed motion.

Christy Houpis stated that he would make a motion, but he is an alternate member. He noted that the ordinance that this application is coming in under has been changed and then repealed. He understands that this application was grandfathered in. He agrees with the Board either voting yay/nay on the application at hand or having a specific debate on it.

Bill Stoughton moved to deny the application. [He noted that he appreciates the changes made to the revised site plan, which he believes moved the development toward being more rural in ways that addressed previous concerns noted by the Board and public, including the uniform setbacks and houses close to the street. He also appreciates the applicant's additional open space restrictions and the applicant's decision to slightly reduce the density, but he still opposes this project for the following reasons:

- 1) The proposal does not require all residents of the age-restricted units to be 62+, but only for one member to be.**
- 2) There is a single condo association for the senior and unrestricted housing units. Ultimately, it would be up to a court to decide, but he believes the Board is responsible for applying the law and so there must be some level of understanding and interpretation of the law. He believes that if the age-restricted units and mixed with the non-restricted units there must be some separation, either physically or through a separate association, or something similar. That is not the case here. He is concerned because only 14 of the 49 proposed units are senior housing. If the 65+ units would like to establish separate restrictions, amenities, etc. they have no power to do so, as they do not represent a majority within the development.**
- 3) Article 5 of the condo docs does state that the elderly housing restrictions can be changed or eliminated with a 67% (2/3) vote of the owners, rendering the elderly housing unrestricted.**
- 4) He does not believe the proposed design protects and preserves the rural aesthetic the Town has consistently valued, as is required by Section 4.16.A of the Zoning Ordinance.**
 - a. The base zoning for this area of town, residential rural, requires two acres per building lot, exclusive of wetlands, floodplains, and steep slopes. Rural/residential is already the densest primarily**

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residential zoning we have. Rural/residential zoning would allow at most 14 housing units on this site. Road frontage, buffer, and setback requirements could reduce the number of units that would be permitted on these properties.

- b. This proposal is for 49 units, or 350% of the base density. This Board cannot revisit the CUP process and determine what the density should be, but it can have a yay/nay vote on the 350% increase of the base density and associated improvements. He believes this is too much for this site. He believes this is an insurmountable hurdle for the applicant, not to say that they have not tried. The applicant has every economic incentive to put as many units onto the land as possible. In his view, this proposal at 350% of the base density, does not satisfy the criteria that the rural aesthetic of the Town be preserved. It may be possible for the applicant to put more than 14 units on this land, but not this many.]

Dwight Brew seconded.

Discussion:

Christy Houppis stated that he concurs with the motion. He also added that he would deny the application because he was not convinced that the benefits to the Town were there to warrant the density bonuses.

Dwight Brew agrees with the motion. He stated that he believes the proposal is too dense for this property, but he acknowledges that the applicant has worked to lower the number of units a bit. He intends to vote for this motion.

Cynthia Dokmo stated that she will support the motion due to the proposed density for this site. She believes the proposal has too many units for this site.

Brian Coogan stated that he had no questions at this time.

Tracie Adams stated that she has concerns regarding the density of this site. She noted that some accommodations have been made by the applicant, but the density of the site has not been a focus of the applicant's responses to the public and Planning Board over time. She noted that Section 4.17 of the PRD has concerns because the "somewhat greater densities" are mentioned, and she does not believe 350% of the baseline density would qualify for that. She doesn't believe that this development is harmonious and blends in with its natural surroundings. The design and amenities do not enhance the Town; thus, she would not support the proposal.

Marilyn Peterman stated that she does not support this motion. She believes it is arbitrary and capricious. She stated that it is a miscalculation to say that the IIHO

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has been repealed, and thus this application should not be taken into consideration. This application met the criteria of the IIHO and was therefore awarded density bonuses. The project's density is no more or less than other developments located along this road. She is perplexed that the Board would turn down this application outright based on a concept of "rural character" that no longer exists in this community in the same way it used to. The preponderance of this community is no longer rural. It is a mistake to base a denial of this application on that concept.

Chris Yates stated that he supports the motion and agrees that the number of units is off. He has a concern regarding the possible number of 3-bedroom units on the property. This has the potential to tax the community. The proposed number does not meet the spirit and intent of the ordinance.

Mike Dell Orfano stated that he understands now why developers don't want to come into Amherst and why Amy Labelle bought land in Derry to expand her business. He noted that the Board appears to be revisiting the already approved CUP and going backwards. The applicant already has a CUP approval for up-to 54 units, and this proposal is for 49 units. The goal at this point is to show that the project can fit on the site. This has been proven, and yet the Board has rolled back to the CUP criteria instead of moving forward. He believes that the Board has stepped out of line and is acting inconsistently with the law. He believes it is unfortunate that he will be paying the taxes for the probable associated legal fees.

Arnie Rosenblatt asked if any Board members would like to comment on the definition of "rural aesthetic" at this time. He believes it is a fair question as part of this motion.

Bill Stoughton stated that his definition is informed by the baseline zoning of this area, the Residential/Rural density, and setbacks. If dealing with the Residential/Rural zone only, he believes there needs to be greater separation between units on site. The zone generally requires certain setbacks from the property lines and the units from each other. That is not the case on this project. Cluster housing was okay through the IIHO, but on a spectrum. If this proposal was for single units on two acre lots it would preserve some of the rural character, but at some number of units this is no longer true. The proposed 49 units, 350% of the baseline density, will look very congested from any angle looking at the site. There will not be much open space to be seen.

Dwight Brew stated that rural Amherst to him means houses separated by trees and open space, not houses and being able to only see an occasional tree. There are varying degrees of this, but the proposal is less in keeping with the majority of Amherst because one can see more houses than space between the units from Route 122.

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Marilyn Peterman stated that she cannot understand Bill Stoughton's rationale when two- and five-acre zoning was all that the Town had for a long time. The PRD, Elderly, and Affordable housing ordinances altered this standard zoning. Thus, to say that 14 units on two acre lots is a way to preserve the rural aesthetic on this site, does not make sense as this rural aesthetic was done away with a long time ago. She questioned why the Board is relying on an argument for "rural characteristic" based on two-acre zoning when there are a number of projects surrounding it that do not follow this. The idea for the IIHO was to cluster housing, create diversity, and increase open space, while moving away from McMansions and single-family homes. She noted that the Town wanted to get away from only two- and five-acre zoning for a long time, but this decision seems to want to go back to that.

Bill Stoughton stated that he is not opposed to densities less than two acre lots. He sees the value in clustering housing and likes an increase in open space. His reasons for denial are 1) the matter of degree of density proposed on this site, 350% more than baseline density. This is not the same as some of the PRD's mentioned by Marilyn Peterman; 2) he believes the Board needs to follow the law by preserving and protecting the rural aesthetic of the Town. The Board needs to look at the appropriate ordinances for each project and do their job based on that. Bill Stoughton stated that he knows Marilyn Peterman is trying to do the right thing. He asked that she accept that he is as well.

Brian Coogan stated that his definition of "rural" is open space, low density, and non-city like. This is the basis he uses for framing his opinions.

Mike Dell Orfano stated that the IIHO ordinance was designed to bring a diversity of housing in on as small a footprint as possible, that the land will support. He explained that parcels along Route 122 sat empty for years and the Planning Board was criticized for only developing north of Route 122. It is fascinating to him that, as the Board began to develop along Route 122, there is now a push to preserve its rural character. A huge portion of the Town's land is dedicated to five-acre zoning and creating open space. He explained that a developer has a right to make an application. This applicant was granted a CUP for up-to 54 units, has reduced this number to 49 units, and now is being nickel-and-dimed over "rural character." If rural character was going to be an issue, it should have been brought up with the applicant during the CUP phase. He does not support this motion and will not be party to this.

Arnie Rosenblatt asked the Board members if they have additional comments regarding the proposed 49-unit number being appropriate under the IIHO ordinance.

Cynthia Dokmo stated that she supports the proposed motion because the proposed 49 units on this parcel is too many. She believes this message has been given to this

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developer many times. Cynthia Dokmo also noted that many of the public's comments seem to be derogatory towards Chad Branon, but that Chad Branon is simply the applicant's messenger and is doing as his employer has asked. She noted that Chad Branon has done a good job, but that 49 units is not in keeping with the rural character of the Town and is too many units for what's existing in this area now.

Roll call: Mike Dell Orfano – nay; Marilyn Peterman – nay; Brian Coogan – aye; Cynthia Dokmo – aye; Dwight Brew – aye; and Bill Stoughton – aye. 4-2-0; motion carried.

In response to a question from Arnie Rosenblatt, Bill Stoughton stated that, in his view, the Board has taken final action on this application. The developer can pursue a different project on this land but must come back with a substantively different application under the existing ordinances, not the IIHO.

Arnie Rosenblatt thanked Chad Branon and Gerry Prunier for their time.

In response to a question from Bill Stoughton, Gerry Prunier stated that the applicant has no reason to move forward with the next wetland CUP item on the agenda, as it applied to the just denied plan. Chad Branon agreed.

COMPLETENESS REVIEW OF APPLICATION AND PUBLIC HEARING IF APPLICATION IS ACCEPTED AS COMPLETE:

2. **CASE #: PZ13773-021221 – GAM Realty Trust (Owners & Applicants), 153-159 Hollis Road, PIN #: Tax Map 1, Lots 8 & 8-2, Tax Map 2, Lots 7, 7A, 7B, 3-1 & 3-2 – Submission of Application/Public Hearing/Conditional Use Permit: Construction of proposed private road across a wetland and 100 ft. buffer area (WWCD) in order to provide safe and suitable access for a 52-Unit Condominium Style development. Zoned Residential/Rural.**

This item was withdrawn.

3. **CASE #: PZ13865-031021 – Napior Rentals, LLC (Owners) & NH Custom Builder (Applicant), 104 Route 101A, PIN #: Tax Map 2-47-2 – Submission of Application/Public Hearing/Non-Residential Site Plan – Proposed commercial change of use from a retail to a mix of residential and retail on Tax Map Lot 2-47-2. Zoned Commercial.**

Cynthia Dokmo recused herself for this item.

Christy Houpis sat for Cynthia Dokmo.

Arnie Rosenblatt read and opened the case.

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Chad Branon, of Fieldstone Land Consultants, and Steve Desmarais, of NH Custom Builder, presented the case, representing Napior Rentals, LLC. Chad Branon explained that this property is located on the north side of Route 101A and is approximately 0.608 acres. It is a developed lot with a 3,592 sq ft building, and associated improvements. The existing structure is positioned on the north side of the site. There is an existing parking lot on the front side of the building, running parallel to Route 101A. There is existing lighting, provided by two utility pole mounted lights. The building also has mounted lights next to the existing doors. The topography of the site is flat. The stormwater on site flows to an existing drainage system on Route 101A. There are no jurisdictional wetlands on site, and the site is zoned Commercial.

Chad Branon explained that the building was last used as a consignment shop, and prior to that was a real estate office. The existing building has been modified over the years. The middle section of the building is a 24x30' bungalow that was built in the 1930/40's. The right-hand side of the building was built in the 1970's and the left section was built in the 1980's. Initially, the applicant was considering renovating portions of the building, but would now like to demolish the old residential portion of the building. There are a number of construction options being reviewed for this property, all that work within the existing footprint of the existing building. There will be no extension of the building footprint into the setbacks.

Chad Branon explained that the finished square footage for the first floor would be 3,500, and the finished square footage for the second floor would be 2,164, for a total of 5,674 sq ft. On the first floor, approximately 800 sq ft will be used for retail space, and approximately 1,700 sq ft will be used for office space. On the second floor, there will be an approximately 1,200 sq ft apartment space on the left side of the building, and the rest of the space, 964 sq ft, will be used as office space. Chad Branon explained that the 1,800 sq ft of office space will require 9 parking spaces, the 2,664 sq ft of additional space will require 11 parking spaces, and the apartment will require an additional 2 parking spaces. This is a total of 22 parking spaces. Chad Branon explained that a site plan has been submitted that shows the existing parking area of the site has 20 spaces. With the modified layout and additional two spaces added, the 22 parking spaces could exist on the current site and comply with the regulations. There are some improvements to the parking area proposed, including raising the graded area of the lot to allow for ADA access into the building, and a handicapped accessible entrance.

Chad Branon explained that this site plan does not propose any addition to impervious coverage, and thus no stormwater mitigation. The plan will remove the overhead electric and communications from the building, and these items will come underground from a nearby pole. This will compromise a maple tree on site, and so a replacement tree is being proposed. Chad Branon explained that, with the exception of removing one tree and replanting one, all of the existing vegetation on site will remain and no other landscape modifications are proposed. The applicant is not opposed to adding more lighting to the site, if necessary. Any lighting on site will not cause light pollution, as they will be downcast and dark sky compliant. Additional lighting would probably be located on the front façade and gable end of the building. A combination of these, with the existing lighting, should be adequate.

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Chad Branon explained that the septic field behind the building needs to be redesigned, due to the change in use, but that this could be handled as a condition of approval. There are sandy soils on site, and he doesn't believe there are any concerns on this item. Chad Branon explained that there are no objections to the recommended conditions of approval listed on the Staff Report. He hopes that the Board will consider action on this item so that the applicant can move forward with site improvements. The applicant has no issue with installing signage to the two parking spots for the apartment. There are no tenants yet lined up for the apartment. He notes that the maximum floor area ratio that the apartment can be to the rest of the building is 25%. The proposed apartment is only 21% of the max floor area and so complies with the regulations. He would like the Board to discuss possible options for the building.

Steve Desmarais explained that this property became more valuable as the Subaru dealership will move in next door. He believes that this building cannot have integrity unless the middle section gains mass. He reviewed a few building options with the Board. In order to build mass, a second floor in the middle section is being proposed. He gave examples of his building work in Milford, including changing Milford Lumber into Contemporary Chrysler, and 1 Nashua Street.

Chad Branon explained that all of the building options shown to the Board operate within the existing footprint. There are no extensions into the setbacks.

In response to a question from Arnie Rosenblatt, Natasha Kypfer stated that the Board needs to vote on completeness of this application. Nic Strong noted that there are no issues with completeness of this application.

Mike Dell Orfano moved to accept the application as complete. Christy Houpis seconded.

Roll call: Mike Dell Orfano – aye; Marilyn Peterman – aye; Brian Coogan – aye; Christy Houpis – aye; Dwight Brew – aye; and Bill Stoughton – aye. 6-0-0; motion carried unanimously.

Mike Dell Orfano stated that he has no issues with the application. He does wonder if the proposed use is the best and highest use for this property, but that is outside the scope of this Board.

Steve Desmarais explained that the applicant purchased the building and didn't want to tear it down, due to the Subaru dealership being put in next door. The owner wants to make this building into something he is proud to drive by.

Chris Yates stated that he had no questions at this time.

In response to a question from Marilyn Peterman, Steve Desmarais stated that the apartment does not need to be handicap accessible. He explained that upstairs offices aren't always easy to rent, so having three offices and one apartment in this building will be great. Marilyn Peterman noted that there are a few of these types of units in Salzburg Square and it's good to see more.

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Tracie Adams stated that she likes the building aesthetics presented.

In response to a question from Tracie Adams, Steve Desmarais stated that the two apartment parking spaces will likely be located near the Aroma Joe's, towards the back door of the building for a separate entrance. Chad Branon noted that the final plan will show these spots, along with a sign designating them.

Brian Coogan stated that he had no questions at this time.

In response to a question from Dwight Brew, Nic Strong confirmed that for mixed use lots, the requirement is that the residential portion be less than 25% of the commercial portion.

In response to a question from Bill Stoughton, Steve Desmarais stated that the apartment will be a two-bedroom unit.

Bill Stoughton explained that the Norway maples suggested in the applicant's plan are actually invasive in New Hampshire. Steve Desmarais agreed to plant Rock maples instead.

Bill Stoughton asked if the Board was being asked to approve the application without seeing the decided-on building plans. Steve Desmarais stated that the final building plans will be submitted to the Building Department for all code items. Nic Strong noted that the Board usually sees the renderings of the building and then reviews them as part of the checklist for the final plan.

In response to a question from Christy Houpis, Chad Branon explained that there will be a steppingstone path from the apartment parking spaces to the back door. There could be wall sconces along this path to light the way. The lighting plan will also be submitted as a condition of the approval.

Christy Houpis noted that impact fees for the residential part of this project would be charged under the Residential rate. Chad Branon stated that the applicant is reluctantly okay with that.

Mike Dell Orfano stated that, if the application is approved, there needs to be conditions for signage, lighting, and landscape plans.

Public Comment:

Wes DeLoid, of Charlie's Auto, 102 Route 101A, stated that he loves the idea, but he has concern regarding two great projects going in on either side of his property. He is concerned about the water runoff onto his property.

Arnie Rosenblatt noted that there were no other hands up from the public at this time.

Chad Branon explained that there are no additional impervious areas proposed as part of this project. There are no plans to change the drainage on the site. The current drainage runs to a closed system on Route 101A. The site consists of sandy soils and a fair amount of infiltration.

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The majority of the site drains away from Charlie's Auto. He does not believe there will be any drainage impacts associated with this proposal.

Bill Stoughton requested that the applicant check the new stormwater regulations. He also noted that impact fees are in play for this application because of the redevelopment approach. He believes the Board will need to look at the existing square footage and how it's used versus the proposed use. If there is a net difference in impact fees from the old to the new, impact fees will be assessed on the difference. Nic Strong agreed with that assessment and noted that the plan originally called out the space as being retail versus office. Bill Stoughton explained that impact fees would thus be charged based on retail use, office use, and single-family detached use, as the apartment is akin to an ADU.

Bill Stoughton moved to approve the application with the conditions listed in the Staff Report and the following:

- 1) Impact fees to be charged by the Community Development Office with the appropriate rates, per the June 2020 schedule**
- 2) No invasive species to be planted on site**
- 3) Applicant must submit lighting, signage and landscaping plans, for review by the Community Development Office**

Christy Houpis seconded.

Discussion:

In response to a question from Arnie Rosenblatt, Steve Desmarais stated that he does not believe the landscape plans are necessary, as the applicant is only removing and replacing one tree.

Nic Strong asked if the Board would also require architectural renderings and floorplans of the proposed building changes, as a condition of approval.

Bill Stoughton amended his motion to include:

- 4) Submission of architectural renderings consistent with one of those shown to the Board tonight.**

Christy Houpis seconded.

Roll call: Mike Dell Orfano – aye; Marilyn Peterman – aye; Brian Coogan – aye; Christy Houpis – aye; Dwight Brew – aye; and Bill Stoughton – aye. 6-0-0; motion carried unanimously.

Cynthia Dokmo rejoined the Board and retook her seat.

- 4. CASE #: PZ13877-031221 – Donald Theriault and David & Suzanne Theriault (Owners & Applicants), 482 Boston Post Road, PIN #: Tax Map 2-170-37 & 10 Aglipay Drive, PIN #: Tax Map 2-170-14–Submission of Application/Public Hearing/Lot Line Adjustment & Subdivision – Depict a lot line**

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829 **adjustment and subdivision to create one new residential lot. Zoned**
830 ***Residential/Rural.***

831 **5. CASE #: PZ13878 – 031221 – Donald Theriault & Dany Lagios (Owners**
832 **& Applicants), 482 Boston Post Road, PIN #: Tax Map 2-170-37 – Submission**
833 **of Application/Public Hearing/Conditional Use Permit - To reduce the wetland**
834 **buffer from 100 feet to between 50-100 feet to allow a driveway and associated**
835 **drainage per Section 4.11.H.2. Zoned *Residential/Rural.***

836
837 Arnie Rosenblatt read and opened the case.

838
839 In response to a question from Arnie Rosenblatt, Natasha Kypfer stated that all items have been
840 submitted for completeness of this application.

841
842 **Mike Dell Orfano moved to accept this application as complete. Marilyn Peterman**
843 **seconded.**

844 **Roll call: Mike Dell Orfano – aye; Marilyn Peterman – aye; Brian Coogan – aye;**
845 **Cynthia Dokmo – aye; Dwight Brew – aye; and Bill Stoughton – aye. 6-0-0; motion**
846 **carried unanimously.**

847
848 Arnie Rosenblatt stated that he would like to hear the CUP application along with the lot line
849 adjustment/subdivision application.

850
851 Sam Ingram and Jason Bolduc of Meridian Land Services, and Dave Theriault joined the Board.

852
853 Sam Ingram stated that this application is for a lot line adjustment, for 2-170-14 a 5.42-acre lot,
854 to include Parcel A (2.3 acres), to result in a stand-alone lot of 7.709 acres. The resulting lot, 2-
855 170-37, is proposed to be subdivided into two lots: one lot with a 4.28-acre lot with 2 acres of net
856 tract area, and a new lot 2-170-37-1, with 3.126 acres and 2.1 net tract area. Both existing lots
857 will continue to be served by an onsite septic system and well. The newly created lot will have
858 an onsite septic system and available Pennichuck water.

859
860 Jason Bolduc explained that the site plan proposal reduces the buffer to the wetland by
861 maintaining 100' to the brook and 50' to the edge of the wetlands. Tom Carr, of Meridian Land
862 Services, has verified this analysis. Based on the analysis, the buffer is located at 50' but because
863 the property is located in the Wetland and Watershed Conservation District, due to the
864 Pennichuck Watershed, the buffer is automatically 100'. The only impact within the buffer is the
865 proposed driveway to the garage. He noted that the Theriaults were told they could cut trees on
866 the lot, but they mistakenly also stumped and grubbed the lot. Thus, a revegetation plan is
867 proposed with lowbush blueberries, bearberries, and sweet fern. This is a sandy site with little
868 undergrowth. The applicant is proposing 4" of loam with plantings that are good sources of food
869 for wildlife and nitrogen fixing. This should fast-forward the vegetation of this site and
870 eventually white pines and oaks will also come back.

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Jason Bolduc stated that a conveyance swale is being proposed to capture the runoff from the site into an infiltration trench. The ACC stated that this meets the regulations. This infiltration basin has been designed to a 50-year storm. All of the proposed structures are located within the setbacks, including the house, leach field, tanks, etc. The additional garage is being proposed to store additional cars. The silt erosion control is in place currently. The conveyance swale will make a nice buffer between the building area and revegetation area. This will be a permanent structure. The ACC also mentioned Stump Pond being of high ecological value. The applicant is proposing handing out a sheet containing endangered species to the contractors and owners so that Fish & Game can be contacted if any species are seen. The ACC commented on the restoration oversight for the property. The applicant is proposing including an as-built of the revegetation area, conveyance swale and infiltration trench as part of the process.

Sam Ingram stated that the applicant has no issues regarding the Staff Report comments for the lot line adjustment application. There is one item regarding wording in one of the notes about the configuration of the lots. This wording has been used for many years, but the applicant will work with the staff to make sure the wording is acceptable.

Marilyn Peterman exited the meeting at 10:06pm.

Tracie Adams sat for Marilyn Peterman.

In response to a question from Bill Stoughton, Jason Bolduc stated that Pennichuck Water had no further comments regarding the CUP application, other than being pleased that the stormwater will be treated with an infiltration basin.

Bill Stoughton asked if the stormwater design was reviewed against all of the current stormwater regulations. Jason Bolduc noted that Doug Brodeur of Meridian Land Services stated that the design meets all State and Town regulations. Bill Stoughton stated that the applicant is planning to use an infiltration basin, which will be within 75' of a wetland. He believes that the best management practices from the State only gives 10% credit for reduction of nitrogen for this system. Jason Bolduc stated that he will need to check with Doug Brodeur, but that Doug Brodeur's commented that the stormwater design accommodates the Town's stormwater regulations to include peak runoff mitigation for up to and including the 50 year storm event, Ground Water Recharge Volumes in excess of the minimum requirements, and treatment of Total Suspended Solids, total Nitrogen, and Total Phosphorus, above the regulatory standard to the Town, NHDES, the Federal Clean Water and Navigable Harbor Acts, and the National Pollutant Discharge Elimination Phase II Stormwater Act.

Bill Stoughton questioned how this conclusion was reached because, due to the system being located less than 75' from surface water, only 10% nitrogen reduction is given by the State standards, and the Town requires 60%. He also noted that, as the property is part of the Pennichuck Watershed, if Pennichuck is assuming that the applicant will be removing the nitrates from the watershed and that is actually not happening, this is an issue. He wants to make sure this is resolved before moving forward with this application.

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In response to a question from Bill Stoughton, Jason Bolduc agreed that the CUP is needed for the area of the driveway to the garage. Bill Stoughton stated that this is the largest garage in a residential area that he's seen. The proposed footprint of this garage is larger than the existing residence with ADU, and garage footprint combined. Jason Bolduc stated that the proposed garage is 40x80', this fits within the building setbacks. The height has not yet been determined.

In response to a question from Bill Stoughton, Jason Bolduc stated that he doesn't believe any commercial vehicles will be stored in the proposed garage, but he would need to check with the applicants. Bill Stoughton stated that that's a lot of cars to store.

Bill Stoughton stated that the application is to modify the wetland buffers just to store a large number of cars on this site, rather than store them in a commercial garage somewhere.

Sam Ingram stated that the garage is exceptionally large. However, even if the garage was reduced in size by half, it cannot be moved over further towards the abutting property. The gravel access driveway leading to it will not change. The impacts are not due to the size, but due to the narrow building envelope.

Bill Stoughton asked why the driveway is not proposed to be placed on the southern end of the property instead of along the wetland buffer. Jason Bolduc stated that the plans were reviewed to try to make that work, but it would ruin the buffer between the existing house and abutting property. The existing driveway meets the line of sight and the grade coming in there is the gentlest with the least amount of fill required. Jason Bolduc stated that the proposed location seems the best option.

Bill Stoughton stated that the ACC saw this presentation from Ken Clinton and Tom Carr of Meridian Land Services. Both said they looked at putting the driveway onto the southern side and couldn't make it work. Bill Stoughton stated that he cannot substitute for their judgement, but the ordinance obligates the Board to look at all ways to lessen the impact to the buffer. If this cannot be avoided, he does not want the garage to be used for commercial vehicles or maintenance, as this would require hazardous materials and floor drain conditions. Sam Ingram stated that using this property has only been discussed for residential purposes. He noted it was a family property and proposed to build a three-bedroom house with an Accessory Dwelling Unit for an adult child. The family own neighboring properties and would use the garage for family vehicles. Jason Bolduc acknowledged the large building footprint and stated that the intent is to be within the footprint and building setbacks. The stormwater management is proposed because of the impact to the buffer. Jason Bolduc stated that he dug down 110" and still did not hit the high-water table.

Bill Stoughton suggested continuing this application in order to receive more information about the nitrogen removal from the system.

Brian Coogan stated that he had no questions at this time.

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Cynthia Dokmo stated that she has the same concerns about this garage and what is being stored there, regarding commercial vehicles, even if owned by the residents, and maintenance of any vehicles and would like to hear about this when the applicants come back.

Natasha Kypfer stated that the letters displayed by Jason Bolduc with Pennichuck's comments and Doug Brodeur's comments have not yet been received by the Community Development Office.

Chris Yates echoed Bill Stoughton's concerns. He stated that he would like to see 3D drawings for the garage, as the proposed height will tell what kind of vehicles will be stored there.

Mike Dell Orfano stated that he is uncomfortable with this application. He believes this is a commercial application disguised as a residential development. He is concerned with Stump Pond and the species there. This is a sensitive area with a lot of pressure from other developments. This area deserves to be preserved. If there is any commercial use of this garage it should have an impervious layer under it. Any future owners may see the option for commercial use. The time to protect the aquifer in this area is now.

Tracie Adams noted that there are several threatened and endangered species in this area that she is concerned about. She is also concerned about the proposed size.

Dwight Brew stated that risk is taken into account whenever granting an exception. The driveway to the garage and the garage itself will both impose on the wetlands. If there is heavy equipment, he is concerned about it being stored in the garage, and also travelling to the site. He would want assurances that the garage will never be used to store or maintain equipment.

Christy Houpis asked if there was any reasoning/documentation given to the ACC from Meridian when asked about moving the driveway. Bill Stoughton stated this was only in the form of a discussion.

Public Comment:

Ken Levasseur, 10 Aglipay Drive, explained that he lives across the street from the Theriaults. When the Theriaults first moved in, they were approved to build a residence. He stated that the Theriault's have been operating a paving business at this residence and have equipment for that business on their property. He believes this may be what will be stored in the proposed garage and is concerned about the rules continuing to be bent. He believes this could lead to the degradation of wetlands in the neighborhood.

Jason Bolduc stated that the paving business is run by Dave Theriault, not Donald Theriault. Ken Levasseur stated that this is a family business. Jason Bolduc explained that he does not believe that Donald Theriault has anything to do with the paving business.

Jenn Morton, 485 Boston Post Road, stated that she has concerns regarding the garage and large commercial vehicles entering and exiting the site along Boston Post Road. This area of the road

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is prone to accidents. For traffic and protection of the wetlands, she is concerned about the placement of the driveway.

Arnie Rosenblatt noted that no other hands were raised from the public at this time. He noted that this application has been accepted as complete.

Bill Stoughton moved to continue these two applications for this applicant to April 21, 2021, at 7pm via Zoom. Dwight Brew seconded.

Discussion:

Mike Dell Orfano stated that the applicant needs to come back with some mechanism to guarantee that the use of the proposed garage will not involve commercial vehicles. Possibly nothing less than something in the deed that will carry forward to the next owners. Even a hobby for maintaining vehicles could be difficult on this property. He explained that a clay membrane would help create an impervious surface, if needed.

Roll call: Mike Dell Orfano – aye; Tracie Adams – aye; Brian Coogan – aye; Cynthia Dokmo – aye; Dwight Brew – aye; and Bill Stoughton – aye. 6-0-0; motion carried unanimously.

OTHER BUSINESS:

6. Discussion regarding Map 11 Lot 16, Pulpit Road, Class VI road and Board of Selectmen request for comment on Release of Liability.

Nic Strong explained that there was a previously approved subdivision plan that is in Amherst, with access through Bedford. When this was approved in 2012, there were notes put on the plan that would require the Boards of Selectmen in Amherst and Bedford to act to allow building on this lot. There is an interested party who would like access to this Lot and who has approached the Board of Selectmen for a Release of Liability. One of the requirements of the statute is that the Planning Board comment on the appropriateness of accessing the Lot in this way for building purposes.

Tom Quinn, applicant's attorney, explained that there is one building lot with a portion in Bedford that fronts on a Class 5 road, Pulpit Road. In 2012 when the plan was approved, there was a road that led from Pulpit Road along the property line to the Amherst Town line, then called High Street and which becomes Pulpit Road in Amherst which is Class 6. This lot in Amherst has frontage on Pulpit Road. Bedford has since discontinued High Street. In 2011 the driveway design was submitted to the Planning Board. The application is regarding the Board's input on the driveway and building to be built in Amherst that will extend from the Pulpit Road in Bedford (Class 5) across what used to be High Street, which will now be the driveway, onto Pulpit Road in Amherst (Class 6). The concept was approved in 2012 but the house was never built. His client acquired the property in December. The Town of Bedford is ready to issue a

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1047 driveway permit, but not until Amherst has issued the building permit. The client has been to the
1048 Board of Selectmen, but the Planning Board first needs to consult.

1049
1050 Brian Coogan stated that he had no questions at this time.

1051
1052 Bill Stoughton stated that he had no questions at this time.

1053
1054 Mike Dell Orfano stated that he had no questions at this time.

1055
1056 In response to a question from Cynthia Dokmo, Tom Quinn stated that part of the lot is in
1057 Bedford, but that isn't buildable, so it is essentially being treated as one lot.

1058
1059 Chris Yates stated that he had no questions at this time.

1060
1061 In response to a question from Tracie Adams, Tom Quinn noted that the applicant will build the
1062 driveway as best he can, but part of the waiver is that if there is harm to the occupants based on
1063 emergency vehicles not being able to access the site, the Town is released from liability.

1064
1065 Christy Houpis stated that he had no questions at this time.

1066
1067 In response to a question from Dwight Brew, Tom Quinn stated that Pulpit Road is a Class 5
1068 road in Bedford and the property in Bedford abuts this road. The property in Amherst does not
1069 abut this road and thus does not have frontage along the Class 5 road. It is a Class 6 road in
1070 Amherst.

1071
1072 Arnie Rosenblatt noted that there were no hands raised from the public at this time.

1073
1074 **Bill Stoughton moved that the Community Development Office advise the Board of**
1075 **Selectmen that the Planning Board has no objections to the proposed Release of**
1076 **Liability. Cynthia Dokmo seconded.**

1077 **Roll call: Mike Dell Orfano – aye; Tracie Adams – aye; Brian Coogan – aye;**
1078 **Cynthia Dokmo – aye; Dwight Brew – aye; and Bill Stoughton – aye. 6-0-0; motion**
1079 **carried unanimously.**

1080
1081 **7. Notice of Lot Consolidation for Map 2 Lot 68 and Lot 67.**

1082 Nic Strong explained that the statute says that the Board needs to act on this. This is regarding
1083 the Gunit Pool company along Route 101A, across from Walmart. There used to be a residence
1084 next to it. The residence was removed. This application is to consolidate those two lots to make
1085 the Gunit Pool company lot more conforming to the regulations. The property will still be non-
1086 conforming, as it is undersized, but this will make it better.

1087
1088 Bill Stoughton asked if the Board could act on this without knowing if there are mortgages on
1089 these properties. Nic Strong stated that the Board can act on this because it is not a defect of the
1090 Board's doing, if this information is not given.

April 7, 2021

APPROVED

1091
1092 Dwight Brew stated that the Board has no choice but to act on this proposal. Nic Strong agreed
1093 that the statute says the Board “shall” act on this.
1094

1095 **Bill Stoughton moved to approve the Lot Consolidation/Voluntary Lot Merger**
1096 **application for South Shore Gunit Realty Management, LLC, by Robert Guarino**
1097 **manager member, to merge Lot 2 Lots 68 & 67 for municipal regulation and**
1098 **taxation purposes; no such merged parcel shall hereafter be separately transferred**
1099 **without subdivision approval. Payment for recording the lot consolidation/voluntary**
1100 **lot merger form at the Hillsborough County Registry of Deeds shall be made by the**
1101 **applicant. Dwight Brew seconded.**
1102 **Roll call: Mike Dell Orfano – aye; Tracie Adams – aye; Brian Coogan – aye;**
1103 **Cynthia Dokmo – aye; Dwight Brew – aye; and Bill Stoughton – aye. 6-0-0; motion**
1104 **carried unanimously.**
1105

1106 **8. Minutes: 3/17/21**
1107

1108 **Bill Stoughton moved to approve the minutes of March 17, 2021, as submitted.**
1109 **Tracie Adams seconded.**
1110 **Roll call: Mike Dell Orfano – aye; Tracie Adams – aye; Brian Coogan – aye;**
1111 **Cynthia Dokmo – aye; Dwight Brew – aye; and Bill Stoughton – aye. 6-0-0; motion**
1112 **carried unanimously.**
1113

1114 **9. Any other business that may come before the Board.**
1115

1116 **Cynthia Dokmo moved to adjourn the meeting at 10:55pm. Dwight Brew seconded.**
1117 **Roll call: Mike Dell Orfano – aye; Tracie Adams – aye; Brian Coogan – aye;**
1118 **Cynthia Dokmo – aye; Dwight Brew – aye; and Bill Stoughton – aye. 6-0-0; motion**
1119 **carried unanimously.**
1120

1121
1122 Respectfully submitted,
1123 Kristan Patenaude
1124

1125 Minutes approved: April 21, 2021