

TOWN OF AMHERST
Planning Board

July 6, 2022

APPROVED

In attendance at Amherst Town Hall: Arnie Rosenblatt – Chair, Bill Stoughton – Board of Selectmen Ex-Officio, Chris Yates - Secretary, Cynthia Dokmo, Tom Quinn, Tom Silvia [7:28 pm], Dan LeClerc (alternate), Pam Coughlin (alternate), and Tim Kachmar (alternate).
Staff present: Nic Strong, Community Development Director; Nicole Stevens, Town Planner; and Kristan Patenaude, Recording Secretary (via Zoom)

PUBLIC HEARING:

- 1. CASE #: PZ15747-050522 – Thomas R. & Polly J. Culver (Owners & Applicants); 10 Clark Island Road, PIN #: 008-107-001 – Wetland & Watershed Conservation District – Conditional Use Permit. To construct a 157 square foot addition with proposed drip edges within 100' wetland buffer from Baboosic Lake. Zoned Residential Rural. Continued from June 1, 2022.**

Taylor Hennas, Meridian Land Services, explained that the parcel sits within the 250' Shoreland zone of Baboosic Lake and within the Wetland and Watershed Conservation District. Most of the existing structure sits within the 100' wetland buffer. This is a preexisting, nonconforming lot of record. In 2009, a CUP was granted for this property to allow for the installation of the existing single-family home, pretreatment system, and other parcel improvements. She explained that the proposal is to construct a 157 s.f. addition onto the preexisting, nonconforming home. It will increase the amount of impervious area of the site to 16.9%. The proposed permanent impact areas include 127 s.f., and temporary impact areas include 2,193 s.f. in order to access the construction areas.

Taylor Hennas explained that, after meeting with the Amherst Conservation Commission (ACC), it was suggested that the plan be altered to include additional techniques to create a net improvement on the property. These techniques include planting of low bush blueberries in an unvegetated area, and the installation of three 50-gallon dry wells. These dry wells will directly store and infiltrate stormwater from an existing 203 s.f. of the existing roof; this area is larger than the proposed addition. The dry wells have been shown to remove 90% TSS, 60% phosphorus, and 55% nitrogen from the stormwater. These revisions will create a net improvement on the property.

Tom Quinn stated that he believes the ACC's concerns have largely been addressed. It seems that reasonable attempts are being made to improve the site and the proposed addition is quite small.

Bill Stoughton stated that he is prepared to support this application. He stated that the applicant will need two waivers from the stormwater regulations. The Town requires 60% nitrogen removal, where this project is only proposing 55%, and 30% of the existing surface for a redevelopment be treated.

No other Board members had comments. There was no public comment at this time.

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Bill Stoughton moved to waive the provisions of Section 6 of the Stormwater Regulations, regarding the percentage of existing impervious surface which must be treated and the nitrogen removal requirement, and that the Board finds that granting the waiver will not impair achieving the spirit and intent of these regulations; that compliance with these regulations is not reasonably possible given the specific circumstances relative to the CUP, or the conditions of the land in such CUP; and that the proposed substitute solution is consistent with the goals of these regulations and is in the best interest of the Town. Seconded by Cynthia Dokmo. Motion carried unanimously 4-0-0.

Bill Stoughton moved that the Board finds the application satisfies the criteria of Section 4.11 I. 1. of the Zoning Ordinance, addressing the findings required for approval of a Conditional Use Permit in the Wetlands and Watershed Conservation District; and, further, to approve Case # PZ15747-050522 for Thomas R. and Polly J. Culver, for a Conditional Use Permit for site improvements in the WWCD at 10 Clark Island Road, Tax Map 8 Lot 107-1, as shown on the plan dated March 3, 2022, most recently revised May 31, 2022, with the conditions listed in the Staff Report. Seconded by Cynthia Dokmo. Motion carried unanimously 4-0-0.

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

2. **CASE #: PZ15888-060622 – Thomas Bredillet (Owner & Applicant), 10 The Flume, PIN #: 010-030-043 – Conditional Use Permit – Site Plan for proposed backyard improvements including a swimming pool, pool house, patio, fire pit, and landscape plantings. Some of this proposed work is within 100' of wetlands. Zoned Northern Rural.**

In response to a question from Arnie Rosenblatt, Nic Strong stated that all required application materials have been submitted.

Cynthia Dokmo moved to accept the application as complete. Seconded by Chris Yates.

Motion carried unanimously 4-0-0.

Mike Nowicki, The MacDowell Company, and Russell Tedford, Hancock Associates, addressed the Board.

Mr. Nowicki described the site, pointing out on the plans the existing house with driveway to the north, the lawn area behind the house, and the tree line to the west and south. He noted that the house has a walkout basement. He also explained that there is an existing water well located in the lawn area, as well as a propane tank with a line running to the driveway. The proposal is to plant eco-grass in a section of the lawn area, install a fire pit, steppingstones, dining terrace, and

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doors leading into the house. A pool, spa, and pool house are also proposed. The pool, spa, terrace areas, and pool house are located outside of the buffer area. Two boulder retaining walls, each approximately 4' in height, will be used to support the pool terrace and pool house from the buffer area. The applicant previously considered a saltwater pool, but this has since been revised. The proposed pool equipment to treat the water includes a UV water sanitizer which will deactivate 99.9% of all microorganisms and algae in the water. Thus, less chlorine is needed in the pool. A Pentair pump and filters will also be used to clean the water. This will be an enclosed system, so no water will need to leave the pool during the season it is used. Calcium, a conditioner, and muriatic acid will also be used to regulate the water.

Russell Tedford explained that the property exists in an area with Hydrologic soil group B. This consists of sandy loam, allowing for a recharge rate of 3" per hour. Proposed stormwater management consists of two underground systems. These are low-profile systems used to attenuate, recharge, and treat stormwater. Water is directed to these systems through yard drains with deep sumps to catch yard clippings. Both systems are controlled to make sure enough water is inside before discharging to storm riprap sections. Per a discussion with the ACC, the plan now shows removal of 90% TSS, 60% nitrogen, and 65% phosphorus. The systems are designed to handle 1" to 50-year storms. Groundwater recharge and water quality requirements are being met. Maintenance logs and information on cleaning the systems are included in an O&M manual for the owners.

Mr. Nowicki stated that fire pit details have been included on the plan, as requested by the Fire Chief. Also, a previous plan from June 23, 2021, has been included in the packet.

Tom Quinn asked how a pump truck could access the site to clean the drains. Mr. Tedford stated that the pump truck company will need to be prepared to run a line quite far from the driveway to the site.

In response to a question from Tom Quinn regarding the fire pit, Mr. Nowicki explained that the fire pit is proposed further from the house and closer to the driveway. This will include a natural wood burning fire pit. There is also a small 3'x5' propane feature included on the plan. These will be safe and are placed properly on the site.

In response to a question from Chris Yates, Mr. Nowicki stated that the central hole for the fire pit is 3' in diameter.

Tom Silvia entered the meeting at 7:28pm.

Bill Stoughton noted that this application may not need to be before the Board. He explained that the wetland area in question on the site is a stream. The plan shows three buffers, 100', 50' and 25'. Under the regulations, the Board picks one of those buffers based on the stream characteristics. A perennial stream with always flowing water uses the 100' buffer, an intermittent stream uses the 50' buffer, and an ephemeral stream uses the 25' buffer. The ACC

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comments state that a 50' buffer applies to this site. The only buffer that is intruded upon through this plan is the 100'.

Luke Hurley, wetland scientist for Gove Environmental Services, stated that the stream on site is intermittent.

Bill Stoughton stated that there is a small corner of the project that nicks the 50' buffer. He asked if the plan could be amended to move that small corner outside of the buffer. Normally, the stormwater management system would be reviewed under a CUP application, and he believes the proposal is an appropriate one. A redevelopment generally requires that 30% of the existing impervious area be treated, as well as all of the new impervious area.

Mr. Tedford stated that roof drains are being used to capture runoff from the rear roof of the existing structure. He is unclear if this is 30% of the existing impervious area.

Bill Stoughton stated that he is unsure if this application needs to be before the Board for a vote.

Nic Strong stated that the application still proposes to disturb over 20,000 s.f. for the stormwater management plan, which requires approval. Mr. Tedford agreed that the plan calls for a disturbance of approximately 27,000 s.f.

Bill Stoughton stated that he would like to confirm the 30% requirement for existing impervious area. This could be conditioned as part of approval of the project.

Tom Quinn noted that there appears to be a significant amount of driveway being removed as part of the proposal. Mr. Tedford agreed that this equates to approximately 10,000 s.f.

There was no public comment at this time.

In response to a question from Bill Stoughton regarding if the Board could approve the application not as a CUP but as a stormwater management plan application, Nic Strong explained that the Board can do so, she pointed out that she is still waiting on Keach Nordstrom's review of the engineering plan and the drainage calculations.

Bill Stoughton moved that the Board finds this application satisfies all of the requirements of the Stormwater Regulations and that it be approved under CASE#: PZ15888-060622 – Thomas Bredillet for a Stormwater Management Plan for improvements at 10 The Flume, Tax Map 10 Lot 30-43, as shown on the plans dated May 31, 2022, and June 2, 2022, with the conditions set forth in the Staff Report and the following additional condition precedent: that the applicant shall demonstrate to the Community Development Office that at least 30% of the existing impervious area is treated with the stormwater management practice. Seconded by Chris Yates. Motion carried unanimously 5-0-0.

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- 176 **3. CASE #: PZ15907-060722 – Walnut Hollow Realty LLC (Owner) & Ashley and**
177 **Jarron Dunnick (Applicants) – Walnut Hill Road, PIN #: 006-081-003 – Subdivision**
178 **Application. Depict a subdivision of Tax Map Lot 006-081-003 to create one new**
179 **2.66-acre residential lot with a +/-6.2-acre remainder lot. Zoned Residential Rural.**
180

181 In response to a question from Arnie Rosenblatt, Nic Strong stated that the applicant is
182 requesting waivers from all of the required studies.
183

184 Arnie Rosenblatt explained that the Board can choose to either defer deciding on the requested
185 waivers until it first hears the applicant's proposal, with the understanding that it can later choose
186 to require any/all of the studies, or the Board can determine that the application is incomplete
187 until the waiver issue can be resolved.
188

189 **Bill Stoughton moved to waive the requirements for the requested studies for**
190 **purposes of completeness only, with the understanding that the Board may request**
191 **one or all of the studies in the future as it reviews the application. Seconded by**
192 **Chris Yates.**
193 **Motion carried unanimously 5-0-0.**
194

195 Arnie Rosenblatt explained that the Board will accept the application as complete, but it may
196 require one or more studies in the future, as it deems necessary.
197

198 **Bill Stoughton moved to accept the application as complete. Seconded by Chris**
199 **Yates.**
200 **Motion carried unanimously 5-0-0.**
201

202 Spencer Tate, Meridian Land Services, addressed the Board. He explained that this request is for
203 subdivision of land from an 8.9-acre piece on Walnut Hill Road. The northwestern edge of the
204 property is approximately 7/10 of a mile from Route 101. The northeasternmost corner is the
205 Embankment Road right of way. The proposal is to break off 2.66 acres with 2.01 net acres,
206 leaving a remainder piece of 6.3 acres. The special circumstances of the parcel include that the
207 owner/applicant currently resides at 40 Walnut Hill Road. The owner also owns a property
208 across the street and would like to break off a piece to construct a structure for their children to
209 live in. There is a 0.8-acre wetland located in the easternmost corner of the piece, with only 0.6
210 acres as part of the proposal. There are no 25% slopes on the lot. In regard to the ACC concerns
211 about the developable area, there is a suitable site and soils on the site. There is a 4,000 s.f. area
212 for a septic system that would support a single-family residence and complies with all local and
213 State setback areas. This area is currently being managed as a pasture, so no trees will need to be
214 removed to create a structure. A septic design has been created. The speed limit was recently
215 lowered in this area to 25 mph, leading to a 200' sight distance requirement, which is met
216 through this proposal. The DPW Director signed off on this item and included a comment that
217 brush needs to be trimmed back at the sight distance location. One lot will meet all regulations
218 and the remainder lot will be conforming. A waiver is being sought from traffic and other impact
219 studies, due to no additional impact from traffic trips as part of the proposal.

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In response to a question from Dan LeClerc, Mr. Tate explained that the B&M Trail is shown on the septic plan. There is a wood line shown and the septic is proposed well beyond that. There is no need to encroach on the 25' buffer as part of this proposal.

In response to a question from Bill Stoughton, Mr. Tate stated that the driveway will be able to achieve the 8% slope requirement.

In response to a question from Bill Stoughton regarding if the project will require stormwater management features, Mr. Tate stated that this is not triggered for the subdivision of land proposal. He is unclear what the intended buildout timeline is. The proposal is also under 20,000 s.f. of disturbance.

Bill Stoughton noted that the parcel is adjacent to wetlands. If stormwater management features are needed, they will need to be placed outside of the wetlands buffer. Mr. Tate noted that this approval could be conditioned on there being no future impacts to the buffer.

In response to a question from Tom Silvia regarding how the equestrian farm on the remainder lot would be impacted if the proposed lot was sold to someone else, Mr. Tate explained that the applicant is the manager of the equestrian farm located on the property. It will be up to her to decide how best to make sure this proposal does not impact her business. The property will still be zoned for this use.

Cynthia Dokmo and Chris Yates had no comments or questions.

In response to a question from Tom Quinn, Mr. Tate explained that the proposal is for a 2.661-acre lot, with 2.01-acre net, leaving 0.5 acres of wetlands. The wetlands are larger than a half-acre, but there is only a half-acre of wetlands on the site itself.

There was no public comment at this time.

Tom Quinn stated that he is okay with approving waivers for a smaller subdivision of this type.

Tom Quinn moved to waive the fiscal impact, environmental impact, traffic impact, water supply, drainage reports, and hydrological reports, being that this is a minor subdivision and not worthy of the time and expense to complete these items.

Seconded by Tom Silvia.

Motion carried unanimously 5-0-0.

Bill Stoughton stated that the proposed use is residential, however there could be other uses on the property, such as agricultural if a barn is built instead. Impact fees could be assessed at the residential rate for now and ultimately, a different use would lead to assessment of different fees.

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The Board discussed the items for active and substantial development. Bill Stoughton suggested this be the construction of a well. For substantial completion of the improvements for final vesting, Bill Stoughton suggested completion of the foundation of the structure on site. Spencer Tate agreed with these suggestions.

Bill Stoughton moved to approve Case #: PZ15907-060722 for Walnut Hollow Realty, LLC, and Ashley & Jarron Dunnick, for the above-cited Final Minor Subdivision of Map 6 Lot 81-3, with frontage on Walnut Hill Road, with the conditions set forth in the Staff Report and the following additional subsequent condition #4: this subdivision approval is conditioned upon no encroachments to wetland buffers being necessary to accommodate residential construction; further with impact fees being assessed at the residential rate; and further with active and substantial development or building being defined as construction of a suitable potable water well, and substantial completion of improvements being defined as completion of the residential foundation. Seconded by Chris Yates.
Motion carried unanimously 5-0-0.

OTHER BUSINESS:

4. Discussion re: Planning Board requirements for Traffic and Hydrogeological studies

Arnie Rosenblatt explained that the Board currently follows a procedure when various studies are required that the applicant, at his/her own expense, will retain an expert and submit a report to the Board. Sometimes the Board will have that report reviewed by a third-party expert. This is also paid for by the applicant, even though it is a report to the Board/Community Development Office. Bill Stoughton has suggested that the Board have a neutral expert on hand to immediately make a report on traffic and hydrogeological items; this will be paid for by the applicant. Arnie Rosenblatt stated that he does not agree with this idea because he believes the current process is the most thorough way to handle things.

Bill Stoughton stated that a traffic study was submitted by the applicants for the Jacobson and Clearview developments. The Planning Board sought an independent third-party review of that report. Later, the Planning Board asked the Board of Selectmen to examine that third party review, because it noted that an intersection in Town was set to fail, with or without additional developments in place. NRPC completed this study, and its traffic analyst took issue with the original traffic study completed by the Jacobson/Clearview development. The NRPC analyst found that there were two items completed by the original traffic analyst that understated the traffic impact of the two developments. One being that a no-development growth rate was used which hasn't been experienced in this area in 20 years. The second being that a peak month requirement was misused. These made the existing traffic in Town look worse than it was, allowing the argument to be made that the developments would not add to an already bad situation. This was not pointed out by the Clearview analyst and was not caught by the third-party analyst the Board retained. This shows an error in the process. The Board cannot determine

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who the developer will choose as an analyst. It also has not retained a third-party traffic analyst often enough to have one it can rely on all of the time. Bill Stoughton stated that he believes it is important to have this.

Bill Stoughton explained that there was a similar occurrence for a hydrogeological report, in which case the third-party analyst hired by the Town is no longer local and went 180 degrees between the recommendation he made to the Board for a particular development and what he later told the applicant's agent. If the Board had someone it routinely engaged there would be a level of trust and engagement. He suggested this mostly for traffic studies, but also potentially for hydrogeological. The applicant would be required to pay for and use whichever party the Board selects for these reports. If the applicant disagrees with the findings of the study, s/he could then seek an additional analyst for additional reports at his/her expense.

Arnie Rosenblatt stated that the concern seems to be with the analysts that the Board has chosen for third party review in the past. He asked if a more regular relationship with one or two third parties that can be relied on would solve this issue. Bill Stoughton stated that he does not believe the Board would generate enough business for a firm to create that kind of relationship. He would like a more trusted, neutral evaluation. Arnie Rosenblatt stated that he believes the Board already receives trusted, neutral evaluations. Bill Stoughton stated that the two cases he mentioned previously were inadequate. Arnie Rosenblatt stated that he believes the current process leads to more review, which is what he is in favor of.

Tom Quinn stated that he sees both sides of the issue. He believes that it makes sense for applications for certain sized developments that these two items be addressed right off the bat by a Town-engaged expert. The applicant will likely want their own expert involved as well. The applicant is required to pay for both of these experts, so the Board might as well make it clear that these two items will be required in this process.

Chris Yates asked if this intention could be fulfilled by including more exact, neutral language in the RFP from the developer to the analyst. As the applicant is paying for these studies, the Board is at its mercy as to what language is included in the RFP. Sample or required language may help with this issue. Bill Stoughton stated that he does not believe this is likely workable.

Cynthia Dokmo stated that there used to be a Town Engineer contracted to review all plans and developer's reports. The Board previously chose two companies to review plans that ended up being questionable. She prefers the current system but believes there should be one company used by the Board in a reliable manner for each review.

Bill Stoughton stated that the issue is that the Board does not regularly go out for a third-party review and, when it has, it has scrambled to find someone to perform it.

Arnie Rosenblatt stated that he believes the proposed approach will create problems. He believes developers will not like the approach and it will leave the Town open to potential lawsuits. He wants to give developers every chance to make their positions. He believes developers should

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have the chance to hire their own experts, with the Board's understanding that these are hired by the applicant to advocate for their clients. The Town can then retain someone, paid for by the developer, to scrutinize the applicant's position. This is a more effective process. He suggested asking Nic Strong to identify three companies in each area that can be reviewed by a small subsection of the Board. This accomplishes the goal of having certain experts on standby, without limiting the applicant.

Bill Stoughton noted that this might not be effective because the second review has always, in his time, been a paper review. It has not involved site work or gathering data in the first instance. He would like a firm to routinely do all of that in the first instance, and then allow the applicant's chosen analyst to perform a desk review. This is about trusting the work product. He wants the Board and the public to be able to trust the work product.

Arnie Rosenblatt stated that Bill Stoughton's opinion seems to be that it is not adequate to receive a rebuttal report that is relying on the applicant's chosen analyst's underlying data, as that data cannot necessarily be trusted. An alternative could be to require that the second, third-party review also use underlying data. This will likely lead to complaints by applicants.

Bill Stoughton stated that he is not interested in making applicants pay more through the process.

Tim Kachmar stated that he has never seen a report from a developer that does not state that there will not be an impact from the proposal. He agreed with having a set firm on the books that could be requested to either complete a full review with underlying data or a simple paper review, depending on what the Board finds necessary. He agreed with interviewing a few firms to have certain ones to rely on.

Pam Coughlin asked if a developer could sue the Town if it does not like the analyst the Town has chosen to complete the review. Arnie Rosenblatt explained that, to the extent that an applicant loses control over the process, there is a specific State policy in place that encourages applicants to seek litigation based on failed applications. He would prefer to give as little opportunity as possible to complain about the process.

Bill Stoughton stated that, if the Board is doing the right thing, he believes the Town will defend itself against a lawsuit.

Cynthia Dokmo stated that she believes the applicant needs to be able to present the whole application, including their own experts.

Arnie Rosenblatt stated that no one is truly a neutral expert. He does not want to create additional exposure for the Town. The legislature has created a court that is specifically intended to rule against municipalities. The playing field is not equal.

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Chris Yates asked how the Board can be sure that the second third-party review is truly looking at the best overall interest of the Town, as it is also being paid for by the applicant. Arnie Rosenblatt stated that the Board currently chooses this expert.

Bill Stoughton stated that the Board recently has started discussing the scope of the third-party review. Arnie Rosenblatt stated that this was not previously done and only came about due to discussions with an applicant's engineer.

Dan LeClerc stated that his concern is charging the applicant twice if it is not part of the application fees. Many developers have on-staff experts in these fields. These can easily be skewed one way or another, but how can it be proven that their findings are incorrect if the studies are carried out correctly. This does not mean the Board shouldn't have backup. He suggested that the Town partner with other nearby towns to share certain experts in the field if the Town itself does not have enough of a workload to find one on its own.

Tom Quinn stated that he believes Bill Stoughton's suggestion would make the process more efficient. Allowing the developer's expert and the Town's own expert to work separately using the same data instead of simply reviewing completed studies, may ensure that items are not missed or skewed along the way.

In response to a question from Arnie Rosenblatt regarding if there are any other towns that use the process as suggested by Bill Stoughton, Nic Strong stated that she is unaware of any. She believes that two or three different companies would need to be interviewed if the Board does wish to move to this process.

Bill Stoughton stated that he believes a regulation would need to be drafted in order to move to this new process. Arnie Rosenblatt asked if Bill Stoughton would draft this item for review.

Bill Stoughton suggested that NRPC might be able to complete the traffic studies routinely or may know of firms that may be helpful.

Arnie Rosenblatt stated that the threshold question is if the Board will approve of the proposed regulation.

Nic Strong suggested asking this question on the Planning Board listserv site to see if other towns have suggestions. Arnie Rosenblatt agreed.

5. Minutes: June 15, 2022

**Chris Yates moved to approve the meeting minutes of June 15, 2022, as submitted.
Seconded by Tom Silvia.
Motion carried 4-0-1 [C. Dokmo abstaining].**

6. Any other business to come before the Board

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435 **Cynthia Dokmo moved to adjourn at 8:31pm. Seconded by Bill Stoughton.**
436 **Motion carried unanimously 5-0-0.**

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438

439 Respectfully submitted,
440 Kristan Patenaude

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442 Minutes approved: July 20, 2022

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