

AMHERST PLANNING BOARD
Wednesday November 1, 2017

In attendance: A. Rosenblatt- Chair, S. Wilkins, P. Lyon-Selectman Ex-Officio, M. Dell Orfano, R. Hart, E. Hahn and Community Development Director G. Leedy

A. Rosenblatt called the meeting to order at 7:30pm.

NEW BUSINESS

1. CASE #: PZ9160-092917 – John W. & William R. Day and Virginia Barbera (Owners & Applicants), Brookwood Drive – PIN #: 005-160-000 – Request for a Conditional Use Permit for a Planned Residential Development – 10 units total. Lot 5-162-2 to be combined with primary lot 5-160. Zoned Residential/Rural

The property (PIN #005-160, 005-162-002) is located at 50 Boston Post Road and 16 New Boston Road in the Rural Residential district. Lot 005-162-002 is located in the Historic District, although no development is proposed on this parcel at this time. The lot is approximately 24.35 acres in two parcels. The property is currently undeveloped former agricultural land.

Project Description

The applicant has applied for a Conditional Use Permit for a residential development on the property. The proposal is to build 10 units of housing in detached units, located on approximately 1/3 acre lots. This Conditional Use Permit is being proposed under Section 3.16, IHO.

As indicated on the plans, the applicant is requesting density bonuses for walkability, restricted community space, open space under restrictive covenant, and 2 bedroom units for a total of 10.06 units allowed.

Tom Carr – Meridian presented the case. This is a PRD presentation for proposed ten homes on 24+ acres bordered on Boston Post Rd and New Boston Rd. These two lots presented earlier this year with two separate subdivision applications where the owners broke up two large parcels they had. The proposal is to combine lots 5-162-2 and 5-160 into one lot and to re-subdivide into a planned residential development. Together the two lots have a net tract area of 14.17 acres. He showed on the map where the lots would be and how much open space there would be around the edge of the lot. As much as they could, the applicants have taken into consideration the abutters privacy by having open space protect along New Boston Rd. as well as along Brookwood Dr. There will be on-site septic and in the community area there will be two wells that will serve as a community water system for 10 homes.

Density calculations: Net tract is 14.17 acres and in the two-acre zoning district we have a net tract base density of 7.085.

There is a trail system that will go from the end of the cul-de-sac through the open space. It will be a 3'-4' wide stone dust footpath. The trail (Walkability) gives a bonus of 10% for .7085

The community area will be restricted to the residents and is proposed to have a gazebo and grills/recreational area. That gives a 10% bonus for .7085

The open space will be in a restricted covenant for no further development. It will be protected in perpetuity as forest. That bonus is 20% for 1.417

20% of the units will be restricted to two bedrooms. (20% x 7.085 = 1.417) 1.417 x 10% bonus = .1417

49 for a total of 10.06 units or (10) units for the development.
50 P. Lyon asked how much the setback will be between units and adjacent structures? Tom said there will
51 be about 40 feet between each unit. Not sure of the size of the units yet.
52
53 M. Dell Orfano asked how many units would be allowed by right? Seven.
54 He also asked who the closest abutter is. Lot 21-2 and 21-6 on Brookwood drive.
55
56 Tom clarified the open space parcels in the immediate area and how they relate to the abutters.
57
58 M. Dell Orfano asked if he anticipates any impact on the abutters water supply.
59 He doesn't because most of the abutters have shallow aquifer wells. These will be drilled wells which
60 will be drawn from another source.
61
62 S. Wilkins said the project is nicely designed. She has no issues with it as it stands.
63 The plan clusters the buildings together and pulls them away from the frontage roads.
64
65 E. Hahn asked if the community space is restricted. Yes, it is restricted to the community residents.
66 The trail as well? Yes.
67
68 R. Hart asked about the trail being for private use. Is that a requirement? Tom said they can't connect it
69 to any other public trails right now, but there's been talk of resurrecting an old trail in that area.
70 Tom said there was a previous client that considered a connection right in that area, but that plan fell
71 through. He agrees it would be great, but it doesn't work with the current parcel and plan.
72
73 M. Dell Orfano asked who will own and manage the open space in terms of taxes.
74 It will be a one-tenth ownership. It will be in the deeds. Owners would pay 1/10th of the open space
75 taxes along with their property tax.
76
77 A. Rosenblatt read the provisions of the ordinance to help explain the process to the public.
78 The first issue they are dealing with is:
79 Conditions for Conditional Use Permits.
80 Before the Planning Board considers the approval of an application for a Conditional Use Permit, the
81 applicant shall prove to the satisfaction of the Planning Board that all the following conditions have been
82 met:
83 a. That the property in question is in conformance with the dimensional requirements of the
84 zone, or meets Planning Board standards for the reduction in dimensional requirements,
85 and that the proposed use is consistent with the Amherst Master Plan. (3-10-15)
86 b. That the proposal meets the purposes of the ordinance under which the application is
87 proposed.
88 c. That there will be no significant adverse impacts resulting from the proposed use upon the
89 public health, safety, and general welfare of the neighborhood and the Town of Amherst.
90 d. That the proposed use will not be more objectionable to nearby properties by reason of
91 noise, fumes, vibration, or inappropriate lighting than any use of the property permitted
92 under the existing zoning district ordinances.
93 e. That the proposed use will not adversely affect the ground water resources of Amherst, in
94 particular the Aquifer Conservation District as defined in Section 4-13 of the Amherst
95 Zoning Ordinance.
96 f. The applicant shall file a Non-Residential Site Plan Review application in accordance with

the “Non-Residential Site Plan Review Regulations” with the Amherst Planning Board.
The second issue they are dealing with is incentives. There can be additional units that are permitted under this provision.

He commented that:

1. He would like to have a site walk to better understand if the conditions for CUP have been satisfied as well as the conditions for density bonuses.

2. The application of the bonuses is not to be done in a formulaic way. The applicant has the burden with respect to each bonus to demonstrate that that bonus is benefiting the Town and serves the purpose for which the bonus is there.

Public Comment

1. Rob Clemens- Chairman of Amherst Conservation Commission

He wondered if the trail can only be used by the subdivision community, can it still be claimed for a bonus. He also said he is in favor of open space and asked if that too is restricted, or does the bonus assume public access? (No)

A. Rosenblatt explained that there are separate bonuses that can be sought for ‘improved and open to public.’ Those are not being sought here.

S. Wilkins said she forgot to mention earlier, but the restrictive covenant needs to be held by a third party such as the Town or the Land Trust or the ACC.

2. Chris Shaver-2 Brookwood Dr.

She asked if these units are condos.

Tom said they are individual family homes. Under state regulations they are classified as condos because of the private areas close to the units and because the lot sizes are smaller than the allowable lot size to allow for the open space.

S. Wilkins stated a condominium is a form of ownership- it has no bearing on what the home will look like or how the development will be laid out.

A. Rosenblatt explained if the applicant satisfies certain requirements, they are allowed to create the subdivision in a different way than what is allowed for an individual home.

S. Wilkins said the Town developed and passed this ordinance because it benefits the Town by creating permanent open space and different styles of homes available to residents.

Chris asked why the entrance road is off Brookwood and not New Boston.

It would require a substantial wetlands permit to come off New Boston Rd. The wetlands bureau would not grant a permit if the developer could avoid it by other means.

Chris asked about the road having to cross the rock wall – isn’t there a town ordinance about removing rock walls?

S. Wilkins said there are some restrictions on scenic roads. Typically, the developer is asked to break the wall and curve it around.

Chris asked about water. In 2016 many wells failed in that area. Two homes there have drilled wells. If they are drilling more, that might affect them.

M. Dell Orfano suggested abutters document their current water flow and quality before any construction starts.

A. Rosenblatt said this ordinance has two provisions: C- no significant adverse impact and E- no significant adverse impact to groundwater resources in Amherst. And the burden is not on the abutters. He further explained if an applicant gets through the CUP process, there is still the site plan process to get through which is where they will have to address those issues.

Chris stated she will be glad to get rid of the 80-foot pine trees.

3. Mark Smith-62 Boston Post Rd

How does the frontage work if, under regular use, there could be 7 units? He thought 200' of frontage would be needed per unit.

Tom explained the property has frontage on three different roads. Legally, they could do a cul-de-sac without granting the open space, but that's not what they want to do.

Mark discussed the effect the development will have on wildlife in the area. The whole open space area is wetlands and not passable. It's essentially a pond. This will create a barrier that the wildlife cannot cross. This concerns him.

One of the goals under section 4.11 of the Zoning Ordinance is to preserve and protect important wildlife habitat, flora, and fauna areas. This project will affect all of these by fragmenting the large area that currently exists that the wildlife use.

A. Rosenblatt asked him if it is preferable to have 7 separate properties on two- acre lots? He wasn't sure- would have to know where the houses would be.

S. Wilkins wondered which option would have more impact on the wildlife.

Tom said lot 5-162 is a lot that can have a house. They could put a road in from the same location as the proposed entrance with 200 feet of frontage and put in 7 homes on a cul-de-sac which would wipe out the whole land area. He understands the abutters concerns about the entrance off Brookwood Rd and they've considered that. They could have asked for more density and they've decided not to do that.

S. Wilkins said the clustering of homes is partially to benefit wildlife by leaving the open space around the improvements.

4. Fred Harrington- Brookwood Dr

In reference to the Ordinance C and E that Arnie mentioned, is it the applicant's responsibility to make sure the neighborhood water isn't impacted?

A. Rosenblatt said the applicant has the burden of satisfying the impact on the neighborhood and the Town.

5. Chris asked if Pennichuck water goes all the way to the school? Yes. Then bring Pennichuck to the site.

A. Rosenblatt noted that for anyone who objects to open space being taken, there was five million dollars that could have been spent to buy open space. The town did not vote in favor of it.

S. Wilkins suggested scheduling a site walk and tabling the case until after that.

G. Leedy mentioned to Tom that having some stakes in the ground would be beneficial.

Dates were discussed. November 18th 10:30am. Gordon can't be there, but Simon may be able to go.

S. Wilkins said the site walk is a public meeting, so anyone is welcome. No further notice will go out to the public for the site walk or the December 6th meeting.

193 **M. Dell Orfano moved to schedule the site walk on November 18th at 10:30AM and to table the case**
194 **to December 6th. S. Wilkins seconded. All in favor**
195

196 **2. Bruce Berry, Amherst DPW Superintendent – Ponemah Hill Road discussion**

197 E. Hahn recused himself from the board and sat with Bruce to present the topic.

198 Bruce stated the following:

199 Ponemah Hill Rd is a scenic road. He came before the board to remove trees previously. He showed
200 photos. There were three trees in this spot he is discussing. They took down a pine tree that was
201 approved previously and now as a result, the abutting resident questioned why they didn't take down
202 the other tree. He emailed back and forth with the resident. They removed the stump of the one that
203 was approved which was three feet from the one in question. They removed it because they are going
204 to taper the banking down.

205 He is looking for guidance. He wants to take down two trees because once the original pine tree was
206 removed, what's left looks like a sore thumb. He also wants to taper the banking going into the
207 intersection which will expose some of the roots of the pine tree and perhaps weaken it. He probably
208 should have included these two trees in the original proposal for approval. The abutter wants the pine
209 tree down as well.

210
211 S. Wilkins asked why the birch has to come down. Bruce is worried about the roots of the birch after the
212 pine is removed. The abutter doesn't mind if the birch comes down or not.

213
214 A. Rosenblatt asked if this is a public hearing. G. Leedy said it's a discussion. If the pine is in the right- of -
215 way and subject to scenic road conditions, then we should have a noticed scenic road hearing before we
216 remove the tree. If it's on the abutter's property, the DPW Director can coordinate directly with him. We
217 haven't had a survey, so we don't know for sure.

218
219 Regarding the birch, Bruce is concerned the pine roots will impact the birch roots after they take the
220 pine stump out.

221
222 A. Rosenblatt clarified that the board previously approved cutting on this road. Now, due to the cutting
223 and construction, the DPW thinks this tree may adversely impact the abutter. So, is it reasonable to not
224 have a public hearing because this is a specific impact which stemmed from work done that was
225 approved at a public hearing? The board agreed with that procedure.

226
227 **M. Dell Orfano moved to permit DPW to remove the pine tree as an ancillary removal from the prior**
228 **approval for scenic road impact. P. Lyon seconded. All in favor**
229

230 Bruce Berry wanted to discuss another matter and read his request as follows:

231 We would like to have a preliminary discussion and take feedback on the concept of scenic roads and
232 dead trees.

233 While I have not taken a dead tree count on every single scenic road, I have surveyed a representative
234 sample. On Dodge Rd there are about 18, Austin Rd about 22, Mack Hill about 14, Brook Rd about 20,
235 Green Rd 8 and the rest all have some. The listed roads total about 80 dead trees of various sizes and
236 fragility. Almost every scenic road has some dead trees.

237 We would like a means to obtain Planning Board pre-approval to cut dead trees. We want to build
238 safeguards into the approval so that it could be suspended or revoked by the Community Development
239 Director or, of course, the Board if we fail to abide by the conditions set down in the approval.

240 Some of the safeguards could be:

241 -We send a picture of the dead tree to the Community Development Director prior to taking it down or
242 afterwards in the condition of storm cleanup or imminent to falling.
243 -Approval has to be renewed annually with an activity report on the previous year's cull.
244 A built-in self-limiting safeguard is the large number of dead trees. We simply do not have the labor and
245 time available or the funds to expend to take down every dead tree. Nor does every dead tree represent
246 a hazard- and some are too close to wires. Some dead trees may simply be trimmed of branches. There
247 is no chance that if an approval is granted, that at the end of the first approval timeframe every dead
248 tree could be cut down.
249 We are simply looking for a way to increase our ability to provide safe roads in a proactive, managed
250 and cost-effective manner.
251
252 He then asked for comments from the board members.
253
254 A. Rosenblatt said he doesn't think we should have discussion without public comment because it
255 wasn't on the agenda. What they are suggesting is a significant change from current process /
256 procedure. He would like to have comment from Town Counsel.
257
258 S. Wilkins said it's in the RSA and wondered if they even have that right.
259
260 A. Rosenblatt doesn't know if this runs afoul of state regulations. We should find out from Town Counsel
261 our legal obligations.
262
263 OTHER BUSINESS
264 Minutes: October 4, 2017
265 **S. Wilkins moved to approve the minutes of October 4th as submitted. M. Dell Orfano seconded.**
266 **All in favor**
267
268 The board discussed meeting on November 15th to discuss subdivision regulations and decide when to
269 post a public hearing.
270
271 M. Dell Orfano asked about the state of LaBelle.
272 G. Leedy said the application was approved by the ZBA and it wasn't appealed. They are presumably
273 coming to Planning Board next. The case across the road was rescheduled to January. If the new plan
274 goes forward, the abutters from the appeal agreed to drop the suit.
275
276 **M. Dell Orfano moved to adjourn at 9:01pm. P. Lyon seconded. All in favor**
277
278 Respectfully submitted,
279 Jessica Marchant