

TOWN OF AMHERST
Planning Board

May 3, 2023

APPROVED

In attendance at Amherst Town Hall: Arnie Rosenblatt – Chair, Bill Stoughton – Board of Selectmen Ex-Officio, Tracie Adams, Tom Quinn, Tom Silvia (remote), Cynthia Dokmo, and Pam Coughlin (alternate)

Staff present: Nic Strong, Community Development Director; Kristan Patenaude, Recording Secretary (remote)

Arnie Rosenblatt called the meeting to order at 7:00pm.

Pam Coughlin sat for Chris Yates. Arnie Rosenblatt noted that Tom Silvia was attending on Zoom but would not be participating in any votes since there was a quorum present in the Town Hall.

PUBLIC HEARINGS:

1. SCENIC ROAD PUBLIC HEARING – EVERSOURCE

In accordance with the NH RSA: 231:158, the Amherst Planning Board will hold a public hearing on Wednesday, March 15, 2023, at 7:00 pm in the Barbara Landry Meeting Room, 2nd floor, Amherst Town Hall, Amherst NH for a scenic road public hearing for the purpose of trimming trees on Chestnut Hill Road.

Arnie Rosenblatt recused himself from this item. Tracie Adams sat as Chair.

Andrew King, arborist for Eversource Energy, explained that, as part of Eversource's regularly scheduled maintenance trimming, a portion of Chestnut Hill Road needs to be trimmed to specifications which are 15' above the electric lines, 8' on either side, and 10' below the wires. Limbs considered to be established, or greater than 4", will not be removed unless in a state of decay or if there are other concerns.

Pam Coughlin had no questions or comments. Tom Quinn asked if the dimensions for the proposed trimming just described were consistent with normal policy. Andrew King stated that these parameters were used statewide.

Bill Stoughton thanked the applicant and stated that electric reliability in Town is an issue all are concerned about.

In response to a question from Cynthia Dokmo, Andrew King stated that no trees are proposed to be removed as part of this project.

Tracie Adams confirmed three items with the applicant: trees will only be removed or trimmed as necessary for public safety or for those that pose dangers to the power lines; any stone walls moved or changed will be replaced and/or repaired; and any contractors performing work on a property will contact that homeowner prior to the work. Andrew King confirmed this to be the case.

May 3, 2023

APPROVED

There was no public comment at this time.

**Bill Stoughton moved to close the public hearing. Seconded by Tom Quinn.
Motion carried unanimously 5-0-0.**

**Bill Stoughton moved to approve the proposed trimming of trees as requested by
Eversource on Chestnut Hill Road. Seconded by Tom Quinn.
Motion carried unanimously 5-0-0.**

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

- 2. CASE #: PZ17205-041323 – Scott & Susan Jacobs O’Connell (Owners) &
Kali Construction (Applicant), 3 Mack Hill Road, PIN #: 020-029-000 – Subdivision**
Application – Depict a subdivision of land of existing lot 20-29 creating two new
residential lots to be known as 20-29-1 & 20-29-2 within a larger remainder lot. *Zoned
Residential Rural.*

Arnie Rosenblatt retook his seat.

Arnie Rosenblatt stated that the Board will first determine completeness of the application. He
asked if there are any outstanding items for completeness of the application. Nic Strong
explained that there is a waiver request with respect to all studies for this application.

Bill Stoughton stated that, in the past, on some occasions the Board has granted waivers while
reserving the right to require studies once the application is heard.

**Bill Stoughton moved to grant the waivers requested to the subdivision regulations
for preparation of the studies because the Board has determined that specific
circumstances relative to the subdivision or site plan indicate the waiver will
properly carry out the spirit and the intent of the regulations; noting, however, that
the Board reserves the right to request any or all of the studies, in the event it
determines it necessary, upon hearing the application. Seconded by Cynthia Dokmo.
Motion carried unanimously 5-0-0.**

**Bill Stoughton moved to accept the application as complete, subject to the waiver
language previously agreed upon. Seconded by Cynthia Dokmo.
Motion carried unanimously 5-0-0.**

Arnie Rosenblatt opened the hearing. He explained that there will first be a presentation by the
applicant. The Board will then have an opportunity to ask questions and make comments. The
Board will then hear from abutters or other interested parties. The Board can then act, as it deems
fit.

TOWN OF AMHERST
Planning Board

May 3, 2023

APPROVED

Sam Ingram, Meridian Land Services, explained that the proposal is for a subdivision of existing Lot 20-29. This property is approximately 12.5 acres in size and there is currently an agricultural operation on the property. The applicants are looking to subdivide off two separate lots, creating three lots in total. The two lots proposed to be created are located along Manchester Road and Mack Hill Road, and will each be roughly two acres, leaving the remaining lot at approximately 8.3 acres in size. All of the properties are serviced by Pennichuck Water and private onsite septic systems. Sam Ingram explained that the staff report discussed the separation of the back lot, the remaining 8.3-acre parcel. The frontage along Mack Hill Road has a separation between it and the intersection of Mack Hill Road and Manchester Road of less than 500'. There is another section of frontage along Mack Hill Road further north that is more than 500'. Also to be discussed is the current operation of a horse farm on remaining Lot 20-29. Test pits were dug on the property, all of which deemed the area suitable for development. There is also a minimal sized wetland pocket delineated on the property, as shown on the plan.

Arnie Rosenblatt asked Nic Strong to detail the items from the staff report. Nic Strong explained that Bill Stoughton pointed out that the recently adopted changes to the reduced frontage ordinance includes a section regarding access to be provided to a reduced frontage lot. One of the requirements is that access must be more than 500' from an intersection and this application does not comply with that. Additionally, there is an existing horse-riding academy on the property. Her research traced this business back to 2002, but she could not find any approvals for site plan under the zoning ordinance that was adopted in 1998 for equestrian facilities and events. She is interested in learning if the business existed prior to 2002 or prior to the adoption of the ordinance in 1998, in order to determine if the requirements for a site plan now would be applicable.

Tom Quinn asked if there is 200' of frontage on both sides of the road for proposed Lot 20-29-1. Sam Ingram explained that the property line at the corner of Mack Hill and Manchester Roads had a curve length of 112'. If that is split in half, there would be 200' of frontage on both Mack Hill Road and Manchester Road.

Tom Quinn stated that, regarding the requested waivers from studies, it might be good to complete a drainage analysis, given the proximity of these sites to the already impaired Beaver Brook. It will be important to see how these sites are proposed to drain. Sam Ingram noted that nothing is currently proposed to be built on these lots. This application is only for subdivision of the land.

Tom Quinn noted that he would like to hear from other departments in Town on this item.

Bill Stoughton asked if an equestrian operation was operated on this site at the time that the ordinance was passed. Sam Ingram stated that he is unclear on this item. He asked the applicant to address this. Susan O'Connell, applicant, stated that she needs to be able to subdivide her land in order to continue living at this property. She bought the property in 2007 from an owner who

TOWN OF AMHERST
Planning Board

May 3, 2023

APPROVED

was running Tempus Fugit Farm at the time. She is unclear what the property owner prior to that one was doing with the land but has been trying to find out.

Bill Stoughton asked if the existing pool house has a 25' setback from the proposed lot line. Sam Ingram stated that this is unclear, but he would work to place dimensions on the plan.

Bill Stoughton stated that, regarding the reduced frontage issue, the concern is access to the lot. He asked if the other potential access area further up Mack Hill Road could be used for the existing lot. Sam Ingram stated that the existing driveway is proposed to remain in place and be the main access point. Bill Stoughton stated that this subdivision will create a new reduced frontage lot, existing Lot 20-29. In doing so, this lot must comply with the ordinance, and it does not appear to, as it is not located more than 500' from an intersection. Thus, under the current plan, this lot would not qualify as a reduced frontage lot. The applicant could seek a variance or could redesign the plan to allow for this frontage. Also, as noted in the staff report, driveway locations for the proposed lots will need to be shown on the plan, to make sure that there is appropriate visibility. Bill Stoughton noted that he would suggest a condition that the applicant comply with the stormwater regulations.

Bill Stoughton encouraged the applicant to consider underground utilities for this project, both for the rural aesthetic of the area and for public safety.

Cynthia Dokmo echoed Bill Stoughton's comment regarding driveway locations for the new lots.

Tracie Adams asked if the applicant had any concerns with the items listed for the plan review in the staff report. Sam Ingram reviewed the items in the staff report that will be addressed on the plan. Regarding a drill hole symbol on the plan, that was not a monument symbol for the boundary; it was for a measuring point that was taken by survey crews. Minor corrections of the abutters list can be addressed. The driveway locations can be added to the plan. A statement of suitability for the land development can be submitted, as the lots have been proven out, test pits dug, and setbacks identified. Note #11 regarding the bounds can easily be modified. The Tax Collector information will be provided. Any waivers granted will be added to the final plans. Regarding debris containers for construction sites, information can be added to the plan that during construction a container will be onsite. Pennichuck Water is available for the site and a statement to this effect will be added to the plan. Finally, State subdivision approval is pending at this time.

Arnie Rosenblatt asked if it is the applicant's view, that as defined under the Town's ordinances, the property currently is an equestrian facility. If it is, he asked if the facility is appropriate to be operating now or if it was grandfathered in because there was previously an equestrian facility on these grounds as of 1998. He asked if the equestrian facility satisfied the requirements for an equestrian facility as defined in the Amherst ordinance. Also, he asked what this change will have on whether or not the property continues to be operated as an equestrian facility, within the definition of satisfying the Amherst ordinance. Sam Ingram stated that it was the applicant's belief that the equestrian use was essentially grandfathered in with the current property. He will

TOWN OF AMHERST
Planning Board

May 3, 2023

APPROVED

review this and provide the Board with information regarding the changes to the property related to the subdivision and how that affects the current use. Susan O'Connell stated that she would also fill in the Board as to how the model for her business may be changing in the future.

Tom Grella stated that he has been an abutter to this property since 1966. Every person who has ever lived on that property has owned animals. As far as he can remember, it was always used for a riding academy. He noted that another property just to the east was required to install underground utilities and did so with no issue.

Reed Panasiti, 11 Mack Hill Road, asked if the applicant is planning to use the area north of the driveway for frontage, as he believes this is the right of way between his house and the next house. When he purchased his property, he was told there that that strip would be his property, while allowing a right of way for the applicant onto the property. Sam Ingram stated that he would look into this item.

Reed Panasiti noted that these properties are located in the Historic District. He asked if units built on the subdivided lots would be subject to certain types of building construction, as being in the Historic District. Nic Strong stated that any buildings would have to comply with the Historic District regulations.

The Board discussed a date to continue this item to. There was discussion regarding if the applicant would need to go before the Zoning Board of Adjustment (ZBA) for a variance request first. Bill Stoughton stated that he would like the ZBA to decide on a variance first, in deference to them and to not place pressure on either board.

**Tracie Adams moved to continue CASE #: PZ17205-041323 for 3 Mack Hill Road to June 21, 2023, 7pm at Town Hall. Seconded by Cynthia Dokmo.
Motion carried unanimously 5-0-0.**

CONCEPTUAL CONSULTATION:

- 3. 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 – Subdivision & Non-Residential Site Plan. Proposed 54-unit condominium style development. Zoned Residential Rural.**

Arnie Rosenblatt read the case. He noted that this is an application that was grandfathered under the, now defunct, Innovative Integrated Housing Ordinance (IIHO). The previous application was denied by the Planning Board, then brought to the Housing Court, and then brought to the New Hampshire Supreme Court which remanded this to the Planning Board. Accordingly, the Board is now addressing it based on the remand from the Court under the IIHO. This is a conceptual discussion only, meaning that an application is not in hand, and nothing said by the Board tonight is binding. This is an opportunity for the applicant to make a brief presentation and

TOWN OF AMHERST
Planning Board

May 3, 2023

APPROVED

hear comments from the Planning Board. There will not be public discussion, as there is normally not in these conceptual discussions.

Chad Branon, Fieldstone Land Consultants, explained that this project was last before the Board in April 2021. This project consists of three properties totaling approximately 32 acres. The permitting on this project began in 2017 under the IIHO. The project was approved under a Conditional Use Permit (CUP) for up to 54 units. During a fairly lengthy final review process, a number of revisions were made to the plans, addressing concerns of the Board, abutters, and the general public. The project was also reviewed by Keach Nordstrom, the Town's consulting Engineer, at the time. The intention at this time is to resubmit the plans for a conceptual discussion with the Board in hopes of moving forward. At the last hearing before the Board, the applicant reduced the number of units to 49 to address comments regarding the proposed orientation of homes and driveways on the site. An updated phasing plan was also submitted at that time. A submission of materials showing those items is planned to be submitted to the Board.

Andy Prolman, Prunier & Prolman, explained that one of the concerns from years ago regarding this project dealt with the condominium declaration and how different types of housing on this project were going to be distinguished. There are three types of housing units proposed through this project, 65+ housing units, rental units, and market rate units to be owned by individuals. The declaration provided to the Board at that time was a generic condominium declaration and did not contain language distinguishing between the types of units. He stated that he believes he can draft a declaration that will satisfy the previous concerns of the Board. In the end, this property will be one lot and there will need to be some master control. Within that there could be one or two sub condominium controls, so that the 65+ units are managed on their own and cannot be interfered with by the other units, and vice versa.

Tracie Adams stated that she would like to hear from the School District regarding its thoughts on the proposed phasing of this project. Chad Branon explained that a fiscal impact report was previously submitted for this project. Tracie Adams stated that she would like to hear from the school regarding the likelihood that this development would impact its ability to care for children that would be coming into the school from this project.

Tracie Adams asked if there are any additional concerns regarding traffic, as this was a previous concern of the Board. She asked if any additional developments have been constructed nearby that might impact this as well. Chad Branon stated that he is unaware if other developments have been constructed since this was previously before the Board. He noted that the application will have to renew the previous DOT permits, which will address traffic. His recollection of the traffic report was that there was plenty of capacity, and the intersections were safe. The applicant can revisit this item and gather more information.

Tracie Adams stated that she would like the Board to further discuss Note #7 on the plan at a later date.

TOWN OF AMHERST
Planning Board

May 3, 2023

APPROVED

Cynthia Dokmo explained that one of the Board's concerns in the past was regarding federal laws for elderly housing with regard to this project. There was some concern about the legality of mixing elderly housing with the other units. Attorney Prolman stated that he is not aware of any prohibitions that would prevent a mix of uses. His proposed declaration for separating the condominium declaration dedicated just to the 65+ units should help address any concerns. He noted that there is a conflict between the IIHO ordinance, which allows density bonuses for 65+ units, and State and federal law, which uses the age of 62+. This dynamic will need to be solved. He stated that he believes this project will be in compliance with state and federal law.

Cynthia Dokmo stated that she voted against this project previously because she believes it proposes too many houses on the 31 acres of land. If this is all buildable, by right, a traditional subdivision would have 15 houses, and this proposal is for three times that many. Her concern is that this is too many houses for the land. She stated that she believes there is also a freshwater spring or something unique to the property. Chad Branon noted that the site is within the Pennichuck Watershed which is an exemplary aquifer. There is a cold waterbody running through the site.

Bill Stoughton stated that there is a water feature on the property which feeds one of the last remaining cold-water streams in this part of the State which supports trout. The Board previously had a long discussion with the applicant about stormwater features and the applicant made some very significant changes to the plan, including removing one or two units so that a stormwater infiltration feature could be located some distance from that tributary. This was a concern for the Amherst Conservation Commission. Chad Branon agreed that the plan originally had a stormwater basin, which mitigated a good portion of the development, located very close to the wetland that runs through the center of the property. Upon hearing concerns, the applicant removed some density proposed in this area and created a rehabilitation plan to revegetate the buffer parallel to that sensitive area.

Bill Stoughton asked if changes are proposed to the plan at this point. Chad Branon stated that the applicant plans to pick up where he left off. This project is less dense than several nearby developments and was already approved up-to a certain density. The applicant submitted studies and a design that supported 54 units and agreed to reduce this down to 49 units.

Bill Stoughton stated that he is encouraged by Attorney Prolman's thoughts on how to structure the condominium documents. The concern was compliance with federal law, both with respect to having an identifiable community for the elderly and implementing other requirements such as restricting occupancy of the 62+/65+ units. The 62+ versus 65+ issue is complicated.

Tom Quinn stated that his concern is that this application violates Section 4.17 of the Planned Residential Development (PRD) ordinance in a number of ways. Most specifically, the PRD allows for "somewhat greater density" than is allowed under conventional zoning, and 300%+ greater density is not "somewhat greater," in his mind.

TOWN OF AMHERST
Planning Board

May 3, 2023

APPROVED

Arnie Rosenblatt noted that this application is being submitted under the IIHO, not the PRD ordinance. The IIHO is a distinct ordinance.

Arnie Rosenblatt stated that the applicant should work with the Office of Community Development with regard to the timing of the application.

OTHER BUSINESS:

4. Driveway discussion Map 8 Lots 83-14 & 83-15, 32 -36 Old Manchester Road. *Continued from April 5, 2023.*

Arnie Rosenblatt explained that this was an issue with respect to a driveway proposal, where concerns were raised by Department Heads. The Board discussed whether it would affirm the Department Head recommendations and ultimately voted to hear from the Department Heads to determine whether the written comments were consistent with their actual feelings on the topic.

Cynthia Dokmo explained that she believed that the Department Heads have no alternative in this case than to say no and send it to the Planning Board for review. If the Board affirms the decision of the Department Heads, these lots cannot be built on and they have been lots of record since 1975. She would like to be assured that the Department Heads' concerns are realistic, and that this proposal poses a real and significant threat to the public, as the owners may face the fact that they are unable to develop these properties at all.

Eric Slosek, DPW Director, stated that he and Fire Chief Conley met with Meridian Land Services regarding this item. The DPW occasionally receives waiver requests for a change or variance in a driveway grade from the regulations. In this case, the waiver request is essentially double what the regulation requirement is of 8%. In consultation with Chief Conley, the DPW believes that this does pose a risk to not only the residents themselves, but emergency responders in inclement weather. A 15% grade is considered a steep slope. The regulations state that the DPW Director may waive any of the design requirements for driveways so long as such waiver does not result in a likelihood of injury to the public health, safety, or welfare. Due to the steep grade proposed, Eric Slosek stated that he cannot say that this will not possibly injure someone or be at risk to the public health, safety, or welfare. Therefore, he felt it appropriate for his office to deny the waiver request and have it brought to the Board for further review.

Matt Conley, Fire Chief, stated that his concern about the proposed grade deals with the safety and well-being of the property owners and anyone who has to access the driveways. A 16% grade is an incredibly steep slope for emergency personnel access with an apparatus, jeopardizing the safety of personnel and vehicles. Also, if the Department is delayed by accessing this area, then it is not fulfilling its obligation to protect and serve the public.

Eric Slosek stated that he and Chief Conley empathize with the property owner and do not take lightly to denying a waiver request that could potentially lead to the property owners not being

May 3, 2023

APPROVED

able to use the property for the desired purpose. Reviewing the regulation, the proposed grade, and the potential likelihood for injury, led to clear answers from the Departments.

**Bill Stoughton moved to affirm the decision of the DPW Director and Fire Chief and deny the driveway permit. Seconded by Tom Quinn.
Motion carried unanimously 5-0-0.**

5. ERZ discussion

Nic Strong explained that the Board previously had questions regarding the ERZ discussion. She sent these to a representative at the Department of Business and Economic Affairs (BEA) and provided the Board with the answers received and a PowerPoint presentation from the BEA. The BEA is seeking approval from the Town whether or not to renew these zones. Bill Stoughton noted that the statute states that this will be signed by the Board of Selectmen. Arnie Rosenblatt stated that the Planning Board could make a recommendation on this item to the Board of Selectmen.

**Cynthia Dokmo moved to recommend to the Board of Selectmen that the ERZ zones are renewed, as previously designated for the following areas: Route 101 ERZ, Route 101A ERZ, Meeting Place ERZ, and LaBelle Winery ERZ. Seconded by Tracie Adams.
Motion carried unanimously 4-0-1 [B. Stoughton abstained].**

6. Lot Consolidation Approval -Cricket Corner Road, Map 4 Lots 122-2 & 122-3

Nic Strong explained that these two lots were part of the Vonderosa subdivision of Map 4 Lot 122. One person bought both the lots and wishes to consolidate them which, by law, the Planning Board is required to consider. Nothing about the construction of the driveway, the need for inspections, the sight distance, etc., is changed. The only difference is that there will be one house instead of two houses at the end of the driveway.

**Tracie Adams moved to approve the lot consolidation/voluntary lot merger application for Dwight Weatherhead Trust, Dwight Weatherhead Trustee, to merge Map 4 Lots 122-2 and 122-3 for municipal regulation and taxation purposes. No such merged parcels shall hereafter be separately transferred without subdivision approval. Payment for recording the lot consolidation/voluntary lot merger form at the Hillsborough County Registry of Deeds shall be made by the applicant.
Seconded by Bill Stoughton.
Motion carried unanimously 5-0-0.**

7 . Minutes: April 19, 2023

Tracie Adams moved to approve the meeting minutes of April 19, 2023, as presented. Seconded by Cynthia Dokmo.

TOWN OF AMHERST
Planning Board

May 3, 2023

APPROVED

Motion carried unanimously 3-0-2 [P. Coughlin, T. Quinn abstaining].

8. Any other business that may come before the Board.

Tracie Adams stated that the Master Plan Steering Committee met last night for the last time. The group reviewed the story map and was pleased. The Board thanked Tracie Adams and the Committee for its work.

Bill Stoughton moved to adjourn the meeting at 8:20pm. Seconded by Cynthia Dokmo.

Motion carried unanimously 5-0-0.

Respectfully submitted,
Kristan Patenaude

Minutes approved: May 17, 2023