

TOWN OF AMHERST
Planning Board

November 1, 2023

APPROVED

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

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

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

Rob Clemens sat for Tom Quinn. Pam Coughlin sat for Chris Yates.

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

- 1. CASE #: PZ17700-080823 – Beaver Meadow Investments, LLC (Owners & Applicants); 48 Ponemah Road, PIN #: 004-025-007** – Subdivision Application. To condominiumize the existing eight residential rental units in two existing buildings. *Zoned Residential Rural. Continued from October 4, 2023.*

Arnie Rosenblatt read and opened the case.

Arnie Rosenblatt asked if there are any issues with completeness. Nic Strong explained that the applicant requested a waiver for the required studies. In the past, the Board has approved the application as complete, while reserving the right to request those studies at a later date.

**Tom Silvia moved that the application is complete, with the understanding that studies can be required at a later date, if needed. Seconded by Rob Clemens.
Vote: 6-0-0 motion carried unanimously.**

Arnie Rosenblatt explained that the Board will first hear from the applicant. The Board will then have an opportunity to ask any questions and make any comments and will then hear public comment. The application will then come back to the Board for further discussion.

Brad Westgate, lawyer for the applicant with Winer & Bennett LLP, explained that this property contains an eight-unit multifamily property, which has been in existence for approximately 26 years. The purpose of this application is to convert the two structures to condominium forms of ownership. The eight units have been a rental property, owned by Beaver Meadow Investments LLC. When converting any property from a single ownership to a condominium form of ownership, this invokes the Town subdivision regulations. Even though there are no changes proposed to the site or existing buildings, this project still falls within the subdivision regulations. The subdivision application was filed by Meridian Land Services, and this has been diligently reviewed by Staff. The first of three Staff reports is a key report that identified three core areas of items. One area was identifying potential waivers, one was identifying items that are not applicable in the subdivision checklist given the pre-existing and built out nature of this

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property, and the third is items for which a better explanation was needed. Following that Staff Report, Randy Haight, of Meridian Land Services, filed a waiver request and a detailed response letter to address the points that were either not applicable or needed better explanation. That filing was supplemented with an e-mail on September 18th, which addressed a few items such as the real estate taxes with an updated title from the time of Beaver Meadow's purchase to now and submitting the Declaration of Condominium, to be reviewed by Town Counsel.

Brad Westgate noted that the Staff Report for tonight's meeting identifies a few remaining items, including that the Department of Public Works (DPW) had no comment, the Fire Department was okay with the plan, and the Superintendent of Schools indicated that this proposal has no material impact on the schools. A waiver request has been submitted. One additional item in the Staff Report that needed clarification was regarding the unnecessary need for soil studies, given the fact that septic systems already exist, and this site is built out. Randy Haight supplemented the waiver request with technical information. The response letter also addressed all the other non-waiver items. Town Counsel has reviewed the Declaration of Condominium and a couple of small changes need to be made. One correction needed on the plan set includes an approval date on Note 7 that should be changed from June to April 16, 1997, as this date pertains to the existing septic systems. He requested that the Board consider granting the waivers and approve the application tonight, subject to conditions of approval listed in the Staff Report.

Tracie Adams stated that she had no questions or comments at this time.

Tom Silvia asked if the units will be sold once turned into condominiums. Attorney Westgate stated that the intent is to sell them, but he is unclear of the proposed price point. Tom Silvia asked if the overall usage of the building and the property would then change. Attorney Westgate stated that the use will not change at all. This will stay a residential property. There will be no changes whatsoever in terms of the property's function and use.

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

Bill Stoughton stated that he read in the Staff Report this was at one time affordable housing. He asked if it is still. Attorney Westgate stated that it was at the time the original covenant was established, but that was an eight-year time frame and the covenant expired by its terms.

Bill Stoughton thanked the applicant and Nic Strong for completing Staff identified issues ahead of the meeting.

Rob Clemens asked if the property has a community water supply. Attorney Westgate stated that two separate wells, one for each building, and separate septic systems were originally approved. This is a community water system but not a public water system, because the property has under ten units total, so the approval process does not rise to the level of public water system approval.

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Rob Clemens asked, with regard to the wells, if testing the water would now fall on a new homeowner's association. Attorney Westgate agreed, as would all common land area maintenance.

Pam Coughlin stated that she had no questions or comments at this time.

There was no public comment at this time.

Bill Stoughton moved to grant the waivers requested in the Meridian letter dated October 31, 2023, to the various sections of the ordinance and subdivision regulations, as the Board has determined that strict conformity with the requirements would pose an unnecessary hardship on the applicant because of the existing built out nature of the project and the waiver would not be contrary to the spirit and intent of the regulations. Seconded by Tom Silvia.

Vote: 6-0-0 motion carried unanimously.

Bill Stoughton moved to approve CASE #: PZ17700-080823 for Beaver Meadow Investments, LLC, for the above-cited subdivision condominium conversion of Map 4 Lot 25-7, 48 Ponemah Road, with the conditions set forth in the Staff Report and the condition that the corrections from the legal review be included and the plan set approval date amended accordingly. Seconded by Cynthia Dokmo.

Vote: 6-0-0 motion carried unanimously.

The Board addressed the Findings of Fact.

Findings of Fact for 48 Ponemah Rd.

Application Description:

CASE #:PZ17700-080823 Beaver Meadow Investments, LLC (Owner and Applicant); 48 Ponemah Road, PIN #: 004-025-007 – Subdivision Application - Plan to condominiumize the existing 8 residential units in two existing buildings. *Zoned Residential Rural*. The Staff Report is adopted into the record and can be referred to for further details.

Application Completeness

Per Subdivision Regulations Section 202, the Planning Board reviewed documents provided and determined that the application was sufficiently complete to proceed with consideration by the Board per RSA 676:4. I (b).

Compliance with Regulations

Per Subdivision Regulations Section 206, this application refers to an existing eight residential units in two existing buildings that are in compliance.

Land Usage Requirements

Per Subdivision Regulations Section 208, the proposed land use meets the existing land uses

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permitted in the Zoning District which is Residential Rural.

Environmental Requirements

The plan presented does not materially impact the environment since the buildings are pre-existing and no changes are proposed to the buildings or land.

Studies

Studies: Drainage, Environmental, Fiscal, Hydrogeological, Traffic, Water Supply, etc.

The Planning Board granted a waiver for preparation of the studies, reserving the right to request any or all of the studies if deemed necessary upon hearing the application. After the application was presented, no studies were required noting that the existing buildings will remain the same as previously built.

Waivers

Per Subdivision Regulations Section 202.3 the Planning Board may approve waiver requests.

The following waiver(s) requested by the applicant(s) were approved by the Planning Board.

- Article 2 Section 207 Waiver to determination by the Planning Board that the character of the land is appropriate for subdivision due the fact that the project and appurtenances are already built.
- Article 2 Section 210.2 A.8. Waiver to final review phase requirement to have soil investigations completed due to the fact that the State Septic System Operational Approval is recorded and noted on the plan.
- Article 2 Section 210.2 A.2. Waiver of demonstration of topography with sufficient detail to indicate stormwater runoff due to the fact that no alterations to the site will be made. Existing site controls are working effectively per verification July 2023.
- Article 2 Section 210.3 B.8. Waiver to the plans being based on a survey with max error 1/10,000 since original plans of the subdivision of land were prepared by others (as recorded) and sited as reference plans.
- Article 2 Section 210.3 B.11. Waiver of required acknowledgment that subdivider must assume responsibilities for land maintenance, injuries and damage occurring on land dedicated for public lands because no land is being dedicated for public use.
- Article 2 Section 210.3 B.23. Waiver to studies (Drainage, Environmental, Fiscal, Hydrogeological, Traffic, Water Supply, Others deemed necessary by the Planning Board) due to fact that the project and appurtenances are already built.

Stormwater Management

The Stormwater Management plan was not required for this application due to the project and appurtenances already being built.

Conditions

The applicant acknowledges the conditions precedent and conditions subsequent in the Staff Report as well as any additions from the Planning Board are required.

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Summary

The Planning Board finds that the application meets the spirit and intent of the Ordinances and Regulations and is approved.

**Tracie Adams moved to approve the Findings of Fact for 48 Ponemah Road, as presented. Seconded by Tom Silvia.
Vote: 6-0-0 motion carried unanimously.**

PUBLIC HEARING(S):

- 2. CASE #: PZ17708-080923 – Riley Investment Properties, LLC c/o Tom Riley (Owner & Applicant); 125 NH Route 101A, PIN #: 002-035-001-C.** Non-Residential Site Plan. To amend the previous site plan approval for Phase C involving the construction of a 12,000 square foot single story retail building and propose a 2,400 square foot single story drive-thru only café. *Zoned Commercial. Continued from October 4, 2023.*

Arnie Rosenblatt read and opened the case. He noted that this application was previously accepted as complete. He explained that the primary purpose of the continuance was due to concerns raised with respect to traffic and there was an agreement and a requirement that a traffic study be prepared and submitted. A continuance has been requested on behalf of an abutter via Attorney Tom Pappas on behalf of Dunkin' Donuts, which is objected to by the applicant.

Arnie Rosenblatt explained that he would like to hear from both parties to determine if there were any standing relationships which would require him to recuse himself. He disclosed that he has known Attorney Pappas for approximately 35 years, and they were business partners at one time. He noted that he and Attorney Pappas currently represent parties who are opposed to each other in another matter. He would like to hear if this is a concern for either party in this case.

Neither party voiced a concern on this matter.

Attorney Pappas, representing an abutter, explained that at the Board's September meeting Carl Andrade, Dunkin' Donuts' owner, raised the issue of traffic, along with some members of the Board, and a traffic study was requested. Mr. Andrade has retained a traffic engineer to critique and provide a peer review of the traffic study from the applicant. The applicant submitted a traffic study recently, and his client's traffic engineer is reviewing it, but he has not yet completed the review. It seems that the Board should receive a full airing of the traffic issue and there is a question as to whether the submitted traffic study contains sufficient data, as it was only based on one weekday in July. This does not take into consideration weekend or evening traffic and does not consider vehicle data from any of the other abutting properties. His client would like the Board to have complete data on vehicles in this area and a peer review before it considers what to do with this application. If the Board is not interested in continuing this item, his client would still like the opportunity to present to the Board a peer review of the data that was presented. He urged the Board to continue this item to its December meeting.

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Attorney Andy Sullivan, of Sullivan Law Office representing the applicant, explained that the applicant complied with the requirements. Whenever there is potential commercial competition there can be issues between companies. At a certain point in time there has to be an end to the constant need for additional time and back and forth. The applicant completed a thorough traffic study and is willing to review it with the Board tonight. It is not appropriate to continue this matter at this time.

Arnie Rosenblatt asked Attorney Sullivan if his client's position is that the Board should make a final determination tonight, without giving the abutter further opportunity to review, analyze, and comment on the traffic study. Attorney Sullivan stated that is correct because the process and the timing was adhered to by his client. He stated that Mr. Andrade pointed out at the September 6th hearing that he wanted a traffic study, but a timeframe was never discussed. This was accommodated. There was an opportunity for Mr. Andrade to receive the traffic study memorandum earlier. The applicant did not miss a timeframe, as one was never discussed. The applicant did as the Board asked.

Arnie Rosenblatt asked Attorney Sullivan if it is his position that the applicant would be prejudiced by delaying this hearing by a month. Attorney Sullivan stated that this is his position. In commercial development, timing is everything and the faster it gets done the better. A continuation would not kill the deal, but time is money. He stated that the Board has the information at hand to make its decision. Additional traffic studies are not needed, as the one submitted is so thorough. He stated that he has never seen a peer review, especially from an abutter, that does not find something.

Tom Riley, principal managing partner Riley Investment Properties, LLC, stated that he has done 4-5 developments for the Andrade family and Dunkin' Donuts and anticipated this might happen. Thus, he submitted a very thorough traffic study which is very precise. He included documentation regarding the exact number of cars accessing Taco Bell and Dunkin' Donuts. He also hired, as an additional traffic study, the traffic company that completed Mr. Andrade's traffic reports in the past. He just received this additional report which substantiates his original traffic report and stated that he would submit it now to the Board and the abutter's attorney.

Tom Riley stated that the only developments he has ever had traffic problems with are near Dunkin' Donuts locations, as they have a high volume at certain times. Thus, he wanted to sufficiently document the traffic report information. All of the traffic studies showed that the proposal is more than adequate, if not overdone, even through the New Hampshire Department of Transportation. He stated that an additional opinion and delay, in his view, is unnecessary. A full traffic study takes a long time to complete, and this was submitted to the Town a week ago. The applicant could have obtained it in the past number of days from the Town. This is only being delayed because of competition. The abutter feels the proposal is a café, not a restaurant. While someone may get a Dunkin' Donuts coffee at a gas station, they will not get a Starbucks coffee from there. This is two different clienteles.

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Attorney Pappas stated that his office called the Town asking about the traffic study and asked to know when it was received. His office diligently kept inquiring about the traffic study and only learned by contacting the Town that the study had just been received a few days ago. It is a misunderstanding that his client was not diligently following this item and it has been clear since September that his client was interested in this traffic study and wanted a chance to review it.

Arnie Rosenblatt asked if the Board had any questions for either legal team. There were no questions at this time. Arnie Rosenblatt asked the Board if it had any comments to make.

Bill Stoughton stated that the back and forth regarding the delay is entirely unproductive. He is interested in what is in the best interest of the Town. While he appreciates the second traffic review from the applicant, he does not appreciate getting it this evening, without time to consider this technical report. If the applicant would like this item considered, he would argue in favor of a continuance. Secondly, the Board allows abutters to comment for a reason. This is to help the Board reach the best decision. It is not unreasonable for an abutter to ask for a continuance to allow time to review a traffic study. Third, the Board's statutory deadline for deciding this application is December 10th. The applicant himself asked for a previous continuance of another month to complete the initial traffic study. He stated that he is inclined to vote in favor of a continuance, as the Town will be better served when the Board has all the information. He stated that he was impressed with the traffic study submitted, as it did seem to consider many of the Board's concerns. He is also sensitive to the fact that Mr. Andrade seemed initially to want to prevent competition from Dunkin' Donuts and he has no interest in this Board stepping in to prevent competition. He stated that he welcomes competition in this Town and will not countenance any opposition based on suppressing competition.

Arnie Rosenblatt noted that the reason for the previous continuance was primarily, if not exclusively, for the traffic study. Bill Stoughton stated that one item was a traffic study and the other was to allow the Town's engineer to comment on the plan itself, which has been completed. Arnie Rosenblatt asked Bill Stoughton why he believes this should be continued, if not with respect to traffic study. Bill Stoughton stated that he believes the Board can make progress if it can narrow the number of issues that are left to be resolved. The Staff Report had some outstanding items, but these may have been resolved. He would continue this hearing to give the abutter an opportunity to address traffic study items and hopefully make a determination at the next hearing.

Cynthia Dokmo stated that she believes this should only be continued for two weeks. Arnie Rosenblatt stated that he would like to make sure the applicant has an opportunity to have a review and prepare a written review, and that the Board has an opportunity to receive the review and digest it prior to the meeting. This may not be able to occur in two weeks.

Sam Foisie, Meridian Land Services, stated that, if this is only being continued for the abutter to respond to the traffic report, he would imagine that two weeks is enough time. The Board would then probably be able to review that response in less time than the typical week submittal, in which case the two weeks continuance would be appropriate.

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Tom Silvia agreed with the comments made by Bill Stoughton and stated the receipt of additional information this evening gives him pause. He asked if the Board should review the application this evening and then decide on a continuation to make sure there are no additional items needed.

Tracie Adams agreed that the Board could consider what the applicant needs to have for the next meeting before continuing the hearing. The Board does not like to receive new information at the last minute, such as the traffic study submitted this evening.

Rob Clemens echoed Bill Stoughton's comments.

Arnie Rosenblatt stated that there seems to be a consensus that there will be a continuance but the timeline for this is yet unclear. He agreed that the Board should also have a conversation about what else is needed. The Board seems to believe this is a positive thing, but it needs to be sensitive to traffic issues and abutter concerns regarding traffic, but not competition. It is in everyone's best interest for the Board to address this item fairly. He stated that he will be asking the abutter's counsel for an opinion on this.

Arnie Rosenblatt asked the Board to consider other questions it has with respect to the application other than traffic.

Rob Clemens asked if the Board would hear from the applicant this evening. Arnie Rosenblatt agreed.

Sam Foisie stated that the site plan has not substantially changed, barring a couple of signage changes to help improve the traffic situation and address specific comments from the Board. Since the last meeting, it was determined that an updated Alteration of Terrain (AoT) permit is needed, and this application was submitted at the beginning of last month. The DOT driveway permit was updated and has received approval as renewed and revised, following the conditions of the original driveway permit. The Staff Report highlighted an error of his which stated that the impact fees would be changed to Retail instead of Industrial, and he agreed with the Staff Report. Regarding a waiver for needing 10' of landscaping within the front of the building, this will not be possible as it is proposed to be a drive through facility. This waiver requested has since been updated. There is an additional waiver requested for the requirement of a landscape architect. Cynthia Dea Boisvert has been doing landscaping in Town for some time now and this is requested as part of the waiver. The applicant is in agreement with all of the comments made by Keach Nordstrom, Town Engineer, including two changes to the site. One of which is a one-way arrow into the drive through kiosk area, so as to not encourage a split into two lanes. The other change includes that the drainage structure (manhole) that receives the flow from the adjacent sites was upsized to make sure it accommodated the numerous pipes going into it. Outside of these changes, the only concern left for the Board is traffic, which the applicant will defer to the next meeting.

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Arnie Rosenblatt asked the Board to consider other questions it has with respect to the application other than traffic.

Rob Clemens and Pam Coughlin stated that they had no questions at this time.

Bill Stoughton noted that the Staff Report contained a question regarding the lighting hours on the plan. Sam Foisie stated that the applicant desires to have lighting on from dusk to dawn, but the lighting ordinance requires that this be dimmed at 11:00 PM. The store is proposed to be open until 10pm. The plans will state that the lighting hours would be from dusk to dawn, with lighting dimmed between 11pm and 4am, as the store opens at 5am.

Bill Stoughton stated that there was also a question regarding whether infiltration will be allowed. Sam Foisie stated that he has had conversations with AoT about this. As there already is an infiltration basin on the site, AoT suggested a waiver request from this requirement. There has been a verbal acceptance that infiltration will be allowed, but not a formal acceptance yet.

Bill Stoughton asked if the applicant has submitted an updated stormwater management report. Sam Foisie stated that he does not believe one was included, but he will provide this to Staff.

Bill Stoughton noted that the Board needs to discuss active and substantial development when it is ready to act on the application.

Cynthia Dokmo stated that she did not have any questions at this time.

Tom Silvia asked if the Board would address waivers at the next meeting. Sam Foisie stated that he would prefer these be addressed this evening. Arnie Rosenblatt agreed.

Sam Foisie stated that the first waiver requested was from the item to provide a minimum of 10' depth area of trees and shrubs around building sides with public access. This site is located off Route 101A and the private driveway in the front could be considered public access, thereby requiring a 10' landscape strip between the building and any pavement there. This is not possible given the proposed drive through use. The drive through needs to be adjacent to the building. He stated that he believes the intent of this can be met with landscaping between the parking area and the access drive. Thus, the spirit or intent of the regulation is met, while the exact physical location of the plantings cannot be met.

Sam Foisie stated that the second waiver request deals with the landscape plan. The Board may waive the requirement of this section where the cost of the site and building are less than \$500,000. The site will be less than \$500,000 while the building will be more than that. Cynthia Dea Boisvert, Arago Land Consultants, has done numerous landscape plans in Town and is familiar with the landscape regulations. She was doing landscaping prior to the State having a landscape license, so she is more than qualified and vetted to provide a landscape plan that meets the Town's requirements. Thus, a waiver from the landscape architect requirement is also being requested.

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Tracie Adams noted that the Staff Report mentioned that the driveway permit should confirm where proposed traffic will exit the site. Sam Foisie explained that the traffic will still utilize the existing signal intersection, as a cross access easement has been granted along the front. To help alleviate concerns from Board member Chris Yates, signage has been included to encourage southbound traffic to travel right out of the entrance, thereby avoiding the area of concern.

Arnie Rosenblatt asked about public comment for items other than traffic concerns. He noted that abutters and interested parties will not be precluded from making additional comments at the next meeting. There was no public comment at this time.

Tom Silvia moved to grant a waiver requested to Section 6.2.A which addresses providing a minimum 10' deep area with trees and shrubs around building sides with public access, as the Board has determined that specific circumstances relative to the site plan or conditions of the land in such site plan, namely the design of the building with a drive through window at the front of the building, prohibits this waiver to be executed and the waiver will properly carry out the spirit and intent of the regulations. Seconded by Bill Stoughton.

Vote: 6-0-0 motion carried unanimously.

Tracie Adams moved to grant the waiver from Section 5.1 under the Landscaping Standards for relief from the requirement for a landscape plan to be provided and endorsed by a licensed landscape architect; the landscape plan preparer was noted to have created many successful landscape plans in Amherst, her career began prior to the adoption of the licensing requirement, the waiver as suggested would achieve the spirit and intent of the regulation, and it would be an unnecessary hardship for the applicant to go forth with a different landscape plan. Seconded by Bill Stoughton.

Vote: 6-0-0 motion carried unanimously.

The applicant team requested a continuance for two weeks. Attorney Pappas stated that his client would request a continuance to the December meeting. His client now has two traffic studies to review and comment on. The Board needs to weigh giving the abutter full time for an adequate review and to provide comments versus if two additional weeks will adversely affect this project. He stated that he would weigh the balance in favor of allowing the abutter's engineer sufficient time to review and comment on the two studies, and the Board time to absorb any comments. Attorney Westgate stated that he does not believe it will take as long to review both of the studies, as they will address the same issues. Tom Riley stated that, if the Board gets the information one week before the meeting and has sufficient time to review it, the abutter's engineer should also have sufficient time. He stated that he has full faith and confidence in the traffic reports. He will call the Town every day in order to review any comments submitted. He noted that he is unsure if Sam Foisie will be available for a meeting in two weeks, but he would like to move forward anyway. He stated that there is a substantial cost for every delay.

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Arnie Rosenblatt asked if there is any interest on the Board in having a Town peer review of the traffic studies. Rob Clemens asked if Keach Nordstrom has reviewed the initial traffic study. Nic Strong stated that they have not. The Town usually uses a different company for traffic peer reviews. Arnie Rosenblatt noted that it is one thing to have a traffic study from the applicant, and another to have a competing traffic study from an abutter. The applicant's traffic engineer is staking out a position to favor the applicant and the abutter's engineer is staking out a position to support the abutter. The Board should consider whether or not it wants its own peer review. Bill Stoughton stated that he does not believe the site is that complicated and he is fairly confident the Board can sort the two reports out in a way that protects the Town's interests. Arnie Rosenblatt agreed.

The Board discussed its meeting agendas for two weeks and the December meeting. Bill Stoughton stated that he is in favor of meeting in two weeks to resolve this item. Tracie Adams stated that she was in favor of continuing it until December. Cynthia Dokmo agreed with Bill Stoughton, as did Rob Clemens. Arnie Rosenblatt stated that he is sympathetic to the applicant's concern in terms of timing and recognizes that construction will be an issue, however, he does not want an approval that is in any way tainted by someone who is vigorously opposing this, and the abutter is opposing it. Not having an adequate opportunity to address and comment on the traffic study could be a mistake for the Board and the applicant. He would recommend four weeks rather than two weeks. The prejudice of the two-week delay is less in the long run than the potential prejudice to the abutter and to the process in limiting it to two weeks. Tom Silvia stated that he is leaning towards two weeks because the abutter will only be responding to one study and is only submitting a response instead of a study from scratch. He noted that he will not be available in two weeks.

Tom Riley stated that he would acquiesce to the December date, as long as he can get the report back in two weeks in order to have time to comment on it.

Bill Stoughton noted that, if this is continued for a month, the normal deadline for submission of materials to be considered is a week before the meeting. He would like any abutter materials to be submitted a week before the meeting, in order to not have another continuance.

Bill Stoughton moved to continue this hearing to December 6, 2023, at 7pm, at Town Hall. Seconded by Tom Silvia.

Vote: 6-0-0 motion carried unanimously.

Bill Stoughton again stated that he would like the abutter's information submitted a week prior to the meeting, so that it may be reviewed by the applicant.

Arnie Rosenblatt stated that the hearing is continued to December 6th. At that time, the abutter will have an opportunity to submit responses to the traffic study one week before the meeting. The applicant will have an opportunity to consider it and the applicant will have an opportunity to respond to that response at the hearing.

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Tom Riley requested that the Town enforce the site plan that is approved for Dunkin' Donuts to utilize the correct drive through avenues for the site. The company is currently utilizing an access that was approved as an emergency and delivery access. Arnie Rosenblatt asked if this is part of the application process. Tom Riley stated that it is part of the traffic report. Arnie Rosenblatt stated that this can be considered at the continued hearing.

OTHER BUSINESS:

3. Discussion re: Proposed Zoning Amendments for 2024

Arnie Rosenblatt explained that the Board has a number of zoning amendments that were initially addressed at the last meeting. The purpose of this meeting is to determine whether there are any comments with respect to the language in amendments. Nic Strong asked if the Board would first address amendment #4, regarding wetlands, as Jared Hardner was present to give the Amherst Conservation Commission's (ACC's) input.

Jared Hardner explained that the ACC found three important areas for updates within the Zoning Ordinance. The first is that the Ordinance should refer to the most current versions of guidance documents including, for delineation of wetlands, the 2012 version of the US Army Corps of Engineers Regional Supplement and, for the classification of wetlands, the most recent version of the New Hampshire Method [*Method for Inventorying and Evaluating Freshwater Wetlands in New Hampshire*]. The second issue relates to the fact that in the Definitions section for wetlands and vernal pools, there is functional information, such as quantitative thresholds, one would only know about if flipping back and forth between the main body of the ordinance and the Definitions section. Some important components of that information should be pulled up into the main Ordinance. This will make it longer to read but there are critical pieces of information to be included. This is important in discussions with people that are not dealing with the Ordinance on a daily basis, as they are not familiar with the important language that is buried in the Definitions Section of the Zoning Ordinance.

Jared Hardner explained that, also, at the end of the Definitions section, there is a paragraph that asked the reader to use a document from 1991 and the current document is dated 2023. The 1991 version of the document gives the liberty to cut off wetlands if they narrow to 50' or less. The purpose of that would be to create what is called an evaluation unit or an assessment unit. Once the units are created, the next step is to use the size of the unit to determine how important it is and how big the buffers on it should be. He explained that he reviewed this item with one of the principal authors, Rick Van de Poll, of the New Hampshire Method and that person stated that there was a good reason the 50' rule was removed from the latest version of the New Hampshire Method, in that it has no basis in science. The author also mentioned that it is recommended to keep wetland systems whole unless there is good reason to break the complex into two or more evaluation units. This suggestion is being sent to Keach Nordstrom for their opinions. Meridian Land Services also agreed that it made sense to remove this section. The current version of the New Hampshire Method provides a methodology for determining when to break up wetlands and it does not include the 50' rule.

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Jared Hardner explained that the last issue relates to the fact that it is challenging for wetland scientists when they evaluate a large wetland to determine how large it actually is, if it extends off the subject property. The challenge is that the scientist may not necessarily have permission from the adjacent landowner to continue the delineation and give a proper assessment of the size of the wetland. This offers a potential loophole, to stop at the edge of the property and only size the portion of the wetland that is on the subject property. A wetland could trigger the 100' buffer because of its size, but a property line along the edge could reduce it to having a 25' buffer. The wetland would have the same hydrological and ecological importance, but the arbitrary property line running through it changes the level of protection. This has an effect on residents of the Town, especially as it relates to hydrology, because wetland buffers are green infrastructure, very important for managing floodwaters, etc. Removing these buffers that are protecting those wetlands effectively creates cumulative effects over time which could eventually require built infrastructure to substitute for these natural functions. Based on a recommendation from Rick Van de Poll, the suggestion is that when wetlands extend off a property, wetland scientists provide an estimate of the size using a topographic map based on LiDAR, which gives a 2-ft. contour, and/or color infrared maps, which show changes in vegetation, and any photographs or other evidence. The scientist should document how they determined the estimated size, with an exhibit depicting the supporting data.

Arnie Rosenblatt asked if these wetland items were not addressed at the last meeting. Bill Stoughton stated that this language is new to the Board. Jared Hardner noted that all of these suggestions will be sent to Keach Nordstrom for external input. He has also submitted them to Ken Clinton, Meridian Land Services, who was supportive of these changes as a practitioner. He also sent the suggested changes to Rick Van de Poll.

In response to a question from Arnie Rosenblatt, Jared Hardner stated that Ken Clinton and Rick Van de Poll support the language as currently submitted. He is awaiting comments from Keach Nordstrom.

Arnie Rosenblatt asked for comments from the Board.

Nic Strong stated that Jared Hardner's language was put into the format regularly used for zoning amendments. The first change is adding in the wetlands definitions, and up to date citations for the reference documents to be used. Further down in the Definitions section, vernal pools had incorrect references to a DES rule and two other definitions had no reference to the DES rule at all. As these are definitions from the State, she proposed to add that language. On the next page, in the Wetlands District section, she agreed with Jared Hardner regarding pulling up parts that currently are in the definitions but are Town of Amherst specific. She suggested that language regarding determining what a protection wetlands/significant wetlands/other wetlands and the way to determine the tiers for vernal pools be included in the Wetlands and Watershed Conservation District section.

Tracie Adams had no comments at this time.

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571
572 Tom Silvia asked why it is better to include this language in the main text, instead of only in the
573 Definitions section. Nic Strong stated that the Board should not regulate in the definitions
574 section. A definition should be a description of what an item is and the actual wording for what
575 to do should be in the body of the work.
576
577 Bill Stoughton asked about the abutting landowner's written permission item. If a wetland
578 stretches over 3-4 lots and the applicant is on the end lot, there is only one abutter but the whole
579 wetland should still be defined. Jared Hardner agreed. Bill Stoughton suggested deleting "the
580 abutting" and instead say "with landowners' written permission." Jared Hardner agreed.
581
582 Rob Clemens, Pam Coughlin, and Cynthia Dokmo had no additional comments at this time.
583
584 Bill Stoughton explained that the Board previously discussed topics for amendments, rather than
585 looking at specific language for each amendment.
586
587 Arnie Rosenblatt asked if there were any Board comments with respect to proposed amendment
588 #1. There were not.
589
590 Arnie Rosenblatt asked if there were any Board comments with respect to proposed amendment
591 #2. There were not.
592
593 Arnie Rosenblatt asked if there were any Board comments with respect to proposed amendment
594 #3. Bill Stoughton stated that he previously asked if the Board can be more stringent than these
595 changes to the floodplain language that are required by the feds. Nic Strong stated that the Board
596 can be, and in fact is encouraged to be more stringent, but there does not seem to be enough time
597 to make additional changes at this time.
598
599 Arnie Rosenblatt asked if there were any Board comments with respect to proposed amendment
600 #4. Nic Strong explained that, regarding the vernal pool definition change, the change is only to
601 the first line, while the rest of the definition itself is much longer and not affected by the
602 proposed change. The current language could be confusing. Arnie Rosenblatt suggested a bracket
603 after the proposed change, stating that the rest of the language will remain as it currently exists in
604 the Ordinance.
605
606 Arnie Rosenblatt asked if there were any Board comments with respect to proposed amendment
607 #5. Nic Strong explained that the Nashua Regional Planning Commission provided a matrix of
608 potential zoning amendments or items that need clarification or have inconsistencies. The first
609 item involves incorrect numbering in the Table of Contents. This is not a zoning amendment and
610 can be fixed at any time.
611
612 Nic Strong stated that the second item is that Section 2.3 contains a reference to Board of
613 Adjustment versus Zoning Board of Adjustment, which occurs throughout the whole document.
614 She asked if the Board would like this amended. Bill Stoughton stated that he does not mind if

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these are not all fixed now, and he would like to know whether any of these matrix items are important enough to consider for this year. He noted that there is only one Board of Adjustment in Town and does not believe this is confusing.

Nic Strong stated that the next item in NRPC's matrix suggests that listing site plan requirements in the Zoning Ordinance should be deleted. This is specifically in reference to equestrian events which is not spelled out in the site plan review regulations so she thinks this language should remain in the Zoning Ordinance. Arnie Rosenblatt agreed. Nic Strong stated that the next item is regarding whether to include a hyphen in the word "pre-existing." Arnie Rosenblatt stated that this is not an item of concern at this time.

Nic Strong explained that the next item is regarding Section 3.2 about nonconforming uses. This is already in the Board's matrix of items to be worked on because it needs detailed review that could not be done this year. Arnie Rosenblatt agreed.

Continuing through the matrix from NRPC, Nic Strong stated that the next item is regarding square feet versus s.f. This is in a table in the Sign Ordinance, and it is specified in the document that s.f. can be used after the first instance where "square feet" is spelled out. Arnie Rosenblatt agreed.

Nic Strong stated that the next item is regarding duplex versus two-family. There are two occurrences of duplex and only one of two-family in the whole Ordinance. She proposed not making this change because she thought that there were differences between the two in the Building Code that could be an issue. Arnie Rosenblatt agreed.

Nic Strong stated that the next item is within Section 3.7 which suggested adding a date to the Building Code. She explained that the Board could consider including the word "current" instead, but this is not needed. Arnie Rosenblatt agreed.

Nic Strong stated that the next item, adding a hyphen to the word "high water," does not need an amendment.

Nic Strong stated that the next item dealt with the lighting ordinance and that the definitions are not in the beginning as they are in some other sections. Arnie Rosenblatt stated that he did not want to address that this year.

Nic Strong explained that, for the next item, the Northern Transitional Zone was added in 1988 and #6 on the list of permitted uses was "all other development in the zone other than Planned Residential Development shall adhere to the following:" which continued directly into the sections on setbacks and frontages, etc. The language has changed over time and other items have been added to the list, and the colon no longer makes sense. This number could either be moved to the end of the list or it could be reworded, or the Board could delete this because a separate Planned Residential Development section exists in the ordinance and a separate set of

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regulations. Arnie Rosenblatt agreed that the section should be deleted, and this item should be included on the ballot.

Nic Strong stated that the next item involves changing language to be consistent regarding frontage. There are seven occurrences that could be changed within one amendment. The Board agreed to include a change of language to “frontage on a Class V or better road,” on the ballot.

Nic Strong stated that the next item deals with moving special exceptions and prohibited use language around in all the sections. The Board agreed not to pursue this item at this time.

Nic Strong stated that the next item involves making a table of all the dimensional requirements across the districts which would be a good thing to have but there was not time to do it this year. The Board agreed not to pursue this item at this time.

Nic Strong stated that the next item points out the difference between a ‘building’ and a ‘structure’ definition in the floodplain district. She explained that these are not the same as the Town-wide definitions, so no change is required at this time. The Board agreed.

Nic Strong stated that the next item suggests being very specific with a statute reference and she believes only referencing the parent statute is fine. Arnie Rosenblatt agreed.

Nic Strong explained that the next item points out that the Accessory Dwelling Unit section is actually called Accessory Apartment. The statute language is for accessory dwelling units, and it would be good to make that change at some point. The Board agreed to include this proposed change on the ballot.

Nic Strong stated that the final change is another statute reference, and she again believes that only referencing the parent statute is fine. Arnie Rosenblatt agreed.

Nic Strong explained that these proposed changes also need to go through Town Counsel. The Board will not have an additional meeting to review this language prior to the December 6th public hearing. The Board acknowledged this.

Bill Stoughton moved to send to public hearing the proposed ordinance amendments, as amended in the discussion tonight and as will be drafted. Seconded by Tracie Adams.

Vote: 6-0-0 motion carried unanimously.

4. Minutes: October 18, 2023

Tracie Adams moved to approve the minutes of October 18, 2023, as amended [Line 161: reword to say “...only has so many slots;” Line 279: change to “Planned.”]

Seconded by Tom Silvia.

Vote: 6-0-0 motion carried.

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702

703 **5.** Any other business that may come before the Board.

704 **Cynthia Dokmo moved to adjourn the meeting at 8:42pm. Seconded by Tom Silvia.**

705 **Vote: 6-0-0 motion carried unanimously.**

706

707 Respectfully submitted,

708 Kristan Patenaude

709

710 Minutes approved: December 6, 2023