

TOWN OF AMHERST
Planning Board

January 4, 2023

APPROVED

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

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

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

PUBLIC HEARING(S):

1. **Second Public Hearing on Proposed Zoning Ordinance Amendments. See separate notice.**

**Bill Stoughton moved to enter into a Public Hearing on the Planning Board proposed Zoning Ordinance amendments and the Petitioned Zoning Ordinance Amendments. Seconded by Tom Quinn.
Motion carried unanimously 3-0-0.**

Bill Stoughton stated that the first proposed ordinance amendment is the Sign Ordinance. The intent was to make the ordinance comply with a U.S. Supreme Court decision, which prohibits content-based regulation. The ordinance was reframed so that signs do not need to be read in order to be regulated. A couple of changes for clarity and as suggested by Town Counsel were made at the first hearing.

There was no public comment on this item.

**Bill Stoughton moved to advance the proposed amendment to the Sign Ordinance to the ballot. Seconded by Tom Quinn.
Motion carried unanimously 3-0-0.**

Bill Stoughton stated that the next proposed amendment is regarding reduced frontage lots. There were previously very few requirements in the ordinance regarding reduced frontage. Most of the requirements were found in the regulations. Ambiguity on this item had been pointed out by applicants to the Board. A working group examined how other surrounding towns regulate reduced frontage lots. The recommendation of the working group, which consisted of three members of the Planning Board and held public participation meetings, is a set of best practices based on what other towns have done..

Tom Quinn stated that he sat on the working group and has some mixed opinions on the best practices decided on. However, he believes it is good to clarify the ordinance and reduce discrepancy. For that reason, he supports the proposed amendment.

TOWN OF AMHERST
Planning Board

January 4, 2023

APPROVED

Brad Westgate, Winer and Bennett, LLP, representing Kevin and Claudine Curran, stated that he appeared before the Board on December 7th, at the first public hearing on the proposed zoning amendments. He addressed those proposals that night and submitted a letter to the Board outlining his thoughts in more detail. He explained that the stated goals of this amendment are to eliminate ambiguities and provide varying lot sizes with a now 50' proposed frontage requirement for reduced frontage lots. The apparent reasons for the changes are in recognition of typically higher wildlife habitat value of undeveloped areas located from road frontages. This justification relative to open space and wildlife habitat value, however, is not set forth in any study or recommendation from a scientific perspective. He stated that it would behoove the process to cite those studies that generate the goal of setting development back from road frontages.

Attorney Westgate stated that he does not believe the proposed amendments achieve the goals of a reduction in ambiguity or the assistance for wildlife corridors by keeping development away from the frontage. Regarding ambiguities, he stated that he does not believe there is an ambiguity in the ordinance itself. The zoning ordinance provision is clear that reduced frontage lots may be two acres and the subdivisions from which they are created have to be at least ten acres, for each reduced frontage lot. The Board has read these regulations and interpreted them in that same manner for over 30 years. The question relative to reduced frontage lots which has arisen over this past year deals with the Subdivision Regulations, not the Zoning Ordinance provision. The ordinance provisions proposed include a 300' setback requirement, meaning that on a reduced frontage lot, a house cannot be built closer than 300' to the road frontage. In this case, the very purpose of reducing development away from the road is frustrated as this will force the development 300' back in a reduced frontage lot setting. The nature of reduced frontage lots is that they are not all back lots. A reduced frontage lot could have 100' of frontage, or 150' of frontage, but it has to have at least 50' of frontage. The proposed ordinance change sets up a standard, but this standard does not meet all the possibilities of reduced frontage lot designs, thus it causes a disruptive process. If an owner of a subdivision creates reduced frontage lots, it may be more logical to build the houses on these lots closer than 300'. Due to this change, the owner would have to get a variance.

Attorney Westgate stated that the proposed regulation contemplates that in multifamily settings, minimum lot sizes be multiplied by the number of units. For example, in the Residential Rural District, which has a five-acre minimum, lots would have to have ten acres to contain a duplex. A duplex does not have the same impact on the land that two units, in comparison, would have. He stated that he believes the amendments are unnecessary, as they actually introduce ambiguity, and they do not achieve the objective of reducing impact from development.

Wendy Rannenberg, 51 Christian Hill Road, echoed Attorney Westgate's comments. She noted that the proposed amendments make it very difficult to provide senior housing located closer to the road which would allow for less driveway area to clear in the winter and a shorter distance to haul trash cans. These amendments also make it expensive to create duplexes, which is a way to provide affordable housing in Town.

TOWN OF AMHERST
Planning Board

January 4, 2023

APPROVED

88 Mike Del Orfano, Mack Hill Road, stated that he previously sat on the Planning Board. He stated
89 that he believes this Board should unanimously vote down recommending this zoning to Town
90 Meeting. He believes the legislation to be ill-conceived and an attempt to limit development
91 rights of larger parcels of land in Town. The proposed zoning change will fail in court on many
92 levels. At the highest level, this amounts to an inverse condemnation of constitutional property
93 rights, without compensation. The regulation would force a select few, but not all, landowners to
94 seek judicial approval to achieve the economic benefits from their land as allowed by current
95 law. An owner challenging this zoning has the burden of proving the zoning change is
96 unreasonable and unlawful. In effect, the proposed regulation creates an unnecessary hardship
97 for a limited number of parcels scattered throughout Town, across multiple zoning districts. As
98 set forth in RSA 674:20, the Town of Amherst has multiple zoning districts, and each has
99 regulations that are different from those of other districts. As written, the proposed zoning
100 change attempts to establish a single zoning ordinance that spans multiple districts. This is spot
101 zoning. The courts have defined spot zoning as area being singled out for a treatment different
102 from that of similar surrounding land, which cannot be justified on the basis of health, safety,
103 and general welfare of the community, and is not in accordance with the Master Plan. During the
104 2013 US Supreme Court session, the Court rendered three decisions, brought under the Takings
105 Clause of the 5th Amendment to the United States' Constitution, which states, "...nor shall
106 private property be taken for public use without just compensation." Property owners can invoke
107 this clause when alleging that the value of their property is being indirectly taken by enacting
108 overbroad regulations and ordinances. The law of inverse condemnation requires that the Town
109 pay property owners just compensation for this taking. Currently, the Town has multiple venues
110 for conserving land in its natural state. It would be a great expense to all taxpayers if the Town
111 has to go to court to resolve personal property right issues. The Planning Board may want to
112 consider the future expense of this proposal. He stated that he would submit the citations from
113 the Supreme Court and the State Supreme Court to Nic Strong for the Board's consideration.
114

115 Sally Wilkins, 28 Green Road, stated that some of the language given as justification for this
116 proposal, deals with the Town's rural aesthetic environmental/wildlife protection. However,
117 these are clearly growth restriction ordinances, being proposed to reduce and restrict growth, not
118 in the form of a moratorium, but as a permanent change to the density allowed in Town. In the
119 case of the scenic road ordinances, this is an attempt to use the scenic road ordinance and the
120 creation of new scenic roads or extensions of scenic roads, to enact spot zoning, which treats the
121 same land within a district differently than other land within that district. She stated that this
122 proposal is not surprising if one reviewed the addresses of the people who submitted this
123 language in the first place, and the locations that are targeted by the proposals which include at
124 least three applications currently before this Board. Those application parcels are vested under
125 the law, and thus, these proposals will not have either the intended effect or the actual intent. If
126 these proposals are enacted, a landowner with a limited amount of frontage will not leave that
127 land undeveloped. The results, instead, will be the creation of new roads. The reduced frontage
128 ordinances were first adopted 36 years ago to disincentivize the creation of new roads, as roads
129 have substantially more impact on land and are also substantially more expensive for future
130 homeowners and the taxpayers than driveways. As a member of the Amherst Land Trust, she
131 explained that the group is currently actively in negotiation with a number of people to place

TOWN OF AMHERST
Planning Board

January 4, 2023

APPROVED

easements over the back portions of their land. If these landowners are forced to install roads to access that land or create deeper lots, those easements will no longer be viable. In terms of the actual conservation and protection of land for wildlife habitat, it will be better not to include these proposals on the ballot.

Richard Hart, Christian Hill Road, stated that his property is approximately 8 acres, and he has been considering separating a lot out of that 8 acres for his daughters to use. He stated that he does not have a concern with any individual warrant, but rather the interactions between all of them. The proposal to make Christian Hill Road a scenic road and the proposal that any subdivision on a scenic road has to produce properties that are at least five acres in size, would impact his 8-acre property. This would reduce his ability to split his lot into two or three lots to zero lots. He asked if the Board's intention was for citizens like him to lose the ability to separate their property.

Arnie Rosenblatt stated that the Board is only discussing this one proposed ordinance change at this time. He stated that he does not view all of these changes together, but as separate items. Rich Hart stated that his concern is the interaction between all of these proposals and how they will affect a lot of citizens.

Ken Clinton, Meridian Land Services, representing primarily Kevin and Claudine Curran, along with a large number of other clients, past, current, and future, stated that he submitted some comments to the Board through Nic Strong. He handed out a single page exhibit to illustrate some of these comments.

Tim Kachmar sat for Chris Yates.

Ken Clinton stated that the title of Section 3.9 is Reduced Frontage Lots, meaning lots which do not meet the frontage requirements of the applicable zoning district. The terminology 'back lot' is not used, and there is no definition for this term given. He stated that he believes a back lot could be considered a lot adjacent to a normal frontage lot, with the building area to the back of the lot. Section 3.9.B notes minimum lot area. The minimum lot size being proposed is 5 acres in the Residential Rural Zone. The minimum lot size in the Northern Transitional Zone is proposed to increase from 3.5 acres to 7 acres, which is a doubling of that minimum requirement. In the Northern Rural Zone, the lot size is proposed to increase from 5 acres to 10 acres, which is a doubling of the requirement. He asked why the lot size is proposed to be increased from 2 acres to 5 acres in the Residential Rural Zone, instead of logically doubling from 2 acres to 4 acres. Not only is the 5-acre lot size based without any scientific studies or reports, the larger requirement actually defeats the stated purpose of the amendment. Creating a lot with greater area allows for private landowners to do more with it, as opposed to protecting this area as natural forest. The 50' corridor proposed only applies if the reduced frontage lot is also a back lot. In some cases, this would not be applicable or would require a zoning variance. The Board has used the term 'applicable proposed dwelling unit location.' This is not well defined. He stated that, regarding Part C of Section 3.9, Frontage, a 50' frontage requirement is arbitrary and without justification on a reduced frontage lot. The current ordinance allows for 17.5' frontage

TOWN OF AMHERST
Planning Board

January 4, 2023

APPROVED

each for a Class B parcel, with two adjacent reduced frontage lots. Doubling this would lead to 35', thus he questioned where the justification is for the extra 15' proposed. He stated that he previously remarked that 50' sounds reasonable for two side-by-side reduced frontage lots, otherwise known as Class B, but to require 50' for every single reduced frontage lot is arbitrary.

Ken Clinton stated that there is a statement in the proposal that a reduced frontage lot should have its frontage contiguous with, what is now known as, a normal frontage lot. He stated that he does not understand the purpose of this, as it only applies in a back lot scenario. The amendments, however, are not entitled 'back lots,' they are entitled 'reduced frontage lots.' There is no definition for a 'back lot.' It further states that additional reduced frontage lots are not allowed within the same subdivision. This statement is unclear, because if a subdivision was approved one year and another subdivision for the remainder of the land was proposed in the future, is it unclear if this provision is still available. He is also unclear regarding the sentence that requires each normal frontage lot to be contiguous with only a single reduced frontage lot. He believes this should read that a reduced frontage lot is required to be contiguous with a normal frontage lot.

Regarding access, Ken Clinton stated that he is unclear regarding the sentence 'an integral portion of and attached to the back lot.' He asked if this means that a driveway has to be within the 50' frontage of the back lot. Regarding driveways and reduced frontage lots, this amendment has numerous requirements specific to back lots. He stated that he does not believe it is wise to have different regulations for reduced frontage lots or back lots, compared to adjacent normal frontage lots. There should be consistent driveway regulations which apply equally to everyone.

Ken Clinton stated that there is also a reference that separation on cul-de-sacs requires 750' measured around a road and that reduced frontage lots are not allowed without using the Town's current singular geometric standard for cul-de-sacs. The Town's singular geometric standard is deeply flawed. One example is that it requires a right of way, both in the outside perimeter of the cul-de-sac and in internal radius as well. This forces an applicant to create a non-conforming lot inside the cul-de-sac, as the standard requires a right of way on both sides of the pavement. This will clearly require a zoning variance and was likely not the intention.

Ken Clinton stated that there are also a couple of incidental things which are unnecessary, such as requiring Town Counsel review and Planning Board acceptance of a private easement and calling a shared driveway for two driveways a common private way. The proposed 300' setback completely contradicts the stated purpose by pushing buildings into the woods and creating lengthier driveways. There seems to be a substantial misunderstanding between reduced frontage lots and back lots. A reduced frontage lot simply means that it has less than the minimum lot size required in that zone. Where every back lot is a reduced frontage lot, not all reduced frontage lots are back lots. These amendments are deeply flawed, and he urged the Board not to submit them for the public warrant.

There was no further public comment at this time. Arnie Rosenblatt asked the Board for their thoughts.

TOWN OF AMHERST
Planning Board

January 4, 2023

APPROVED

Bill Stoughton stated that a reduced frontage lot is a choice. In a traditional subdivision, a developer could choose to seek approval for reduced frontage lots or propose a Planned Residential Development, which avoids the reduced frontage lot requirements altogether and includes other items to protect wildlife. He stated that he understands that developers have an incentive to get as many lots as possible out of a parcel. This proposal may change how developers have to calculate some of those incentives. He stated that he believes this will be a very workable ordinance and, if it is not, the Board will change it.

Tom Quinn stated that he is not thrilled with this proposed ordinance. He believes it will make it easier to develop back lots. However, the clarification of this ordinance will make the Board's process a lot easier. He noted that it is difficult to review all of the last-minute comments submitted. He stated that Ken Clinton was present at many of the working group meetings, but he does not recall hearing the points made by Mr. Clinton previously.

Tracie Adams asked Bill Stoughton to speak more to the differentiation between back lots and reduced frontage lots, as raised by Ken Clinton. Bill Stoughton stated that for both lots shown on the map handed out by Ken Clinton, as long as they had the required frontage on the road under the revised regulations, both could be reduced frontage lots under the proposed ordinance. The proposed ordinance does not outright prohibit a reduced frontage lot which is triangular in shape, but otherwise complies with the requirements.

Tim Kachmar stated that he believes this proposal supports where the Town residents want development to go. He stated that he believes it is funny that the comments received tonight were from ex-Planning Board members. These people are no longer on the Planning Board because the Town did not want them, due to their ideas of development or things they were planning for this Town. One ex-member should be sued because of his actions at Planning Board meetings that resulted in a recent case being kicked back to the Planning Board. He stated that he is in full support of this proposal.

Bill Stoughton stated that, respectfully, he disagreed with some of Tim Kachmar's comments. The views expressed tonight by all people were made in good faith. He stated that he does not believe Board members should be personal in their attacks. Tim Kachmar stated that he was not being personal. Bill Stoughton respectfully disagreed. He noted that, while he may not agree with all of the comments made, he welcomes them and defends each person's right to make those comments.

Arnie Rosenblatt noted that he welcomes comments by everyone. He stated that he has certainly made comments that people disagree with. He noted that this is a standalone amendment. Simply because this is approved or not approved does not mean that another proposal will be approved or not approved. He explained that no one present knows exactly what a court would do if this item was challenged. He stated that he does not believe this is spot zoning, exclusionary zoning, or snob zoning. He stated that he believes this is an effort to address ambiguous portions of the existing ordinance. He agreed with Attorney Westgate that the existing ordinance and regulations

TOWN OF AMHERST
Planning Board

January 4, 2023

APPROVED

are ambiguous. He stated that the interpretation of the Planning Board over the last decades, as presented, is likely correct. The Board can either decide to live with the interpretation as it has been employed or change it. He does not believe that everyone on the Board agrees with how the existing ordinance is interpreted. While he sympathizes with some of the comments made this evening, he is not persuaded by them. He stated that arguably anything could be seen as a taking as zoning, by definition, is restricting someone's use of land. While he is not strongly in favor of this proposal, he also does not necessarily agree with the arguments against it.

Tim Kachmar stated that Bill Stoughton has done a great job of considering these proposals and working through the process of the regulations and ordinances. This presents a clear step forward, with some limitations and clear direction. It would be impossible to make something perfect that fits every single case.

Arnie Rosenblatt thanked Bill Stoughton and those involved in drafting this proposal.

Tom Quinn stated that the impetus for this particular amendment was to bring some clarity to the ordinance, which was not clear. Attorney Westgate made a lot of great points. He stated that he can see the current ordinance in two different ways. The purpose of this proposal is to bring some sort of certainty to the zoning ordinance.

Bill Stoughton stated that he is quite certain that this could be improved and will be improved over time. He asked if the Board wants to take the current ordinance, that it generally agrees is flawed, and replace it with something that is better, he believes, or leave the flawed ordinance and regulations in place.

Bill Stoughton moved to advance the proposed amendment to reduced frontage lots to the ballot. Seconded by Tom Quinn.

Discussion:

Tom Quinn stated that does not believe the proposal is flawed, though he may not 100% agree with it.

Motion carried unanimously 4-0-0.

Tracie Adams presented the proposed amendment to scenic setbacks and minimum lot frontage. She explained that, on September 27th, the Planning Board received a letter dated September 14, 2022, from several citizens who supported it and were looking to change the frontage and lot size requirements on scenic roads. The Planning Board discussed this item and created a working group, consisting of three Board members, Tim Kachmar, Tom Quinn, and herself. Several citizens also participated. The group generated the current draft, minus a five-acre minimum item, which was removed at a subsequent Board meeting. The current suggestion includes a frontage of 300' on scenic roads. The purpose of this is to provide a vegetative buffer within a scenic setback, as well as increase that scenic setback from 100' to 125'.

January 4, 2023

APPROVED

Bill Stoughton stated that there is a similar petitioned warrant article and the proponents have made very strong points in favor of making these changes. They are consistent with preserving more open space within the Town, which residents of Town expressed as a desire in the Master Plan. Preservation of the rural, scenic, and undeveloped nature of the Northern Rural and Northern Transitional Zones is a justification in the ordinance for increased lot sizes and frontage required in those zones. However, these increased frontage requirements are generally recognized as density reduction measures. Residents seem to favor this and there is value in preserving open space, but he does not think this proposal is the way to go about it. He does not object to the voters choosing whether to increase setback requirements on scenic roads and other designated roads, but he does not plan to support increasing the frontage requirements. The existing increased lot size and frontage requirements are based primarily on the ability of the land to support development. The northern zones have increased frontages and lot sizes due to the prevalence of steep slopes, poor soils, and limited access in that area of Town. Under the proposed amendment, that justification cannot be made in all parts of Town. It would establish increased frontage requirements based solely on location along designated roads. Some of those roads have been formally designated as scenic roads, while others have not. The result of this proposed amendment would be a scattered mix of frontage requirements within the Rural Residential Zone, which covers most of the Town. Two lots with identical physical characteristics could have significantly different frontage requirements, and therefore potential value, based solely on the respective street location. A neutral observer would be hard pressed to understand what basis the Town had for a mix of frontage requirements and the resulting noncontiguous zoning. Frontage requirements would also be subject to change in the future, based on whether a road is designated as scenic. The previously discussed amendment allows for an option between a traditional subdivision or one with reduced frontage lots, but there is no choice with this amendment.

Tracie Adams explained that the working group was looking to enhance and maintain rural character. The group was also interested in wildlife corridors and landowner rights. This proposal was not intended to supersede their rights. The Penn Central Test was reviewed and there were three factors to be assessed, including reviewing the regulation's economic effect on the landowner, the extent that the regulation interferes with reasonable investment backed expectations, and the character of the government action. Tax maps and maps from the Nashua Regional Planning Commission (NRPC) were reviewed. There are 14.7 miles of scenic Town roads in the Residential Rural Zone and, of the 16 scenic roads listed there, approximately half of them contained lots that were determined would be impacted by this change. In *Conservation Biology* 2011, there was an article entitled 'The Effects of Road Networks on Bird Populations,' which stated that there is a direct effect of roads on birds, including habitat loss, fragmentation, vehicle mortality, pollution, and poisoning. The article stated that, "increasing habitat loss and fragmentation, and predicted species distribution shifts due to climate change, are likely to compound the overall effects of roads on birds." In *Current Landscape Ecological Reports*, 2017, an article entitled 'Effects of Landscape Structure on Conservation of Species and Biodiversity,' examined 215 different research studies conducted between 2011 and 2015 exploring the impacts of roads and road networks on a variety of species. The article stated that, "the presence of roads can be related directly to the mortality of wildlife, hindering wildlife

January 4, 2023

APPROVED

movement both physically and behaviorally, and the loss and degradation of the habitat, all of which can have far reaching implications.” The NH Fish & Game website lists a NH Wildlife Action Plan, which is a blueprint to conserve species of greatest conservation needs and their habitats. Chapter 5 of that plan includes some ideas that can be implemented, including maintaining and creating wildlife habitat; this is the intention of the buffer and movement of the setback being proposed. This proposal should be considered for conservation and to increase and maintain the rural character desired in Amherst. There needs to be some sort of plan to allow for positive actions. She asked people to look at other towns nearby and see what growth has looked like when these factors have not been considered and regulated.

Tom Quinn stated that he had concerns about setting a minimum lot size, based on the Penn Central Test. As that part of the proposal has been removed, he fully supports this. There are still some concerns that this may impact property owners. The intention is to increase setbacks and allow for a recommended no disturbance buffer on scenic roads. It also proposes to increase the setback on roads with scenic setbacks. This is an important proposal, as it is one that matters to the citizens of this Town. The recent Master Plan survey showed a highest priority for maintaining the rural nature of the Town. The Master Plan is supposed to drive zoning. This proposal does not require larger lot sizes, and if a minimum lot size is not sufficient to meet these standards there is relief available to a landowner. There are also other options for a landowner to develop their land, potentially with a higher density than a traditional development.

Tim Kachmar stated that he is totally in favor of this and believes it reflects what citizens want.

Arnie Rosenblatt stated that he cannot support the 300’ frontage, for the reasons articulated by Bill Stoughton. He stated that he is confident that a majority of people in Town would support this. He stated that he has tried to help preserve open space in his time in Town, but he cannot support this proposal. The best way to preserve open space in Town is to buy it. The Board does its best to protect the Town and to scrutinize applications, but the harsh reality is that the best way to preserve 100 acres is to buy the 100 acres and set it aside. This does not mean the Board should not scrutinize applications or create smart ordinances.

Richard Hart, Christian Hill Road, and member of the Amherst Conservation Commission (ACC), stated that, from a conservation point of view, the proposed 300’ frontage is not going to help wildlife habitat at all. In fact, it will likely reduce the available habitat. Most wildlife requires areas that are much larger than 300’; it requires multiple acres. The best way to preserve habitat is to keep a house as close to the road as possible, and preserve 300’ of trees in the back, bordering other trees.

Brad Knight, Upham Road, stated that the 300’ frontage may make sense for four or five acres. It is very difficult to develop a two-acre lot with a 200’ frontage, while meeting all of the other requirements. If the setback of that house is increased, this increases the width of that frontage, and the lot becomes very narrow. The Board is proposing to use RSA 231:157 Scenic Road Designation as an identifier for the proposed zoning change. The scenic road designation is not a zoning function; it was created to maintain the rural and scenic beauty of many older travel

TOWN OF AMHERST
Planning Board

January 4, 2023

APPROVED

corridors in Town. It protects trees, stone walls, and the existing character of these roads. Overlaying the scenic road designation with zoning requirements essentially creates a new zoning district. Most voters will applaud any change that is perceived to slow down development, however most are unaware of the impact on many homeowners in Amherst. This action will make most existing homes on scenic roads nonconforming, as they no longer meet the proposed zoning requirements. All changes to those previously conforming homes will now require a variance. This will strip these owners of property value and increase costs for upgrades or maintenance. He stated that he is concerned that the Town is defending an illegal action of arbitrary increases to frontage and setbacks only applying to a few. It will be very difficult to justify this change, The Board will have to explain why two roads, side-by-side, have different requirements, solely based on a non-zoning designation. The Board has better options to control development of the few remaining parcels in Amherst.

Wendy Rannenbergh, Christian Hill Road, echoed Brad Knight's comments. She stated that the notion of moving a house back to help preserve open space in Town is silly. All that this will do is hide houses from the road. She stated that she is concerned that the Board is proposing this change at the same time there is a petitioned warrant article, which by law has to be on the warrant, to change the designation of Christian Hill Road to a scenic road. Voters may vote on the petitioned warrant article and this article without a clue as to how the two interact. She stated that proposing these two items at the same time is not in the best interest of the voters and homeowners in Town.

Dave Williams, County Road, stated that he has reviewed every parcel of land proposed to be affected by this. There are only a few impacts, and these are not huge. This proposal does not deny development of property, but instead proposes an increase from a 200' frontage to a 300' frontage along scenic roads to maintain the rural character of the Town. He stated that he believes there is value in not driving off wildlife due to overbuilding. He asked how there can be a cost benefit cost analysis of owls in his backyard versus widening a scenic road to accommodate more traffic. He lives between Spring Road and County Road, containing one of the major aquifers in Town which could be a future source of water for the Town of Amherst. A major threat to this aquifer is overdevelopment. Every new house built on these roads, or any other scenic roads, will likely include 2-3 vehicles. This does not include the Amazon or FedEx delivery trucks and the oil trucks. These will all crowd pedestrians off the road. People come from all over the world to visit this State, see the landscape, and see the unique and quaint New England villages. He stated that he is not opposed to all development, but this amendment could help to move the Town forward. When the wildlife is gone, the water is contaminated and the streets are crowded with cars and pedestrians no longer feel safe, this quaint New England Town will be gone forever. People need to decide if the dollar value of a piece of property or the values of the citizens is more important.

Howard Muscott, 48 County Road, stated that he and his wife emphatically support this amendment. He believes this item should be put to the voters. The residents have already spoken on this issue, via the Master Plan survey. This is a value judgment regarding how to protect the Town's spaces. This proposed revision is a compromise, dealing with a limited amount of a

TOWN OF AMHERST
Planning Board

January 4, 2023

APPROVED

property which will be impacted. Simply because a scenic road is not a zoning item, does not mean that the people who are in charge of zoning should not deal with zoning on a scenic road. This proposal is likely the smallest amount of change and compromise which achieves what the voters want, protected open spaces and wildlife habitat. 91% of people in the Master Plan survey stated that they want to preserve these spaces.

Israel Piedra, Welts, White, & Fontaine, P.C., representing Brett Vaughn of Vonderosa, LLC, stated that his client owns multiple parcels. approximately 350 acres, on/or near County Road. His client intends to develop that land. Members of the public, supporters of this petition, and members of the Board have openly acknowledged that one of the main instigators of this proposal is to limit the planned development by his client. He questioned the statutory and zoning authority of the Board or the Town to even consider this type of regulation. Under the Scenic Road statute, ten members of the Town can petition to designate a road as a scenic road on the ballot. This creates a system where ten members of the Town can essentially create zoning through Town Meeting, without any review by the Planning Board. If this Board and the town continue to impose dimensional requirements on scenic roads that are tied to scenic roads, in the future ten members of the Town could petition Town Meeting to designate every road in Town as a scenic road. Thus, every road in Town could be subject to these dimensional requirements. This is not how zoning is intended to work under the State statute. He stated that he does not believe this type of dimensional requirement for scenic roads is lawful under State law. He stated that he knows the working group searched for any other town in the State with frontage requirements tied specifically to scenic roads, and there are not any. This is because it is not within the purview of the Scenic Road statute to create dimensional requirements. The Board cannot simply impose zoning requirements on random parcels in Town that have nothing in common with each other except that they have been arbitrarily designated as scenic roads. He stated that the Scenic Road statute itself has notice requirements to abutters that are on scenic roads. The citizen's petition to designate a road as a scenic road should have notified every abutter on that road. He does not believe that happened, thus, this item should potentially not be forwarded to Town Meeting. He stated that this proposal also has unlawful effects against his client, as it is partially targeted at him. The reasons given for this proposal are pretenses to limit development. This violates his client's substantive due process rights and his equal protection rights. His client is being treated differently than other nearby landowners. He noted that this proposal does not do what the Board is intending. The scenic setback is already twice as much as any other lot in this district, the Residential Rural Zone, and the Northern Rural Zone. Normally it would be 50', and it is already 100'. The proposal to make it even larger does not have an appreciable difference. This will simply allow for an extra 25' of lawn. It serves to limit development and does not have any legitimate purpose. Similarly, the frontage requirements are an arbitrary way to reduce the number of houses on a road. This will push houses back into wooded areas, require longer driveways, reduce the feasibility of having shared driveways, increase the number of curb cuts and potentially lead to the need to create new roads. These all work to the opposite of the intention of the proponents. This does not accomplish the goal of preserving open space. A better approach would be to work collaboratively with property owners on a case-by-case basis to come up with thoughtful and flexible planning. This can include working with developers to establish networks of trails and other conservation efforts to provide

TOWN OF AMHERST
Planning Board

January 4, 2023

APPROVED

benefits to the Town. These options are eliminated if the Board forces developers to do certain things in order to use the land in a reasonable manner. This proposal is not good for the Town, it is not good for property owners, and it is not good for the land. He urged Board members to consider voting against this proposal.

Beth Sullivan, Village Woods, stated that her driveway is ¼ mile long. There are back lots in her neighborhood, along with 25+ acres around the neighborhood that is mutually owned by those in the area. This was done to safeguard against developers coming into the area. Residents have less property rights than developers. There is no control unless there are covenants for a neighborhood.

Brett Vaughn, 3 Huxley Lane, stated that this proposal is supposed to preserve wildlife and enhance the rural beauty of the Town, by stopping unsightly construction. This proposal does not stop someone from dumping junk in their front yard, or maintaining the woods in front of the property, it simply restricts the ability to build a house on a lot. It is in the best interest of a builder to place a house properly on a lot to make the lot look nice and avoid clear cutting. The 43 signatures for this item live on a very small section of County Road and are trying to make changes for the whole Town. He stated that he believes there is a collaborative way to work through these items with developers and the Board. Most people that he has spoken to about his proposed development simply do not want a paved road through the area. There is a way to work collaboratively to make that happen, keep the road safe, and keep the area beautiful. This specific proposal does not meet the purpose. It is deceiving to say that this will increase the rural beauty of the Town, when it will really only harm people who want to build on their lots.

Ken Clinton, Meridian Land Services, on behalf of Kevin Curran, stated that Section 3.11.A. Purpose, includes language, “to encourage” a vegetative buffer, and encouraging something in zoning is not appropriate. A zoning ordinance should either allow a certain use or specify a dimensional requirement; it should not encourage. ‘Encourage’ does not have any business being in a zoning ordinance. The ordinance needs to be black and white. The 25’ setback increase in Part B of Section 3.11, from 100’ to 125’, will not achieve the stated goals of this proposed purpose. He stated that he is a land surveyor by profession, and it is hard to find a surveyor that visually can tell the difference between 100’ and 125’; no one will notice an additional 25’. This is an insignificant, arbitrary change, especially when considering the landowners’ right to use their land. Moving a house back on a lot will simply allow for the area to be cleared, even if a buffer is encouraged, which, again, is not appropriate. This is based on an assertion of the State’s language within the ordinance which is not appropriate. The proposal notes it to be a ‘50’ vegetative buffer, without a unit assigned to it. The amendment, as written, is incomplete. Finally, there is an absence of a list of roads in Section B, as there should be. He asked if this deals with the 16 scenic roads, or the additional 11 scenic roads with scenic setbacks, or both, for 27 in total. This proposal is deeply flawed as it is incomplete and should not be placed on the ballot.

Wendy Rannenberg approached the microphone to speak. Arnie Rosenblatt stated that she had already spoken once on this topic. Wendy Rannenberg stated that there was nothing stated at the

TOWN OF AMHERST
Planning Board

January 4, 2023

APPROVED

beginning of the meeting to say that people could only speak once on a topic. Arnie Rosenblatt stated that he is stating it now. She explained that she waited for everyone else to speak on this topic before speaking again. Wendy Rannenberg stated that there are a certain number of roads listed in this proposal, but there is also another amendment proposed to add additional roads as scenic roads in Town. The committee that put that item forward has the intention of putting forward a significant number of additional roads in Town in the coming years to add them as scenic roads.

Jason Sorens, Cricket Hill Drive, stated that the minimum frontage requirement, and minimum lot size are not fundamentally different. A larger minimum frontage will effectively require a larger lot size. The NH Zoning Atlas contains every zoning district in the State and shows that only 79 districts in the State have a minimum frontage of 300' or more. Only 6% of zoning districts in the State have a minimum frontage that high; 1,217 have lower frontages. The claim that low density development protects the environment is actually untrue, according to the standard knowledge of urban planning. He encouraged people to review the University of Maryland Center for Smart Growth. Forcing people out into remote areas by limiting development creates longer commutes leading to more air pollution, more impervious surfaces, more disturbance, and more invasive species. The vegetative buffer mentioned in this proposal is optional, and it is not defined. This ordinance does not protect environmental values. He cautioned against assuming that the majority of voters support this. Approximately 10% of the Town participated in the Master Plan survey; this is probably not a representative sample. St. Anselm College does an annual survey regarding views on housing, which found that more than 60% of NH voters support building more affordable housing in their community. This is likely not substantially different in Amherst.

Tracie Adams explained that Ken Clinton pointed out that there should be a notation of the scenic roads. This is found in Section E: Scenic Roads but is not listed in this proposal. This was listed in the original but was not included in the public's version.

Tom Quinn asked if there is a technical issue with this proposal, which could affect the other citizen's petition proposal. Tracie Adams noted that the word 'feet' is not included, as pointed out by Ken Clinton. Nic Strong explained that the only things in this item are the sections proposed to be changed. There are other pieces of existing Section 3.11 that are not included, as no changes are proposed to them. The list of roads is one of those items.

Tim Kachmar moved to advance this proposal to the ballot, with the inclusion of the words '50 feet' in the appropriate location. Seconded by Tom Quinn.

Discussion:

Bill Stoughton stated that he appreciates and supports why people want to make this change but having listened carefully to all the comments, and as the frontage change remains in the proposal, he will oppose it.

Arnie Rosenblatt stated that he has not been swayed and cannot support this item.

January 4, 2023

APPROVED

Tom Quinn noted that this will go on the ballot anyway through the citizens' petition.

Arnie Rosenblatt stated that the support of the Planning Board on an article on the ballot holds some weight. He noted that, while he generally does not vote on motions, he will vote on this item.

Motion carried 3-2-0 [B. Stoughton and A. Rosenblatt opposed].

Bill Stoughton stated that amendment #4 has already been advanced to the ballot.

Bill Stoughton stated that amendment #5 deals with a proposed outdoor lighting and glare ordinance. A couple of changes were made at the request of Town Counsel. One change helps to limit the amount of light shone upward at nighttime and leaving the lot.

Bill Stoughton moved to advance amendment #5, regarding outdoor lighting, to the ballot. Seconded by Tom Quinn.

Motion carried unanimously 4-0-0.

Bill Stoughton stated that amendment #6 deals with a limited set of changes to Section 4.9 regarding the Industrial Zone. Substantive changes were made at the first hearing and are reflected.

Morgan Hollis, Gottesman & Hollis, P.A., representing Tana Properties Limited Partnership, stated that his client is the owner of a significant amount of property in the Industrial Zone. He spoke in opposition for his client to the proposed amendment to Article 4 Section 4.9 of the Industrial Zone, a proposal to require an earthen berm and noise attenuation panels between lots in the Industrial District and bordering residential zones or uses. The provision states that between the 100' vegetated buffer and any building, an earthen berm topped by noise attenuation panels shall be constructed for visual, light, and noise attenuation. The height of the earthen berm and noise panels shall be adequate for visual, light, and noise attenuation, as determined by the Planning Board. Testimony was heard before the working group for this item and at the last public hearing, that this proposal is purposely vague, and that people should trust the Planning Board. He stated that all ordinance changes should be reviewed in light of the criteria of Penn Central standards, nexus versus reasonable investment backed expectations of property owners. This proposed amendment lacks the required and necessary sufficient detail to advise either an applicant before the Planning Board or the Board itself as to what the minimum requirement is for a plan to be submitted. The zoning ordinance must be complied with in order to submit a development plan for site plan review. This proposal includes a 100' vegetated buffer, which his client does not object to. It also states that, outside this buffer, there shall be an earthen berm. There are no details as to the size, or steepness of this berm, if it must be landscaped, or the size or materials of the noise attenuation panels which must top it. The noise attenuation panels shall be constructed for visual, light, and noise attenuation. He asked what the definition of attenuation

January 4, 2023

APPROVED

is. One definition of attenuation is reduction, but this term is also not defined. The Planning Board will somehow mysteriously come up with an answer as to the details for these items and how attenuation is going to be accomplished. An ordinance has to have specificity and this proposal does not have specificity, as there is no specificity as to what is actually to be attenuated. There is no standard for the attenuation and there is no definition as to the earthen berm or the panel. This sounds more in keeping with the Board's Site Plan regulations which, in the Industrial District, already allow the Board to require an earthen berm. His client requested that the Board withdraw this proposed amendment in order to allow for further definitions and the incorporation of appropriate standards. This perhaps belongs in the Site Plan regulations not in the zoning ordinance.

Barbara Staffiere, 9 Crystal Lane, requested that the Board consider amending this proposal to include a 40' maximum height of buildings throughout Town. She noted that the reason for leaving these decisions up to the Board was due to the fact that the size of the structure would not be known ahead of time. Thus, to require a 20' berm for a 10' tall building would not make any sense. The Board would base this decision on dimensions of the structure proposed.

Richard Hart, Christian Hill Road, suggested that this article specify levels for the attenuation, for example, below 20 decibels at a distance of 10' from the border, some number of lumens or less 10' from the border, etc. This would give specifics and then let the developer decide the best way to achieve them.

Bill Stoughton stated that he would not call the provisions regarding visual, light, and noise attenuation vague. He stated that they are flexible precisely for the reason mentioned by the resident. What is proposed to be built on a site will control what the berm and the panels look like. The Board has proposed amendments to the Site Plan Review Regulations should this zoning amendment pass to supply those details.

Bill Stoughton moved to advance amendment #6 to the ballot. Seconded by Tom Quinn.

Motion carried 3-1-0 [T. Kachmar opposed].

2. Public Hearing on Petitioned Zoning Ordinance Amendments. See separate notice.

Arnie Rosenblatt explained that the next items are four petition zoning ordinance amendments. He asked what needs to be done with these. Nic Strong stated that, generally speaking, the Board would allow the proponent of the petition to explain the proposal and then the Board can state if they recommend it or not. This recommendation will be placed on the ballot with the petition.

Skip Dalton stated that the warehouse subcommittee group was made up of Board members, Bill Stoughton, Chris Yates, and Cynthia Dokmo. The group undertook extensive research to look at other towns that were struggling to deal with the impact of extremely large distribution centers proposed and/or built near residential neighborhoods. The group sent multiple letters to the Board outlining these problems. A number of these issues have been addressed in the Board's

January 4, 2023

APPROVED

proposed amendments #5 and #6. This petition took the approach adopted by Chelmsford and Acton, MA, with their respective ordinances. The differences between warehouse and distribution center business models were added, with Chelmsford's comprehensive definitions, to Article 9. These definitions form the basis for the replacement section in the permitted usage for Industrial Zone. Chelmsford had this overwhelmingly passed by their Town Council in October 2022, hence it is believed these definitions have gone through extensive legislation and legal review. The business models for warehouses and distribution centers have changed dramatically over the past 60 years. Distribution plants were added to Amherst's Section 4.9 in 1963, but there is no definition expressed at all. There is no definition for warehouse or distribution center in Section 4.9.1. Skip Dalton continued that the group's research indicated a massive surge in building extremely large distribution centers all across the nation. New Hampshire has been somewhat buffered from this impact until recently. Now, out-of-state developers are invading New Hampshire, seeking out vacant land and/or redeveloping commercial properties. Zoning regulations must protect the Town's neighborhoods, infrastructure, wetlands, aquifers, open space, wildlife, safety, traffic issues, property values, protect citizens from accidents that occur in industrial facilities, while still allowing reasonable progress. The Town wants to attract businesses that are beneficial and not all businesses will ultimately prove to be so. Skip Dalton stated that the planned development proposal from April 2022 was a wakeup call for action. The Town was caught with old, outdated ordinances that provided no guidance for reasonableness of the application. The proposed structures and parking facilities were so large they could not fit on 148 acres. While that applicant ultimately walked away, the Bon Terrain properties continue to be aggressively marketed in exactly the same fashion by the property owner. Without ordinance changes, the owner will secure another client focused on building a 1M+ s.f. distribution center. The proposed amendment is, "To see if the Town will vote to amend the Amherst NH Zoning Ordinance Article 9 Section 9.1 Meaning of Certain Words, by adding the following definition: Warehouse: a facility or part of a facility used primarily for storing goods, wares, commodities and merchandise, whether for the owners thereof or for others, and whether it is a public or private warehouse operation, or act in relation thereto. Warehouse shall include shipping and/or delivery to retailers and businesses (business to business, and wholesalers). Warehouse shall exclude Distribution Center, as defined in Section 9.1." The reason for differentiating warehouses is that these generally have a much lower impact. Impact includes traffic volume anticipated from new land use construction and, as the Board knows, this is a key factor in calculating impact fees. The Institute of Transportation Engineers (ITE) has dramatically different traffic calculations for each type of warehouse use and the ordinances should reflect these differences, in order to help properly assess traffic, air quality, noise, and overall environmental intensity.

Skip Dalton stated that petitioned amendment #2 is, "To see if the Town will vote to amend the Amherst NH Zoning Ordinance Article 9 Section 9.1 Meaning of Certain Words, by adding the following definition: Distribution Center, a facility or part of a facility where goods or products are stored on site temporarily for the primary purpose of shipping and/or delivery to a consumer. Such facilities may include automated systems, office space, and a pick and pack area to be used by employees for sorting and packaging goods and products for shipping and/or delivery from available onsite inventory. Distribution Center includes fulfillment by third parties for the above

January 4, 2023

APPROVED

stated purpose. Distribution Center excludes shipping and/or delivery to retailers and businesses (businesses to business and wholesalers). Distribution Center is not defined as Warehouse, as defined in Section 9.1. Distribution Center is not defined as Retail use that may simply have an accessory delivery component.” Currently no definition exists for Distribution Center in the ordinance. This distinguishes higher impact distribution centers from lower impact warehouses. Distribution Centers are business-to-consumer facilities built primarily to facilitate distribution of fulfillment of goods and materials to consumers. The Distribution Center definition also does not include any retail use that may have an accessory delivery component.

Skip Dalton stated that petitioned amendment #3 is, “To see if the Town will vote to amend the Amherst NH Zoning Ordinance Article 4 Section 4.9 Industrial Zone A., Permitted Uses by including the following use: 6. Warehouses, Distribution Centers no greater than 200,000 s.f., service industries, and parcel delivery.” Currently, the ordinance reads “6. Distribution Plants, service industries, parcel delivery.” This 200,000 s.f. limit is being proposed for high impact distribution centers and is a reasonable metric. All the open industrial lots in Amherst are well over 6 miles from the Everett Turnpike, along an already heavily congested traffic area, Route 101A. Most of the open lots along this area reside on sensitive aquifers and have other environmental considerations. This amendment will provide flexibility and planning tools for the Town, while still mitigating the negative impacts from mega distribution centers. There are seventeen additional permitted uses for Industrial Zones. This proposal offers a balance between the Board's need to provide additional tax dollars, without unduly compromising Town resources or resident safety. These ordinances can be further amended as business models change and based on the impact of those changes on the Town. Through application of this amendment, Amherst will send a responsible message to outside developers that Amherst is interested in adding reasonable growth to its industrial base.

Morgan Hollis, Gottesman & Hollis, P.A., representing Tana Properties Limited Partnership, stated that his client owns a number of parcels of land in the Bon Terrain Industrial Park, which contains the primary open land remaining in the Industrial Zone. His client has asked him to speak in opposition to the three citizen’s petitions. The definitions of Warehouse versus Distribution Center are benign in terms of the impact on his client. The biggest impact is from the third proposed amendment, which is the arbitrary and capricious selection of 200,000 s.f. as the maximum size of a structure. The Planning Board regulates development based upon adverse impacts. An applicant must mitigate those impacts. Traffic impacts are the genesis for this arbitrary selection of 200,000 s.f. Particular uses must complete traffic studies which are then presented to the Board. Uses fall into different land use categories, which are then used to calculate an appropriate amount of traffic for the site. It is the Board's job to make sure that the traffic study analyzes the proposed use. An applicant cannot switch back and forth between uses. He questioned why 200,000 s.f. is being considered, instead of 300,000 s.f., as there are already two buildings in the Bon Terrain area which are 300,000 s.f. These buildings would not be allowed to change to distribution centers, per this ordinance. He questioned how the Board knows that some of the activity in those buildings is not already being distributed to consumers, rather than to a business consumer. Any consumer delivery, under this ordinance, requires that the building be under 200,000 s.f., without any justification or explanation, other than fear that

TOWN OF AMHERST
Planning Board

January 4, 2023

APPROVED

these buildings, if they get bigger, might be out of control. Any proposal has to be vetted before the Board. This ordinance is similar to placing square footage restrictions on single-family houses in the Residential Rural Zone. He stated that he will attach his memo on this item to an exhibit from Conger Industries which outlines 13 definitions of warehouses, among which is distribution center. A distribution center is defined as a type of warehouse in that industry. Warehouses typically store goods for longer periods, whereas warehouse distribution centers temporarily store goods while they are prepared for routing to the retailer. The definition proposed in this ordinance is at odds with the industry definition. Simply because these centers distribute to consumers should not allow for an arbitrary definition of a maximum 200,000 s.f.; that is inappropriate and illegal, in his opinion.

David Patterson, 18 Summerfield Way, expressed sincere appreciation for the Board's tireless work in sorting out key proposed ordinances or adjustments for voter consideration. There was some disappointment regarding the Board's decision to exclude four of the seven proposed ordinances that the warehouse committee put forward. One, adopted in its entirety, dealt with dark night skies, while the other two were rewritten with somewhat reduced effectiveness, dealing with noise abatement and a building height restriction. The proposals this evening include adding a definition of Warehouse to the Amherst Zoning Ordinance, eliminating vagueness, and clearly defining a warehouse, with an emphasis on storage. A second proposal proposes to add a definition of Distribution Center to the Amherst Zoning Ordinance. This tightens the focus on what a distribution center is and that it includes high traffic volume. This is the complete opposite of a warehouse storage facility. The third proposal proposes to add an amendment under Industrial Permitted Use section to include warehouses and distribution centers no greater than 200,000 s.f. This aims to lessen the severe impact a proposal might have on the community; a community which does not have the infrastructure capable to support massive high volume business ventures. These three proposals are a step forward to help the community minimize negative impacts of proposed land development in the Bon Terrain industrial area, especially as it abuts several residential properties. It is clear more work is needed to bring Amherst zoning standards into the 21st century. The Town cannot effectively protect nearby landowners and residences against the aggressive business development proposals. He urged citizens to help safeguard the character and heritage of the Town.

Barbara Staffiere, 9 Crystal Lane, stated that she supports the three petitions and urged the Board to consider supporting them as well. She stated that she moved here from Chelmsford, which has a distribution center being built in a residential neighborhood. Citizen petitions tried to prevent this from happening. That town is taking, by eminent domain, areas of people's property to put in roads for tractor trailers. She does not want this to happen in Amherst. She urged the Board to slow down any distribution center entering the Town. The impacts of this would be felt by residents near Bon Terrain, throughout Town, and into surrounding towns.

Steve Nelson, 9 Beacon Lane, stated that he believes the 200,000 s.f. limit on warehouses is necessary, due to the Town's infrastructure and ability to protect the surrounding area. Large warehouses are tall and dense. They create a nightmare for towns and fire departments. A 2022 fire in an Indiana warehouse destroyed a 1.2M s.f. fulfillment house. It took 350 firefighters from

TOWN OF AMHERST
Planning Board

January 4, 2023

APPROVED

30 fire agencies to put out that blaze. The building will not be reopening. In February of 2022, a document warehouse caught fire and it took two days to put out the blaze. A North Carolina mega warehouse fire required dozens of mutual aid fire departments and 10 days to extinguish. The all-Volunteer Fire Department in Amherst is a dedicated group of well-trained firefighters with outstanding leadership. He asked if citizens want the Department to have to fight a massive fire of this scale. On Saturday, December 24th, the Amherst Fire Department responded to a house fire in the north end of Town. Most of the department responded and they called in mutual aid from Milford to cover the Fire Station and then Brookline when Milford was called out. This was the response needed for a 3,000 s.f. house. He asked the Board to consider how much aid would be needed for a 1M s.f. warehouse fire. The Town needs to be realistic in its capabilities. Warehouses need to be limited to 200,000 s.f., with a limited height as well.

Deb Keough, 16 Summerfield Way, stated that other towns in the area have restricted large warehouses and asked why Amherst has not done the same thing. This will preserve the Town's heritage and rural look. She stated that she does not care what impact fees applicants have to pay, as they will never cover the total fees of a large operation. The Master Plan survey found that 91% of people want to preserve the Town's rural character. Large warehouses will impact other retailers, traffic, and emergency travel along Route 101A. There are 17 other uses a landowner could use the land for.

Barb Dalton, 14 Summerfield Way, stated that the proposal deals with more than just the residents of Summerfield Way, Peacock Brook, and Patricia Lane; this is about the Town and how to protect it from being overwhelmed by mega distribution centers. Fear of litigation should not be a reason not to protect the Town. These three petitions allow the Board an additional year to make any necessary amendments, while giving the Town some protection.

Dan Cuoco, 2 Appleton Way, stated that he is in agreement with all previous speakers and is in support of these proposals.

Bill Stoughton stated that the subcommittee consisted of himself, Cynthia Dokmo, and Chris Yates. He thanked all of the residents for the way they conducted themselves during the working group meetings. The group originally set out to review definitions and incorporate definitions into the ordinance. This item was far more complex than anticipated. He has no particular objection to the definitions proposed, but he will likely not support these petitions because he has not had enough time to review them fully and he believes that the Board needs to review the nature of these restrictions to potentially couple them with additional uses not permitted today.

Tom Quinn stated that he wished the Board did not have to make a vote on a citizen's petition. Any citizen has the right to create a petition and it is up to the voters to then say yes or no. These particular proposals seem fairly simple and narrow in scope, so he would be in favor of moving them forward.

Arnie Rosenblatt noted that, regardless of how the Board votes, these proposals will be on the ballot.

TOWN OF AMHERST
Planning Board

January 4, 2023

APPROVED

Tracie Adams stated that Attorney Hollis stated that even he thought the definitions were benign. Thus, she is okay with advancing those. She questioned the proposed 200,000 s.f. maximum but was fairly convinced that these structures would be a large undertaking for the Town's infrastructure and Fire Department to handle. It appears this subcommittee is ongoing and will continue to work on this.

Tim Kachmar stated that he voted no on the last proposal, and will not support this one, because he believes the current industrial zoning is appropriate. Limiting the size of a building is dependent on the size of the property and what the property can support, based on current zoning rules and regulations. He stated that he does not have a problem with the definitions, as proposed but does not believe the Board's job is to limit the size of what can be built on a property.

Arnie Rosenblatt suggested that the three items be framed individually.

**Tim Kachmar moved to support the definition of a Warehouse amendment, as proposed. Seconded by Tracie Adams.
Motion carried 3-1-0 [B. Stoughton opposed.]**

**Tracie Adams moved to support the definition of a Distribution Center, as presented. Seconded by Tom Quinn.
Motion carried 3-1-0 [B. Stoughton opposed.]**

**Tim Kachmar moved to not support the 200,000 s.f. maximum warehouse size amendment. Seconded by Bill Stoughton.
Motion carried 3-2-0 [T. Adams and T. Quinn opposed.]**

Arnie Rosenblatt thanked everyone involved, both on the Board, subcommittees and in the public.

Tim Kachmar asked if the Board can simply support the fourth citizen's petition, as it is similar to one already supported by the Board. Arnie Rosenblatt stated that it would be best to hear the petition first.

Dave Williams noted that the fourth petitioned amendment is a Plan B in case the Planning Board did not approve the other, similar language proposed for the scenic road setbacks. The proponents suggested withdrawing this petition, as the Board did approve the other language. Nic Strong stated that the petition cannot be withdrawn. Arnie Rosenblatt expressed concern that there will be confusion regarding these two similar items. Nic Strong stated that she checked with the Municipal Association, which stated that each petitioned amendment shall be placed on a ballot, which may be separate from the ballot used to elect town or village district officers. The town cannot follow the directions of the petitioner to not put the article on the warrant, if amendment #3 is moved to the ballot by the Planning Board, regardless of any changes made to the numeration of the pending drafts. Arnie Rosenblatt stated that these two items seem to be the

TOWN OF AMHERST
Planning Board

January 4, 2023

APPROVED

same thing. He believes the Board should still vote on the #4 amendment. He stated that he is frustrated that there will be two similar amendments.

Wendy Rannenbergs stated that, for the Town warrant, petitioners have the ability to modify the language in a petition warrant article, so long as it does not change the fundamental purpose of the article. Nic Strong stated that this is not true for zoning petitions.

Bill Stoughton stated that the Board could oppose this petition, as the Board already supported the other one. Arnie Rosenblatt stated that he is concerned this could be more confusing. Tom Quinn stated that he is concerned the two items could potentially pass with different regulations. Nic Strong stated that she believes, if both pass, the stricter one would prevail. If this occurs, the Town will need to get in touch with Town Counsel to figure out which one takes precedence. Arnie Rosenblatt stated that 'stricter' seems to be in the eye of the beholder. He stated that the Board may want to turn this item down, regardless of how it substantively feels about it. Tim Kachmar stated that he is concerned that some people may vote for this item as it does not contain the 125' setback, included in the other item.

Tom Quinn moved to support the scenic setback citizens' petition, as presented.

Seconded by Tim Kachmar.

Motion carried unanimously 3-2-0 [B. Stoughton and A. Rosenblatt opposed.]

3. Minutes: December 21, 2022

None at this time.

4. Any other business that may come before the Board

Tim Kachmar moved to adjourn at 9:50pm. Seconded by Tracie Adams.

Motion carried unanimously 4-0-0.

Respectfully submitted,
Kristan Patenaude

Minutes approved: January 18, 2023