

TC PB Minutes 11.14.2022 Working Group of Planning Board discussing Scenic Setbacks

Tracie began the meeting at 3:00 pm with Minutes from the 11.09.2022 distributed and reviewed by working group attendees. No edits were suggested, and the minutes were approved as presented. Nancy Williams, Dave Williams, Tom Quinn, and Tracie Adams approved and represented 4 of the 6 attendees of that meeting.

The following detailed agenda was provided to attendees.

Welcome all attendees.

Overview of last meeting held on November 9, 2022, at 4:00 pm in Town Hall.

- *The 6 attendees discussed scenic setbacks, scenic road designation, Residential/Rural Zone frontage requirements and minimum lot size requirements, legal concerns and review of Penn Central 3-part test, discussion and development of 3 possible options for ordinance changes, decision to meet again prior to Planning Board meeting Wed November 16, 2022 to discuss proposed ordinance changes.*

3 Possible Proposals based on discussion:

- *Scenic setback currently 100 feet for all scenic roads and several other roads in Town. Change to scenic setback 125 feet to enhance preservation of rural character and scenic appearance to better align with goals of the Master Plan.*
- *In Residential Rural Zone currently 2-acre minimum lot size. Change to 5-acre minimum lot size in Residential Rural Zone on scenic roads.*
- *In Residential Rural Zone currently 200 feet minimum frontage required. Change to 300 feet minimum frontage required in Residential Rural Zone on scenic roads.*

Scenic Setback Discussion

Below is current Amherst Scenic Setback document found in Zoning Amherst Article III General Zoning Provisions Section 3.11 Scenic Setbacks found on Pages 20 -21.

- **A. PURPOSE.** *The purpose of this section is to preserve and enhance the rural, open character of the Town as viewed from the main roads leading through the Town and scenic roads within the Town and to prevent unsightly development along these routes. Encouraging natural vegetation and wildlife habitat in the setback increases the rural experience while traveling on scenic roads and Town roads with scenic setbacks.*
- **B. REGULATIONS.** *To accomplish the purpose of this section, a setback requirement for all structures of ~~one hundred (100) feet~~ **one hundred twenty-five (125) feet** from the highway right-of-way is established on the following roads, and said setbacks shall apply notwithstanding any other setback requirements which may be applicable as a result of other zone regulations: (3-2-76)*

1. Rte 122 from Hollis Town line north to Old Rte 101, Horace Greeley Highway. (3-14-00)

2. *Boston Post Rd from Stearns Rd north to Route 122*
3. *Boston Post Rd from Beaver Brook north to Mt. Vernon Rd.*
4. *Mt. Vernon Rd from Boston Post Rd north to Mt. Vernon Town line*
5. *Amherst Street (3-9-99, 3-14-00)*
6. *Horace Greeley Highway from Milford Town line north to Bedford Town line. (3-9-99)*
7. *New Boston Rd from Boston Post Rd north to Mt. Vernon Town Line*
8. *Christian Hill Rd from Davis Lane to Route 13*
9. *Corduroy Rd from Merrimack Rd north to Boston Post Rd.*
10. *Merrimack Rd from Boston Post Rd north to Corduroy Rd.*
11. *Mack Hill Rd from Manchester Rd north to Austin Rd.*
12. *All scenic Roads (see Section E) 3-2-76*

- *C. EXCEPTIONS TO SCENIC SETBACK REQUIREMENTS. 1. Any person aggrieved by the operation of this section may apply to the Board of Adjustment for a variance herefrom in like manner as in other situations where the existence of a hardship Town of Amherst Zoning Ordinance 21 is alleged. (3-2-76) 2. In the event that a lot of record at time of passage of this section is of such size and dimension that the application of the foregoing setback in combination with all other setbacks as may be required for such lot precludes the use of more than sixty percent (60%) of the area of such lot, then the foregoing ~~one hundred (100) foot~~ **one hundred twenty-five (125) foot** setback shall not apply to such lot; however, if a lot qualifies for this exception and is also subject to Non-Residential Site Plan Review by the Planning Board, the Planning Board shall determine that appropriate provision has been provided so as to reasonably achieve the purpose of this section as set forth in Paragraph 1 above. (3-2-76) 2. In the event that a lot of record at time of passage of this section is of such size and dimension that the application of the foregoing setback in combination with all other setbacks as may be required for such lot precludes the use of more than sixty percent (60%) of the area of such lot, then the foregoing ~~one hundred (100) foot~~ **one hundred twenty-five (125) foot** setback shall not apply to such lot; however, if a lot qualifies for this exception and is also subject to Non-Residential Site Plan Review by the Planning Board, the Planning Board shall determine that appropriate provision has been provided so as to reasonably achieve the purpose of this section as set forth in Paragraph 1 above. (3-2-76) The regulations set forth herein, are intended to apply only to the construction of new structures which take place on and after the effective date of this section. Any dwelling or other structure which was in existence at the time of passage of this section, may be enlarged, modified, or otherwise altered without the necessity of complying with the requirements of this section, provided that such alterations do not reduce the setback from the front lot line to an amount less than the setback which exists on the building to be altered. Provided further, however,*

that such construction or alterations must comply with any other setback requirements applicable in the respective zones other than the scenic setback. (3-2-76, 3-9-82)

Review RSA 231:157-158

- **231:157 Scenic Roads; Designation.** – Any road in a town, other than a class I or class II highway, may be designated as a scenic road in the following manner. Upon petition of 10 persons who are either voters of the town or who own land which abuts a road mentioned in the petition (even though not voters of the town), the voters of such town at any annual or special meeting may designate such road as a scenic road. Such petitioners shall be responsible for providing the town clerk with a list of known property owners whose land abuts any of the roads mentioned in the petition. The town clerk shall notify by regular mail within 10 days of the filing all abutters along the road that lies within the town that a scenic road petition has been filed for and that an article to designate such road as a scenic road will appear in the warrant at the next town meeting. The voters at a regular town meeting may rescind in like manner their designation of a scenic road upon petition as provided above. Notice to the abutting landowners shall also be given as provided above. Each town shall maintain and make available to the public a list of all roads or highways or portions thereof within the town which have been designated as scenic roads. Such list shall be kept current by updating not less than annually and shall contain sufficient information to permit ready identification of the location and extent of each scenic road or portion thereof, by reference to a town map or otherwise.
- **Source.** RSA 253:17. 1971, 455:1. 1973, 586:1. 1981, 87:1. 1992, 160:3, eff. July 5, 1992.
- **231:158 Effect of Designation as Scenic Roads.** –
 - I. As used in this subdivision, "tree" means any woody plant which has a circumference of 15 inches or more at a point 4 feet from the ground.
 - II. Upon a road being designated as a scenic road as provided in RSA 231:157, any repair, maintenance, reconstruction, or paving work done with respect thereto by the state or municipality, or any action taken by any utility or other person acting to erect, install or maintain poles, conduits, cables, wires, pipes or other structures pursuant to RSA 231:159-189 shall not involve the cutting, damage or removal of trees, or the tearing down or destruction of stone walls, or portions thereof, except with the prior written consent of the planning board, or any other official municipal body designated by the meeting to implement the provisions of this subdivision, after a public hearing duly advertised as to time, date, place and purpose, 2 times in a newspaper of general circulation in the area, the last publication to occur at least 7 days prior to such hearing, provided, however, that a road agent or his designee may, without such hearing, but only with the written permission of the selectmen, remove trees or portions of trees which have been declared a public nuisance pursuant to RSA 231:145 and 231:146, when such trees or portions of such trees pose an imminent threat to safety or property, and provided, further, that a public utility when involved in the emergency restoration of service, may

without such hearing or permission of the selectmen, perform such work as is necessary for the prompt restoration of utility service which has been interrupted by facility damage and when requested, shall thereafter inform the selectmen of the nature of the emergency and the work performed, in such manner as the selectmen may require.

III. Designation of a road as scenic shall not affect the eligibility of the town to receive construction, maintenance or reconstruction aid pursuant to the provisions of RSA 235 for such road.

IV. Designation of a road as a scenic road shall not affect the rights of any landowner with respect to work on his own property, except to the extent that trees have been acquired by the municipality as shade or ornamental trees pursuant to RSA 231:139-156, and except that RSA 472:6 limits the removal or alteration of boundary markers including stone walls.

V. A town may, as part of a scenic road designation under RSA 231:157 or as an amendment to such designation adopted in the same manner, impose provisions with respect to such road which are different from or in addition to those set forth in this section. Such provisions may include, but are not limited to, decisional criteria for the granting of consent by the planning board or other designated municipal body under paragraph II, or protections for trees smaller than those described in paragraph I, designated for the purpose of establishing regenerative growth along the scenic road.

VI. Any person who violates this section or any local provision adopted under this section shall be guilty of a violation and shall be liable for all damages resulting therefrom.

- **Source.** RSA 253:18. 1971, 455:1. 1973, 586:2. 1981, 87:1. 1983, 122:2. 1991, 134:3, 4. 1992, 160:2, eff. July 5, 1992.

Scenic Road Minimum Lot Size and Minimum Frontage Discussion

*Review minimum lot size and minimum frontage requirements for Residential Rural Zone (RR).
Amherst Article IV General Zoning Provisions Section 4.3 Page 50*

- **C. AREA AND FRONTAGE REQUIREMENTS.** 1. *The minimum lot area shall be two (2) acres. The minimum area shall contain no wetland as defined in Art. IV, Sec. 4.11, no flood plain as defined in Art. IV, Sec. 4.10, and no slopes greater than twenty percent (20 %). (3-5-74, 3-14-89, 3-6-04)* 2. *Each new lot shall have a minimum frontage of two hundred (200) feet on a publicly maintained road, unless frontage has been approved and recorded as reduced frontage lot/s; in which event, thirty-five (35) feet shall be sufficient. (3-4-75, 3-10-87)* Corner lots shall have the minimum required frontage on each side of the lot that abuts a street or road. (3-8-22)

Review of history related to lot sizes.

Review of local Towns and their ordinances pertaining to minimum lot size and frontage. Towns included in review included Mont Vernon, Milford, Hollis, Wilton, Merrimack, Hooksett, New Boston.

- *Mont Vernon District 1: 2-acre zoning, 200 feet frontage. District 2: 5-acre zoning, 300 feet frontage. District 3: 5-acre watershed area, 300 feet frontage.*
- *Milford A District, primarily single-family residential on individual lots, not serviced by both municipal sewerage and water systems: lots 40,000 SF min (0.918 acres) with 150 feet frontage. R District, low density residential: lots 2-acres (87,120 SF) with min 200 feet frontage*
- *Hollis Residential and Agricultural District: minimum lot area 2-acres, min frontage 200 feet*
- *Wilton Residential District: one acre not served by public water and sewer: one acre per dwelling for lots, frontage 100 feet*
- *Merrimack District R, Residential, single family residences: based on soils, lot 100,000 SF (2,295 acres), frontage 250 feet, if lot 80,000 SF (1.837 acres) then frontage 200 feet*
- *Hooksett Low Density Residential if no water and sewer, 2 acre lots, 200 feet frontage*
- *New Boston R-1 Residential, one family 1.5 acres, 150 feet frontage*

Discuss proposals and how want to move forward.

Adjournment.

Minutes from the 11.14.2022 meeting.

Tracie welcomed attendees and provided each with a copy of detailed agenda above. Attendees included Dave Williams and Nancy Williams. Planning Board attendees included Tom Quinn, Tim Kachmar, and Tracie Adams.

Tracie stated that there are two options available for proposed ordinance changes. One option involves a Planning Board hearing on ordinance changes with the Planning Board voting to move the proposal forward. Town Counsel reviews the proposals forwarded by the Planning Board. The proposed ordinance changes will be placed on the ballot for Town to vote on at the March election. Another option is for citizens to petition for a proposed ordinance change. Nic in Community Development told Tracie that 25 registered voter signatures are needed for the petition and that more than 25 would be wise to ensure can reach the 25 registered voter mark. The petition is due December 14, 2022. Nic suggested having signature and print blocks on petitions. Citizen petitions will not be reviewed by Counsel. At a public hearing the Planning Board will provide a Recommend or Do Not Recommend status and a vote tally for all proposed ordinance changes that come before them.

Dave Williams distributed document entitled Talking Points for November 14, 2022, Meeting.

Tracie read the overview of the last meeting provided in the agenda. Dave added that there was a buffer suggestion along with the proposed scenic setback increase to 125 feet on scenic roads.

The group engaged in a discussion of Zoning Amherst Article III General Zoning Ordinance Section 3.11 Scenic Setbacks found on page 50.

Dave stated he reviewed the Penn Central test related to legal concerns of proposed changes.

Tracie stated that the Heritage Commission is looking into going through the process of adding more scenic roads at some point. Currently, all scenic roads have scenic setbacks and there are several other Town roads that are not designated as scenic roads but do have scenic setbacks.

The group reviewed RSA 231:157-158 provided in agenda. Dave read paragraph V and Tracie referred to paragraph IV. The group discussed sections IV and V and their implications.

Tracie read the proposed scenic setback change to Section 3.11 in agenda and received feedback from the group that the Purpose and Regulation section proposed changes were representative of their ideas. Tracie read a section from Howard and Amy Jo Muscott letter dated September 27, 2022. Tracie suggested adding verbiage that stated “increased proposed minimums will have significantly beneficial effect on wildlife who rely on wooded habitat and wildlife corridors in Amherst to survive and that Amherst Scenic Roads are clearly in the middle of some of the most highly rated Wildlife Habitat in the region and across the entire state” based on data taken from the Nashua Regional Planning Commission’s (NRPC’s) MapGeo. The group agreed with this suggestion.

Tracie read another possible addition to Section 3.11 B. Regulation that included an idea that reflected the discussion about adding a buffer of 50-feet in the 125-foot setback on scenic roads and other Town roads with scenic setbacks. Group agreed to add language “Encourage establishment of a 50-foot buffer and use of Best Management Practices within the 125 feet setback to preserve and enhance the rural character of the Town as viewed from scenic roads and roads with scenic setbacks.”

The group agreed that the additional voluntary 25-foot buffer could have significant visual impact and improve rural character without imposing on land-owners use of their property. Tracie and Nancy agreed it would enhance natural vegetation and provide wildlife habitat.

Proposed additions or changes highlighted in yellow. Red colored language is proposed to be eliminated.

Section 3.11

A.PURPOSE. The purpose of this section is to preserve and enhance the rural, open character of the Town as viewed from the main roads leading through the Town and scenic roads within the Town and to prevent unsightly development along these routes. This can be complimented by encouraging natural vegetation and wildlife habitat in the setback to increase the rural experience of viewing beautiful natural surroundings while traveling on scenic roads and Town roads with scenic setbacks.

B. REGULATIONS. To accomplish the purpose of this section, a setback requirement for all structures of one hundred (100) feet one hundred twenty-five (125) feet from the highway right-of-way is established on the following roads, and said setbacks shall apply notwithstanding any other setback requirements which may be applicable as a result of other zone regulations: (3-2-76) Voluntary establishment of a 50-foot buffer and use of Best Management Practices within the 125 feet setback to preserve and enhance the rural character of the Town as viewed from scenic roads and roads with scenic setbacks is encouraged but not compulsory.

Tracie read the agenda item on scenic road minimum lot size and minimum frontage from Amherst Article IV General Zoning Provisions Section 4.3 Residential/Rural Zone page 50. The September 14, 2022, letter to the Planning Board suggested an addendum to section 4.3C. Tracie suggested that changes to scenic roads would need to be reflected in each zone's language.

Dave suggested that the scenic road section 3.11 was a better place for the proposed changes and would encompass all current scenic roads.

The September 14, 2022, letter written by Dave was supported by total of 56 citizen signatures and states that *The minimum lot area on all RSA 231:157 Scenic Roads, which have held this Scenic designation for a minimum of 7 years, shall be five (5) acres and each new lot shall have a minimum frontage of three hundred (300) feet.*

The group discussed options of where this proposal would fit best and determined it was a better option to place this proposal in the scenic setback section 3.11 instead of changing each zone individually under each section like the section 4.3 C Residential/Rural Zone (RR). Tracie thought both might be needed. Tom felt that all zones were covered if placed in scenic setback section. Tim agreed.

The 7-year minimum of designation as a scenic road was discussed and kept in proposal.

Changing the Section 3.11 title to accurately reflect changes to the section was discussed. The group agreed with adding "minimum lot size and frontage on scenic roads."

The group agreed for language from Section 4.3 page 50 to be carried over with lot size five (5) acres and frontage of three hundred (300) feet be substituted.

Tracie and Tom reviewed local Town findings and internet search results for scenic road lot size and frontage requirements. No group member was able to locate scenic road findings in the ordinances of local towns. Tracie found that internet searches revealed Amherst zoning as first and most relevant search result.

Tracie reviewed findings for the towns of Mont Vernon, Milford, Hollis, Wilton, Merrimack, Hooksett, and New Boston for comparable lower density residential zones. Tom and Dave pointed out that none of the other towns had scenic setback or scenic road considerations for comparison. Tracie confirmed that the only information gathered pertained to comparable lots per zoning and also lots without town sewer and water that better mirror Amherst. Other towns listed scenic roads but had no scenic setback documentation or additional requirements for scenic roads.

Dave reviewed his Talking Points November 14, 2022, Handout in detail. Talking Points included RSA 764:16 IV which grants the Planning Board power to adopt or amend ordinances.

Dave applied the Penn Central Test and determined that the requirement for reasonable return for landowners/developers on scenic roads is met by this change and that development on scenic roads is not eliminated, nor is the opportunity to make a reasonable economic return. He felt

theses efforts to change the ordinance reflect back to the Master Plan and to Master Plan survey results.

Dave presented a document that tracked lots on scenic roads that could be impacted. Lots greater than 5 acres were noted in green and lots greater than 2 acres and less than 5 acres were red. Dave and Nancy believe that many lots are unbuildable because of wetlands, severe slopes, aquifers, and vernal pool concerns.

Dave suggested that landowners and others impacted by the changes can vote No on their ballots. He reported that 91% of respondents to the recent Master Plan Survey conducted in Dec 2020/January 2021 rated protection of open space and natural resources as a high priority.

Dave compared the conditions for establishing the Northern Rural Zone with 5 acre lots and 300 feet of frontage to the proposals and reported on their parallels.

Tracie stated she was told that creation of the Northern Transitional Zone came in response to a legal filing against the Town because lot sizes in this area were to be zoned 5 acres like the Northern Rural Zone. A compromise was made at 3.5 acres with 300 feet of frontage and the Northern Transitional Zone was created. Tracie thought this history should be considered.

Dave was not aware of any ordinance suggested by the Planning Board that would help move forward the goal of maintaining rural character. He felt this was an opportunity to start.

The group discussed the 5-acre minimum versus other options with lower acreage numbers. Tracie expressed concern with this aspect of the proposal and felt the scenic setback proposal was more likely to garner Planning Board support with or without the buffer language. Dave wanted to use 5-acres and 300 feet of frontage and other attendees concurred with starting with this language in the proposal.

Tracie asked about the bond that was passed to purchase desirable land for the Town. No one was aware of any purchases yet. All agreed that purchasing the land was the best way to ensure conservation and maintaining rural character.

Moving forward the group agreed to have Tracie draw up the proposal for ordinance changes based on today's feedback. Since Dave was most well versed about minimum lot size and frontage, he accepted nomination to speak to these points at the Planning Board meeting Wednesday. The group looked forward to Planning Board feedback and insights especially on legal concerns.

The group adjourned at 4:35 pm.

Minutes taken by Tracie Adams and respectfully submitted.

As a result of meeting the following proposal was drafted. Changes and additions are in yellow. Red colored items are to be removed.

Proposal of Ordinance Change

Zoning Amherst Article III General Zoning Ordinance

Section 3.11 Scenic Setbacks and Minimum Lot Size and Frontage on Scenic Roads

A.PURPOSE. The purpose of this section is to preserve and enhance the rural, open character of the Town as viewed from the main roads leading through the Town and scenic roads within the Town and to prevent unsightly development along these routes. This purpose can be complimented by encouraging natural vegetation and wildlife habitat in the setback to increase the rural experience of viewing beautiful natural surroundings while traveling on scenic roads and Town roads with scenic setbacks. Further preservation of rural character and open space can be accomplished through establishment of scenic road minimum lot size and frontage requirements which additionally benefits highly rated wildlife habitat and wildlife corridors on scenic roads in Amherst (Nashua Regional Planning Commission's MapGeo data).

B. REGULATIONS. To accomplish the purpose of this section, a setback requirement for all structures of one hundred (100) feet one hundred twenty-five (125) feet from the highway right-of-way is established on the following roads, and said setbacks shall apply notwithstanding any other setback requirements which may be applicable as a result of other zone regulations: (3-2-76). RSA 231:158 states that as part of a scenic road designation or as an amendment to such a designation adopted in the same manner, a town may impose provisions with respect to such a road which are different from or in addition to those set forth in this section. Relative to RSA 231:158 this additional provision encourages establishment of a 50-foot buffer and use of best management practices to maintain it within the one hundred twenty-five (125) foot setback on scenic roads.

The purpose of this section can further be achieved through the establishment of a minimum lot area of five (5) acres on scenic roads that have held a Scenic Roads designation for a minimum of seven (7) years (see RSA 231:157 Scenic Roads). The minimum lot area shall contain no wetland as defined in Article IV, Section 4.11, no flood plain as defined in Article IV, Section 4.10, and no slopes greater than twenty percent (20%). Each new lot on a scenic road shall have a minimum frontage of three hundred (300) feet on a publicly maintained road, unless frontage has been approved and recorded as a reduced frontage lot/s; in which event, thirty-five (35) feet shall be sufficient. Corner lots on scenic roads shall have the minimum required frontage on each side of the lot that abuts a street or road. (03-08-2022).

Lots created on or after the effective date of approval of this section (March 2023) will comply with its provisions.

C. EXCEPTIONS TO SCENIC SETBACK REQUIREMENTS. 1. Any person aggrieved by the operation of this section may apply to the Board of Adjustment for a variance herefrom in like

manner as in other situations where the existence of a hardship Town of Amherst Zoning Ordinance 21 is alleged. (3-2-76) 2. In the event that a lot of record at time of passage of this section is of such size and dimension that the application of the foregoing setback in combination with all other setbacks as may be required for such lot precludes the use of more than sixty percent (60%) of the area of such lot, then the foregoing **one hundred (100) foot one hundred twenty-five (125) foot setback** shall not apply to such lot; however, if a lot qualifies for this exception and is also subject to Non-Residential Site Plan Review by the Planning Board, the Planning Board shall determine that appropriate provision has been provided so as to reasonably achieve the purpose of this section as set forth in Paragraph 1 above. (3-2-76) 2. In the event that a lot of record at time of passage of this section is of such size and dimension that the application of the foregoing setback in combination with all other setbacks as may be required for such lot precludes the use of more than sixty percent (60%) of the area of such lot, then the foregoing **one hundred (100) foot one hundred twenty-five (125) foot setback** shall not apply to such lot; however, if a lot qualifies for this exception and is also subject to Non-Residential Site Plan Review by the Planning Board, the Planning Board shall determine that appropriate provision has been provided so as to reasonably achieve the purpose of this section as set forth in Paragraph 1 above. (3-2-76) The regulations set forth herein, are intended to apply only to the construction of new structures which take place on and after the effective date of this section. Any dwelling or other structure which was in existence at the time of passage of this section, may be enlarged, modified, or otherwise altered without the necessity of complying with the requirements of this section, provided that such alterations do not reduce the setback from the front lot line to an amount less than the setback which exists on the building to be altered. Provided further, however, that such construction or alterations must comply with any other setback requirements applicable in the respective zones other than the scenic setback. (3-2-76, 3-9-82)

Dave's language from letter dated September 14, 2022, to Planning Board. This letter was signed by 56 citizens of Amherst. *The minimum lot area on all RSA 231:157 Scenic Roads, which have held this Scenic designation for a minimum of 7 years, shall be five (5) acres and each new lot shall have a minimum frontage of three hundred (300) feet.*