

January 22, 2026

VIA E-MAIL ONLY

Town of Amherst
Planning Board
Two Masin Street
Amherst, NH 03031

RE: TransFarmation – IIHO Application – response to Attorney Baker’s comments

Dear Planning Board members:

I am writing this letter on behalf of my clients to respond to the two letters submitted by Attorney William Baker on behalf of the Applicant.

The main issue addressed by Attorney Baker in his first letter is the expiration of the Conditional Use Permit (“CUP”). The language in the Integrated Innovative Housing Ordinance Development Regulations controls (“IIHO”). The IIHO, independent of the zoning ordinance, sets forth a path for CUP approval. Despite the Applicant’s assertion that the one-year period ties to the approval of the site plan, the plain language of the IIHO, specifically, Section 509 Lapse and Renewal, states otherwise.

Section 509.1 Duration and Lapse attempts to address in subsection (a) the expiration of the CUP while subsection (b) the issue of vesting. Per the IIHO, vesting requires site/subdivision plan approval and/or the issuance of building permit (See also RSA 674:39). Section (a) provides that if the CUP is not acted upon within a period of two years from the date of approval, then such approval shall be null and void. This language is particularly instructive as it does not speak of vesting but rather the expiration of the CUP. Section (b), however, does speak of vesting and provides guidance as to what constitutes vesting.

Section 509.2 Extension allows the Applicant the opportunity to apply for one extension if the construction or substantial use thereof has not commenced for good cause. Any application for an extension shall demonstrate to the satisfaction of the Planning Board

that it was impossible or impractical to receive the **necessary approvals** to move forward. *Hence, the clock is running before the approvals are granted.*

Although not specifically stated, my clients' position is the "actions" referenced in Section 509.1 (a) correlate directly to Section 509.2 which states provides guidance to what those actions might be: "if the construction or substantial use thereof has not commenced for good cause..." (the "actions") and "it was impossible or impractical to receive the necessary approvals..."

There was no extension granted for the good cause as outlined in the IIHO. The Applicant did not obtain an extension as required by Section 509.2 as evidenced by the September meeting minutes and the procedural history of the case; therefore, the CUP expired and CUP is now null and void.

Additionally, there may be some confusion between the CUP vesting and the expiration (vesting protects the Applicant from future changes in land use regulations and expiration refers to a deadline by which that approval must be acted upon before it becomes void – lack of vesting does not equate to the expiration of approvals). This appeared to be a point of contention during the Planning Board's September 2024 meeting. Contrary to the September 2024 meeting discussion, the IIHO language discusses that an extension may be granted if the necessary approvals were not obtained (the clock does not begin to run upon receipt of approvals).

This second letter summarizes some concerns presented to the Board at the last public hearing while recognizing this Board's authority to address these issues in detail at the time of final approval. The Applicant directs the Board's attention to the September 6, 2023 Notice of Decision which supports my clients' position and the demonstrated need for a reduction in the number and location reconfiguration of lots. Condition Precedent #6 specifically permits this Board to reduce the number of lots for certain reasons, some of which are described herein:

1. If the bases for bonus requests or the proposals or representations of the applicant in its written materials and discussion before this Board are changed.

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2. If the Board's detailed Subdivision/Site Plan Review or any associated studies or engineering reviews identify detrimental impacts to the town that offset some or all of the benefits supporting the bonus unit awards herein.
3. If subsequent applications fail to comply with applicable law, ordinance or regulation, or if relief is sought from other town ordinances or regulations in order to accommodate the increased density allowed.
4. To address concerns regarding the preliminary plans submitted with the CUP application, if those concerns have not been addressed satisfactorily in subsequent applications. Such concerns include, but are not limited to, construction of roads and structures in excessively sloped areas and lack of adequate emergency vehicle access.

Findings of Fact #6 also permit the Board, in addressing its stated concerns, to consider further reduction or if warranted to reject the final application for the following reasons:

- a. **Proposed road and lot construction in areas of potentially excessive slopes, which may require excessive cut and fill and which may result in unacceptable stormwater management challenges.**
- b. **The ability of emergency vehicles to operate on the depicted shared driveways.**
- c. **The impacts of the proposed development on traffic, particularly at the intersection of Boston Post Road and Foundry Street. The Board notes that the third-party review of the applicant's traffic studies, which was performed by the Nashua Regional Planning Commission, states that the applicant's traffic engineer's conclusions are tailored to be advantageous to the applicant, and benefit from existing police officer presence at the intersection during certain times. Further, the Board notes that upon presentation of the final application and subdivision design, the Town Department of Public Works, with professional engineering assistance if needed, may assess the off-site road and drainage improvements necessitated by the proposed development, which may affect the traffic impacts of the proposed development.**
- d. **The need for stormwater management features that comply with town and state requirements without encroachment into wetlands, wetland buffers, and steep slope areas. This is of particular concern at this site given the proximity of the proposed impervious surfaces to steep slopes, and the potential difficulty of locating acceptable infiltration and other stormwater management features.**
- e. **The need to assess the proposed solar panel installation and its compliance with Town ordinances and regulations.**

My clients set forth their positions regarding the outlined concerns in previously submitted material which support the reduction and reconfiguration of lots based on the criteria described above. My clients also raised a number of other issues that we ask for the Board's consideration.

As always, we appreciate the Board's time and thoughtfulness with this application.

Sincerely,

Laura J. Gandia

specifying the phasing, timing and sequence of the improvements contained within the IIHO project; the performance guarantees relating thereto; actions to mitigate development impacts; and any other information and commitments the Board deems necessary to insure the successful completion of the project as proposed and approved, including all mitigation commitments. A copy of the signed agreement shall be recorded at the Hillsborough County Registry of Deeds.

508.5 Modification or Amendment of Conditional Use Permit

- (a) The Board shall have the authority to allow for the correction of an inadvertent or clerical error or omission provided such correction does not constitute a reversal of the decision on an IIHO Conditional Use Permit or conditions contained therein.
- (b) In the event that field conditions, building plan modifications or requirements of the Town of Amherst or any other governmental authority necessitate changes to the IIHO project, a detailed written description of such changes shall be submitted to the Board. The Board shall determine whether such changes warrant further review by the Board. If the Board determines that such changes require review and amendment of the Conditional Use Permit, then the petition to amend the IIHO project Conditional Use Permit shall be subject to the notice and public hearing requirements as set forth in Section 202.1 of the Subdivision Regulations and in applicable law.

508.6 Relationship to Subdivision and Site Plan Approval

The approval by the Planning Board of an IIHO Conditional Use Permit shall neither oblige the Planning Board to approve the related Final Subdivision Plat or Site Plan nor substitute the approval of the Application for the approval of the related Final Plat or Site Plan.

509 LAPSE AND RENEWAL OF CONDITIONAL USE PERMIT

509.1 Duration and Lapse of Conditional Use Permit

- (a) If an approved IIHO Conditional Use Permit is not acted upon within a period of two (2) years from the date of approval, then such approval shall be null and void.
- (b) Actions sufficient to vest an approval for a Conditional Use Permit include site plan approval, subdivision approval, issuance of a building permit authorized under the Conditional Use Permit. However, should any site plan or subdivision approval or building permit granted under an approved IIHO Conditional Use Permit expire unused after the conclusion of the two-year validity period provided for herein, said Conditional Use Permit shall become void as well.

509.2 Extension of Conditional Use Permit

Prior to the expiration of an IIHO Conditional Use Permit, the Applicant may apply for one extension of the Conditional Use Permit for a period not to exceed two (2) years. Requests for extension may be made in such form as the Planning Board shall require. The Applicant may apply for an extension if the construction or substantial use thereof has not commenced for good cause. Any application to extend the two-year validity period shall demonstrate to the satisfaction of the Planning Board that it was impossible or impractical to receive the necessary approvals to move forward in reliance on the Conditional Use Permit granted within two years. Any application for renewal or



Town of Amherst, New Hampshire
Office of Community Development
Building · Code Enforcement · Planning · Zoning · Economic Development

**TOWN OF AMHERST
PLANNING BOARD
NOTICE OF DECISION**

CASE #: PZ17124-032323
MEETING DATE: September 6, 2023
CREATED BY: Nic Strong, Community Development Director
ZONING DISTRICT: Residential Rural (RR) with Floodplain Conservation District (FPCD) and Wetland & Watershed Conservation District (WWCD) and Aquifer Conservation and Wellhead Protection District (ACWPD) Overlays

APPLICATION DESIGNATION: Conditional Use Permit for Planned Residential Development per the Integrated Innovative Housing Ordinance
PLAN TITLE and DATE: Jacobson Farm 33 Single Family Lots, 1 Four Unit Barn, & 4 Open Space Solar Farm Lots TransFarmations Regenerative Communities Tax Map 5 Lots 100 & 148 Amherst, New Hampshire
PROPERTY OWNER: Scale: varies Dated: March 6, 2023
Robert H. Jacobson Revocable Trust, Laurie Stevens, Trustee
APPLICANT/AGENT: TransFarmations, Inc., c/o R. Carter Scott
Meridian Land Services, Inc.
MAP/LOT: Map 5 Lots 100 & 148
LOT SIZE: Map 5 Lot 148 = 36.2 acres
Map 5 Lot 100 = 83.7 acres
NET TRACT AREA: Map 5 Lot 148 = 13.4 acres
Map 5 Lot 100 = 48.4 acres
ROAD FRONTAGE: Christian Hill Road
LOCATION OF PROPERTY: 17 Christian Hill Road

You are hereby notified that the Conditional Use Permit for a proposed Planned Residential condominium development under the Integrated Innovative Housing Ordinance has been conditionally approved by majority vote of the members of the Planning Board on September 6, 2023, on the motion:

I MOVE to approve Case # PZ17124-032323 for Robert H. Jacobson Revocable Trust, Laurie Stevens, Trustee (Owner) & TransFarmations, Inc., c/o R. Carter Scott (Applicant), for a Conditional Use Permit for a Planned Residential Development under the Integrated Innovative Housing Ordinance, at 17 Christian Hill Road and Christian Hill Road, Map 5 Lot 100 & Map 5 Lot 148, as the proposed IIHO development complies

with the Zoning Ordinance, including the specific provisions and standards of Section 3.18 of the Ordinance regarding Conditional Use Permits and Section 4.16 regarding IIHO projects, for a maximum of 39 units which may be subject to reduction during any required subdivision/site plan review process and the details that may be determined with regard to such things as, but not limited to, road design and construction, drainage constraints, septic capabilities, water resources, and with the following conditions:

CONDITIONS PRECEDENT:

The following conditions must be satisfied prior to the Planning Board Chair signing the Conditional Use Permit.

1. Submission of plans that include all the details determined by the Planning Board to be required.
2. No lot shown on a plan for which a permit is granted under this ordinance may be further subdivided and a note to this effect shall be placed on the Final Plan.
3. The mix of housing types, number of dwelling units and structures, and the number of bedrooms for each dwelling unit shall be determined at the Final Review and be noted on the Final Plat.
4. As a condition of final approval, the applicant must obtain the Board's approval of the external architectural design of the PRD to ensure that it complies with the goals of harmonious existence with the neighborhood and the environment as stated in the paragraph on PURPOSE at the beginning of this ordinance (4.17). The approval of the architectural design shall be a part of the Final Review approval.
5. Execution of a Development Agreement or other similar instrument specifying the phasing, timing and sequence of the improvements contained within the IIHO project; the performance guarantees relating thereto; actions to mitigate development impacts; and any other information and commitments the Board deems necessary to insure the successful completion of the project as proposed and approved, including all mitigation commitments. A copy of the signed agreement shall be recorded at the HCRD at the applicant's expense. The Development Agreement shall require Town Counsel review at the applicant's expense.
6. The Board may require a downward reduction in the number of units at the time of future Conditional Use Permit or Subdivision/Site Plan Reviews for any of the following reasons:
 1. If the bases for bonus requests or the proposals or representations of the applicant in its written materials and discussion before this Board are changed.

2. If the Board's detailed Subdivision/Site Plan Review or any associated studies or engineering reviews identify detrimental impacts to the town that offset some or all of the benefits supporting the bonus unit awards herein.
3. If subsequent applications fail to comply with applicable law, ordinance or regulation, or if relief is sought from other town ordinances or regulations in order to accommodate the increased density allowed.
4. To address concerns regarding the preliminary plans submitted with the CUP application, if those concerns have not been addressed satisfactorily in subsequent applications. Such concerns include, but are not limited to, construction of roads and structures in excessively sloped areas and lack of adequate emergency vehicle access.
7. The Board's action addresses density only and does not constitute acceptance of the applicant's depiction of site features.
8. At the time of Subdivision Application, and following due consultation with the Town Department of Public Works, the applicant shall address potential offsite improvements to alleviate traffic delay, capacity, and queuing issues at the intersections of Boston Post Road and Foundry and Main Streets. Pursuant to Zoning Ordinance Section 4.19 N., the DPW may obtain engineering support at the applicant's expense for study of road, drainage, sewer and water upgrades necessitated by the development and the applicant may be assessed its proportionate share of the costs of such improvements.
9. The applicant shall provide for third party oversight and monitoring of the workforce housing restrictions in those units of the development.
10. The applicant shall provide in its legal documents that additional Accessory Dwelling Units beyond those approved herein are not permitted.
11. Payment of any outstanding fees for the Conditional Use Permit application, including any fees for recording at the HCRD.
12. Project phasing shall be determined based on the details provided in the subdivision application.

CONDITIONS SUBSEQUENT:

The following conditions subsequent shall be met during construction and on an ongoing basis.

1. The open space shall be held in common, equally, by all the owners of the PRD. All the open space shall be readily accessible to all the residents of the PRD and such open space shall be retained in perpetuity for one or more of the following

uses: conservation, agriculture, recreation or park. No building or construction whether it be structures or septic systems shall take place in the open space.

Harvesting of trees in the open space is permitted if it is done according to good forestry practice and with the expressed permission of the Planning Board.

2. The applicant shall file a Non-Residential Site Plan Review application in accordance with the "Non-Residential Site Plan Review Regulations" with the Amherst Planning Board, if needed, along with a Subdivision Application, and any other applications as necessary.
3. The applicant shall comply with all of the Town of Amherst's Zoning Ordinance, Subdivision Regulations, Non-Residential Site Plan Review Regulations and Stormwater Ordinance.
4. This approval is based upon the plans, specifications and testimony submitted to the Planning Board. Any alterations, additions or changes to the plans are not authorized and may require additional Planning Board approval.
5. In the event that field conditions, building plan modifications or requirements of the Town of Amherst or any other governmental authority necessitate changes to the IIHO project, a detailed written description of such changes shall be submitted to the Board. The Board shall determine whether such changes warrant further review by the Board. If the Board determines that such changes require review and amendment of the Conditional Use Permit, then the petition to amend the IIHO project Conditional Use Permit shall be subject to the notice and public hearing requirements as set forth in Section 202.1 of the Subdivision Regulations and in applicable law.
6. Substantial construction must commence within one year of the Planning Board approval of the Conditional Use Permit and Site Plan Approval.
7. If construction is not commenced within this period, the Conditional Use Permit approval may be extended for up to one additional year upon approval of the Amherst Planning Board. If construction is not commenced within this extended period the Conditional Use Permit is declared null and void.
8. Actions sufficient to vest an approval for a Conditional Use Permit include site plan approval, subdivision approval, issuance of a building permit authorized under the Conditional Use Permit. However, should any site plan or subdivision approval or building permit granted under an approved IIHO Conditional Use Permit expire unused after the conclusion of the two-year validity period provided for herein, said Conditional Use Permit shall become void as well.

Findings of Fact

1. Subject to the reservations in the subsequent findings and the conditions of approval, the Board finds that the application meets the requirements for issuance of a Conditional Use Permit in accordance with Zoning Ordinance Section 3.18.C.1.
2. In determining the maximum density the applicant will be permitted to use in its subsequent applications, the Board has exercised its discretion after careful consideration of the views of the applicant, the public, and individual Board members.
3. The Board finds as fact that the same or overlapping benefit to the town is present in several bonus categories and that the actual benefit the town will enjoy does not warrant the maximum possible bonus in those categories.
 - a. In the categories of attached housing, single floor housing, single bedroom housing, and two-bedroom housing, the Board finds there is an overlap of these features and benefits within a few housing units, particularly in proposed lots 3, 4, and 5, limiting the total benefit derived.
 - b. In the categories of improved access to public spaces and open space under restrictive covenant, the applicant is using access through the open space as its proposed improvement. The benefit to the town is not as great as it would be if the proposed amenities were entirely separate, such as the proposed open space and a separate bike path to the village providing improved access to public spaces (which has not been proposed).
4. The Board finds that the benefit to the town of the proposed open space is affected by the presence of undevelopable wetlands and steep slopes, and has taken that into account in bonus awards.
5. The Board finds that the benefit to the town of the redevelopment of the existing farmhouse is minimal. The Board has carefully considered the views of the Town's Heritage Commission but concludes the farmhouse lacks the historical importance necessary to justify the award of the claimed bonus units. For example, there is no evidence in the record that the farmhouse was involved in early colony, town, county or state government functions, or that it has unique architectural features, or that it was occupied by persons of historical importance, or that it otherwise merits significant housing bonuses based on its history. The Board finds that the town already enjoys most of the historical benefit of the farmhouse by virtue of the documentation efforts previously undertaken to show the historical use and appearance of the farm and its structures.
6. The Board has expressed concern with the proposed plans in several respects. The Board finds that the record of this application does not permit the Board or the public all of the information necessary to address those concerns adequately, but that the concerns may be addressed, in whole or part, by the applicant's subsequent subdivision applications. The Board notes that its ordinances and regulations anticipate this possibility, permitting the Board to grant the CUP with a maximum density number that is subject to potential reduction at later application stages, and expressly reserving numerous decisions for the final

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application stage. In establishing a maximum density in this CUP, the Board is expressly relying on its ability to review the final plans and supporting information and, if necessary, to reduce the allowed number of units or, if warranted, to reject the final application. The concerns expressed include, but are not limited to:

- a. Proposed road and lot construction in areas of potentially excessive slopes, which may require excessive cut and fill and which may result in unacceptable stormwater management challenges.
- b. The ability of emergency vehicles to operate on the depicted shared driveways.
- c. The impacts of the proposed development on traffic, particularly at the intersection of Boston Post Road and Foundry Street. The Board notes that the third-party review of the applicant's traffic studies, which was performed by the Nashua Regional Planning Commission, states that the applicant's traffic engineer's conclusions are tailored to be advantageous to the applicant, and benefit from existing police officer presence at the intersection during certain times. Further, the Board notes that upon presentation of the final application and subdivision design, the Town Department of Public Works, with professional engineering assistance if needed, may assess the off-site road and drainage improvements necessitated by the proposed development, which may affect the traffic impacts of the proposed development.
- d. The need for stormwater management features that comply with town and state requirements without encroachment into wetlands, wetland buffers, and steep slope areas. This is of particular concern at this site given the proximity of the proposed impervious surfaces to steep slopes, and the potential difficulty of locating acceptable infiltration and other stormwater management features.
- e. The need to assess the proposed solar panel installation and its compliance with Town ordinances and regulations.


Nic Strong
Community Development Director

September 12, 2023
Date

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