

**Town of Amherst
Zoning Board of Adjustment
Information Center- Souhegan High School
Tuesday, November 18, 2014**

ATTENDEES: D. Kirkwood; Chair, J. Quinn, J. Ramsay, W. Sullivan (Alt), C. Vars (Alt), R. Panasiti (Alt)
A. Buchanan (Alt) and C. Mailloux- Community Development Director

D. Kirkwood called the meeting to order at 7:07pm. The applicant requested to audio record the meeting since it will not be video recorded. The request was approved. D. Kirkwood introduced the board members.

The first case was read by J. Ramsay.

1. Case #PZ5490-101714- Appeal of an Administrative Decision

Terry & Kelly Connor, 1 Smith Lane, PIN# 003-027-000- Appeal of an administrative decision of the Amherst Planning Board relative to its interpretation of the Amherst Zoning Ordinance regarding calculation of minimum lot size and density of Elderly Housing projects in the Rural Residential zone.

T. Quinn, attorney, was present to represent Terry and Kelly Connor. Also with him were: attorney J. Boutin and K. Bouchard and K. Clinton from Meridian Land Services. They have all been working on this case over the past two years.

T. Quinn explained that the zoning ordinance has changed since this case began in 2012. In 2014 the ordinance was restructured. Article 5 which dealt with elderly housing was moved to article 4. T. Quinn explained the various portions of the ordinance that apply to the case which include portions of both section 4 and section 5.

T. Quinn presented historical background of the case to the ZBA as follows.

In 2012, the applicant applied for a special exception for elderly housing. It was approved in January of 2013. In December of 2013, the plan went before the Amherst Planning Board. In October of 2014, the Planning Board decided the applicants weren't compliant with the density requirements. Since that was a zoning issue, instead of the appeal going to Superior Court, it comes back to the ZBA.

This has been a two year project. The plan that was presented back in 2012 is essentially the same as tonight's plan. The lot is approximately 16 acres, and 30 units with the possibility of a community room are proposed. The majority of the site is North of Smith lane. South of Smith lane is to be the site of the community well.

In the ordinance, special exceptions expire after a year unless construction has begun or a Certificate of Occupancy is issued. Neither was the case in this instance, so the applicant applied for it again in December 2013 and it was granted again. No conditions were put on the approval. In the meantime, they obtained a variance for the 100' setback from Rt. 101.

Since then, the case has come before the Planning Board on many occasions. A final approval was submitted in July 2014 to the Planning Board. The case was moving forward and getting down to the details such as traffic and sidewalks.

Then in September 2014, the issue became the density. The case was tabled and Town Counsel was approached on the issue. In October 2014 the plan was denied on the basis that the plan was non-compliant with the minimum lot size.

T. Quinn began his appeal to the ZBA. The plan meets the special exception requirements. Article 5 section 5.2 addresses the standards for all special exceptions. Article 4 section 4.3B addresses the standards for elderly housing. The applicants believe they meet the standards for both of these sections. There are two main requirements that need to be met. 5.2A1.1- general requirement states the property in question is in conformance with the dimensional requirements of the zone; and that the minimum lot area shall contain no wetland, flood plain or slopes greater than 20% as defined in article 4. 4.3B- Elderly housing states tract density shall be a minimum 0.5 acres per unit and the total lot not less than 15 acres.

The original presentation confirmed the lot would be 16 acres and include two flat, dry acres. There are actually eight flat, dry acres on the lot. Special exceptions are for more intense uses on legally conforming lots and that makes perfect sense. The applicant meets the requirements of the two flat dry acres. They also meet the elderly standards- entire lot is not less than 15 acres and not less than 0.5Ac per unit. T. Quinn stated he believes the Planning Board's calculation is incorrect. The Ordinance reads: 'The entire tract cannot be less than 15 acres.' It does not say 'net tract'. That was the interpretation of the applicant as well as the former zoning administrator.

T. Quinn looked online for the definition of entire:

1. No element or part left out
2. No part left out
3. Complete in all parts, undivided, whole.

Net tract calculations are listed in other ordinances, but this ordinance specifically uses the wording: entire.

T. Quinn stated again that he believes they meet all of the requirements for the special exceptions and that the denial was based on a Planning Board error.

W. Sullivan asked T. Quinn what his thoughts are on the failure to appeal. T. Quinn responded that twice appeals could have been filed. The selectman could have appealed if they disagreed with the approval, but didn't. D. Kirkwood mentioned some area and frontage requirements for nursing homes, churches and elderly housing. He then read from the Ordinance and asked about the interpretation. T. Quinn stated they meet the minimum dimension of zone (2Ac) of which the area cannot include wetlands and slopes. They have 8Ac. He again stated that density is 1 unit per .5 acre and there's no mention of net tract.

Ken Clinton – Meridian Land Services
He has been working on this project since the beginning as well as working often in Amherst and has experience with elderly housing. He provided documentation to the board. He explained there are two distinct parts.

The threshold test is that it should be a conforming lot. It needs to meet minimum lot size. (5.2A1.1)
If you meet the first test of minimum lot, you can proceed to the next test. (4.3B)
Mr. Clinton further reviewed and read from the document submitted regarding other sections of the Ordinance to compare them to the sections in question. (See attached)

A. Buchanan was confused as to how the planning board brought this issue up.

T. Quinn stated it came up late in the process. In April 2014 the applicant presented a preapproval plan and smaller issues were coming up such as sidewalks and overflow parking. At that time there was no mention of this issue.

A. Buchanan asked for clarification as to what the Planning Board is suggesting is needed- 15 clean acres? Yes that is what their interpretation is.

W. Sullivan stated that with the Planning Board's argument, the whole project wouldn't qualify, true?

A. Buchanan- or only 15 units would be possible.

J. Boutin confirmed yes, if we use the Planning Board interpretation, the project wouldn't be possible. The Planning Board believes 16 units could be done with the eight acres, but that's not possible.

C. Mailloux clarified that the ZBA members have copies of the Planning Board minutes. Town Counsel was consulted and the Planning Board used his opinion to aid in their decision. All of that info is in the ZBA packets.

Ken Clinton showed a plan that shows accurate wetlands and limit of the flood zone. This is and was complete and done by the Meridian surveyors.

D. Kirkwood asked him if you did net tract area, what would you come up with. K. Clinton didn't know the answer because he hasn't done that calculation because it wasn't necessary for the application.

J. Boutin also responded that because of the requirements of the ordinance, the criteria is different for each section, so which criteria would he have calculated for?

W. Sullivan moved to go into deliberations. A. Buchanan seconded. Vote: All in favor

DELIBERATIONS:

1. Case #PZ5490-101714- Appeal of an Administrative Decision

Terry & Kelly Connor, 1 Smith Lane, PIN# 003-027-000- Appeal of an administrative decision of the Amherst Planning Board relative to its interpretation of the Amherst Zoning Ordinance regarding calculation of minimum lot size and density of Elderly Housing projects in the Rural Residential zone.

J. Ramsay moved no regional impact. W. Sullivan seconded. Vote: All in favor

Discussion:

W. Sullivan stated that the language about the entire tract of land is unequivocal. It states entire.

In Bill Drescher's opinion, there is no mention of the word entire which is the whole key.

The minimum lot area isn't even a question. They could put three buildings of 12, 12 and 6 units each and still be ok. Also, we ruled on this. There was no appeal. The applicant probably spent six figures on the project based on our decision.

A. Buchanan feels the same way as W. Sullivan. Regarding Section 5.2.1.1, based on the language, the ordinance is clear. He can't see where the Planning Board is coming from- it doesn't make any sense.

D. Kirkwood is familiar with these articles since he wrote a few of them. The elderly housing was in the Ordinance before they wrote the others. He is also familiar with the intent. The intent may be different from what was written into the ordinance. He's trying to reconcile the intent with what was written. Regarding tract density- he's assuming it was put in in 2007. It was inserted after the rest of the development vehicles were in the ordinance. When you try to find the definition of minimum lot area, it's difficult to come up with anything other than what Ken mentioned. It may not say what was intended, but we can't hold the applicant accountable for what is not written.

Test:

Did the applicant demonstrate that there was an error in the interpretation of the Amherst Zoning Ordinance in the decision made by the Planning Board?

A. Buchanan yes. I believe the Planning Board misinterpreted article 5.2.1 as it applies to the law

J. Ramsay yes. The only qualifications are the 'entire tract' and there are no qualifications on that

J. Quinn yes agree with Alex

W. Sullivan yes

D. Kirkwood yes

5 True

D. Kirkwood stated that the appeal, having passed the test, is approved.

A. Buchanan moved to come out of deliberations. C. Vars seconded. Vote: All in favor

Other Business:

1. Minutes: October 21, 2014

J. Ramsay moved to accept the minutes of October 21st as submitted. W. Sullivan seconded.

Vote: 4 in favor to approve the minutes. W. Sullivan, J. Ramsay and A. Buchanan abstained.

A. Buchanan moved to adjourn at 8:17pm. C. Vars seconded. Vote: All in favor.

Respectfully submitted,

Jessica Marchant



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November 18, 2014

Zoning Ordinance Review Memo – regarding Connor Court Elderly Housing density calculation.

Prepared by Ken Clinton

The Amherst Zoning Ordinance applies a variety of restrictions to certain lot development options, but the content of these restrictions are inconsistent. One cannot imply that the full list of restrictions applies to all sections of the ordinance when specific restriction language indicates otherwise.

Section 4.3 Residential/Rural Zone (RR). (3-12-63, 3-11-93)

B. USES PERMITTED BY SPECIAL EXCEPTION RESIDENTIAL/RURAL. (3-11-93)

3. Elderly Housing. Single or Multi- unit residential developments which comply with the Federal Definition of Elderly Housing subject to the following: (3-14-89, 3-12-91, 3-11-03)

- a. Each structure may be a single dwelling unit or a cluster of units containing from two (2) to twelve (12) dwelling units. (3-14-76, 3-11-03)
- b. **Tract density shall be a minimum of one-half (1/2) acre for each dwelling unit, and the entire tract of land on which a development is situated shall contain not less than fifteen (15) acres. (3-4-7)** The absence of restrictions in this section, where there are one or more restrictions in each of the other development options, clearly shows the intent to not apply said restriction(s) here.
- c. If off-site drinking water is available and on-site soils are classified by the NHDES as Group I or II then the tract density in units shall be limited to a maximum of six (6) bedrooms per acre and the minimum tract size shall be reduced to seven and one-half (7 1/2) acres. (3-13-01, 3-11-03)
- d. Ancillary facilities such as community meeting rooms, site management offices, and rooms for limited healthcare services are allowed. (3-13-01, 3-11-03)
- e. No structure shall be constructed to a height greater than thirty-five (35) feet, exclusive of chimneys or cupolas, measured from the lowest adjacent exterior elevation. (3-4-75, 3-11-86, 3-11-03)

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, 3-6-0) Three restrictions – not called ‘net tract area’

Section 4.14 Affordable Housing. (3-14-89, 3-10-09, 3-11-14)

C. IDENTIFICATION OF SUITABLE PROJECT.

2. Specific Criteria. (3-10-09)

- a. Where there is no existing dwelling, the **net tract area (total parcel minus wetlands)** shall be at least four (4) acres and not more than fifteen (15) acres, except in the Northern Rural Zone, the net area shall be at least ten (10) acres but not more than twenty (20) acres. (3-12-91, 3-9-99, 3-10-09) Only one restriction.



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Section 4.16 Open Space Plan.

C. AREA, SETBACK, FRONTAGE.

1. Minimum Parcel Area: Ten (10) acres in the Residential/Rural Zones. Twenty-five (25) acres in the Northern Rural and Northern Transitional Zones Minimum Lot Area.

2. Minimum Lot Area: Forty thousand (40,000) square feet in the Residential / Rural, Northern Rural, and Northern Transitional Zones. In the Northern Rural and Northern Transitional Zones, the average minimum lot area shall be eighty thousand (80,000) square feet, with a maximum lot area of five (5) acres allowed for the purpose of calculating the average minimum lot area.

D. SLOPES AND WETLANDS. **No wetlands, no flood plain as defined in Art. IV, Sec. 4-10, or slopes over twenty percent (20%) will be used to compute the minimum lot area.** Three restrictions – not called ‘net tract area’. No dwelling will be constructed on slopes over fifteen percent (15%). (3-6-04)

Section 4.17 Planned Residential Development (PRD). (11-2-82)

C. MINIMUM LOT AREA. Planned Residential Developments may be permitted on single or adjacent tracts of land, under one (1) ownership, or to be brought under one (1) ownership, which have a net tract area of no less than twenty (20) buildable, non-wetland acres in the Residential/Rural, and Commercial Zones, and thirty (30) buildable, non-wetland acres in the Northern Rural Zone, and twenty-five (25) buildable, non-wetland acres in the Northern Transitional Zone. **Net tract area shall mean the total area of the tract or tracts less the area in the Wetlands Conservation District, Flood plain Conservation District, areas of slope equal to or greater than twenty percent (20%), and soils with severe limitations as defined by the United States Department of Agriculture Soils Survey Interpretation Sheets of 1973, 1975 or 1976.** Four restrictions. On-site determination of soil types may be conducted at the request of the Board by an agent of the Hillsborough County Soil Conservation Service or a qualified soils scientist approved by the Town of Amherst. Only soils with slight or moderate limitations shall be included in the net tract area. PRDs may be built only on the net tract area. (3-14-89, 3-12-02, 3-6-04).

Section 5.2 Standards Applicable to All Special Exceptions.

A. CONDITIONS FOR SPECIAL EXCEPTIONS.

1. Before the Board of Adjustment considers the approval of an application for a special exception, the applicant shall prove to the satisfaction of the Board of Adjustment that all the following conditions have been met:

1. That the property in question is in conformance with the dimensional requirements of the zone; and that the **minimum lot 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%);** and that the use is compatible with the Amherst Master Plan. (3-13-07) Not called ‘net tract area’. Once the minimum lot area ‘test’ is confirmed, this condition is met and one considers the specific requirements of the desired development option. It is understood that this provision is intended to prevent uses by Special Exception to only be allowed on compliant lots, not pre-existing / non-conforming lots which may not support the considered uses.