

TOWN OF AMHERST
Zoning Board of Adjustment

April 19, 2022

DRAFT

1 In attendance: Doug Kirkwood (Chair), Jamie Ramsay (Secretary), Danielle Pray (Vice Chair),
2 Tracy McInnis, and Tim Kachmar (alternate)
3 Staff present: Nic Strong, Community Development Director, Nicole Stevens, Town Planner,
4 and Kristan Patenaude, Recording Secretary

5

6 Doug Kirkwood called the meeting to order at 6:57pm. He asked that all present respect other's
7 decisions regarding wearing masks. He explained that the chairs in the room were originally
8 spaced 6' apart but that the spacing needed to be reduced to accommodate all present. He asked
9 that those present wear a mask. He explained that the Secretary will read the case. Each applicant
10 will then be asked to present the case.

11

12 Doug Kirkwood noted that on the agenda this evening are four variance requests for the same ap-
13 plicant. He asked if the applicant would like for all four requests to be treated as one.

14

15 Morgan Hollis, Esq., Gottesman & Hollis, P.A., representing the owner and applicant, explained
16 that there are four proposed variances regarding use, height, floor area ratio requirements, and
17 impacts to the Wetland and Watershed Protection District. He noted that the last item may be
18 considered unnecessary by the Board and could be addressed separately from the other three.
19 The remaining three items can be treated as one. If the Board denies the use variance, then the
20 other two items are likely not needed. He asked the Board to consider if the last item is neces-
21 sary.

22

23 The Board agreed to handle the items in this way.

24

25 Doug Kirkwood outlined the process of the Board. The Board will first hear from the applicant.
26 The Board will then ask questions and make comments. The Board will then ask for public com-
27 ment. If the comments become duplicative, members of the public may be asked to stop com-
28 menting and come back for a second comment later in the public comment session.

29

30 Doug Kirkwood introduced the Board members and noted that Charlie Vars was absent. He ex-
31 plained that Tim Kachmar could sit in Charlie Vars' place for this meeting.

32

33 Doug Kirkwood explained that there is a State RSA which governs the practice of regional im-
34 pact. He has reviewed this RSA for underlying references that could be used when determining
35 regional impact for the proposals to be heard tonight.

36

37 Doug Kirkwood read RSA 36:54 – 36:58:

38

39 **“36:54 Purpose. –**

40 *The purpose of this subdivision is to:*

41 *I. Provide timely notice to potentially affected municipalities concerning proposed developments*
42 *which are likely to have impacts beyond the boundaries of a single municipality.*

43 *II. Provide opportunities for the regional planning commission and the potentially affected mu-*
44 *nicipalities to furnish timely input to the municipality having jurisdiction.*

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45 *III. Encourage the municipality having jurisdiction to consider the interests of other potentially*
46 *affected municipalities.*

47

48 **36:55 Definition. –**

49 *In this subdivision "development of regional impact" means any proposal before a local land use*
50 *board which in the determination of such local land use board could reasonably be expected to*
51 *impact on a neighboring municipality, because of factors such as, but not limited to, the follow-*
52 *ing:*

53 *I. Relative size or number of dwelling units as compared with existing stock.*

54 *II. Proximity to the borders of a neighboring community.*

55 *III. Transportation networks.*

56 *IV. Anticipated emissions such as light, noise, smoke, odors, or particles.*

57 *V. Proximity to aquifers or surface waters which transcend municipal boundaries.*

58 *VI. Shared facilities such as schools and solid waste disposal facilities.*

59

60 **Section 36:56 - Review Required -**

61 *I. A local land use board, as defined in RSA 672:7, upon receipt of an application for develop-*
62 *ment, shall review it promptly and determine whether or not the development, if approved, rea-*
63 *sonably could be construed as having the potential for regional impact. Doubt concerning re-*
64 *gional impact shall be resolved in a determination that the development has a potential regional*
65 *impact.*

66 *II. Each regional planning commission may, with public participation following the public post-*
67 *ing of notice of the intent to develop guidelines, including notice published in a newspaper of*
68 *general circulation in the planning region, develop guidelines to assist the local land use boards*
69 *in its planning region in their determinations whether or not a development has a potential re-*
70 *gional impact. The regional planning commission may update the guidelines as needed and pro-*
71 *vide them, as voted by the regional planning commissioners, to all municipalities in the planning*
72 *region.*

73

74 **36:57 Procedure. –**

75 *I. Upon determination that a proposed development has a potential regional impact, the local*
76 *land use board having jurisdiction shall afford the regional planning commission and the af-*
77 *ected municipalities the status of abutters as defined in RSA 672:3 for the limited purpose of*
78 *providing notice and giving testimony.*

79 *II. Not more than 5 business days after reaching a decision regarding a development of re-*
80 *gional impact, the local land use board having jurisdiction shall, by certified mail, furnish the*
81 *regional planning commission and the affected municipalities with copies of the minutes of the*
82 *meeting at which the decision was made. The local land use board shall, at the same time, submit*
83 *an initial set of plans to the regional planning commission, the cost of which shall be borne by*
84 *the applicant.*

85 *III. At least 14 days prior to public hearing, the local land use board shall notify, by certified*
86 *mail, all affected municipalities and the regional planning commission of the date, time, and*
87 *place of the hearing and their right to testify concerning the development.*

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88 *IV. Notwithstanding the foregoing, when the building inspector determines that a use or struc-*
89 *ture proposed in a building permit application will have the potential for regional impact and no*
90 *such determination has previously been made by another local land use board, he or she shall*
91 *notify the local governing body. The building inspector shall also notify by certified mail the re-*
92 *gional planning commission and the affected municipalities, who shall be provided 30 days to*
93 *submit comment to the local governing body and the building inspector prior to the issuance of*
94 *the building permit.*

95

96 **36:58 Applicability.** – *The provisions of this subdivision shall supersede any contrary or in-*
97 *consistent provisions of local land use regulations enacted under RSA 155-E and RSA 674.”*

98

99 Doug Kirkwood explained that there is a question as to if the Board should determine regional
100 impact of the proposals now, or after the presentation by the applicant is complete. He asked that
101 the Board suspend its regular meeting and discuss how best to make this determination. He ex-
102 plained that there is evidence within the RSA that if the Board determines there is regional im-
103 pact of the case, notification must be sent to those identified as potentially impacted.

104

105 The Board voted to enter into a deliberative session to discuss the regional impact in regard to
106 the items before it this evening.

107

108 Danielle Pray explained that the Board has, in the past, determined regional impact after com-
109 pleting a hearing. However, there is evidence in the RSA that the Board should act promptly on
110 regional impact. Thus, the Board can vote on regional impact prior to hearing the case.

111

112 Danielle Pray noted that, from the documents received by the Board, these cases seem to be for
113 an applicant looking to build a warehouse with a number of tractor trailer bays for goods to be
114 shipped/received. These trucks will be coming to and going from the area using local and State-
115 owned corridors. She believes there are a couple of sections of the regional impact RSA that ap-
116 ply to this proposal; there could also be additional sections that also apply that she has not yet de-
117 termined. RSA 36:55, Section III, transportation networks; and Section V, proximity to aquifers
118 or surface waters which transcend municipal boundaries. Danielle Pray stated that she does be-
119 lieve this application has regional impact, based on these items, and thus, the Town should notify
120 local municipalities. Regarding Section III, Danielle Pray stated that she believes Hollis, Merrimack,
121 Nashua, and possibly Milford should be notified. Regarding Section V, she believes that
122 the same towns should be notified, with the potential for additional towns to also be notified, as
123 determined through further discussion by the Board.

124

125 Tim Kachmar agreed with Danielle Pray’s suggestions for regional impact. He noted that, as the
126 proposal looks to utilize the Route 101A corridor for its trucks, this would primarily impact
127 Nashua, Merrimack, and Hollis. However, it is unclear yet how much traffic will also be coming
128 to this site from the west. He explained that the Board would need to review a map of the aquifer
129 to determine exactly which towns will likely need to be notified, in regard to Section V.

130

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131 In response to a question from Tim Kachmar regarding if the presentation tonight will proceed if
132 regional impact is determined, Danielle Pray explained that the meeting will not continue if re-
133 gional impact is determined. If the Board votes that this application has regional impact, the
134 Town has 14 days to notify other municipalities identified, so that they have the opportunity to
135 send representation to a future hearing on this item.

136
137 Tracy McInnis agreed with Danielle Pray regarding her thoughts on regional impact. She noted
138 that the traffic along Route 101A is already busy. She also explained that this aquifer is im-
139 portant to not only this community, but surrounding ones as well.

140
141 Jamie Ramsay also agreed. He noted that there could be additional towns identified to have im-
142 pact from Section III, coming from the west on Route 101A. Also, there could be towns im-
143 pacted from travel to the east on Route 101, such as Bedford, Manchester, and others.

144
145 Doug Kirkwood stated that he is most concerned regarding the impact to the aquifer that this pro-
146 ject could have. He has reviewed the aquifer map from the Nashua Regional Planning Commis-
147 sion (NRPC) and noted that there is no flat ceiling on this aquifer, but instead areas of pockets.
148 The size of this proposal in regard to the aquifer will need to be discussed. He also noted the
149 proximity of this project to Witches Brook and the impact that may have on the town of Hollis.

150
151 Morgan Hollis explained that the variances being requested are only for one of the lots of this
152 project, not for the whole development. The use variance is only being requested for the ware-
153 house use on this single lot. This will also need to go to the Planning Board for approval. Most of
154 the proposed warehouse building will be located on the lot where this is already an allowable
155 use. The variances are being requested for the one, 15-acre lot, which is proposed to hold ap-
156 proximately 180,000 s.f. of the warehouse. The Board is not here tonight to weigh in on the size
157 and scale of the entire 1.2M s.f. proposed warehouse and its potential regional impact. This en-
158 tire proposal may never come to fruition if the use variance for the single lot use is not approved.
159 He noted that the Planning Board will also consider regional impact as part of its process. He
160 wants the Board to be clear that it is deliberating on regional impact only for this small section of
161 the project, but not for the entire large, proposed warehouse.

162
163 Danielle Pray acknowledged that the Board is deliberating on regional impact only for the single
164 lot. Impacts from this single lot would still impact the aquifer and traffic of the area, due to the
165 variance's proposal to change the use of this site to Industrial and all of the allowed uses that
166 could thus come along with this change.

167
168 Morgan Hollis noted that the applicant is only requesting a warehouse use.

169
170 **Danielle Pray moved that all four variances requested by this applicant have re-**
171 **gional impact, under RSA 36:55, specifically Sections III and V, to the towns men-**
172 **tioned previously and NRPC, with the caveat that there may be additional towns im-**
173 **pacted that the Board is yet unaware of. Jamie Ramsay seconded.**
174 **Voting: 5-0-0; motion carried unanimously.**

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175
176 Doug Kirkwood noted that, due to the fact that no one, including the applicant or the public, had
177 the chance to make presentations for or against these items this evening, there cannot be a claim
178 of no due process. The vote for regional impact moves this hearing to the next Board meeting,
179 with 14 days for the Town to notify the identified municipalities.

180
181 Tim Kachmar asked if the next meeting for these items can be held sooner than next month, to
182 accommodate the applicant and abutters. Danielle Pray stated that the meeting has to be held
183 within the timeframe listed in the RSA. The next Zoning Board meeting is May 17, 2022.

184
185 It was noted that the location for the May 17, 2022, meeting will be changed to the Souhegan
186 High School auditorium.

187
188 **Danielle Pray moved to continue this hearing to May 17, 2022, at 7pm, at the Souhe-**
189 **gan High School auditorium. Jamie Ramsay seconded.**
190 **Voting: 5-0-0; motion carried unanimously.**

191
192 The Board voted to come out of its deliberative session.

193
194 Doug Kirkwood reiterated that the Board voted that the proposal does have regional impact on a
195 number of towns mentioned. Due to this, these towns will be notified of the next Board meeting
196 to be held on May 17, 2022, at 7pm, at the Souhegan High School auditorium, in case they
197 would like to send representation.

198
199 **PUBLIC HEARINGS:**
200 ***These items were previously addressed and tabled to May 17, 2022, at 7pm, at the Souhegan***
201 ***High School auditorium***

202
203 **1. CASE #: PZ15534-032122 –VARIANCE**
204 **TANA Properties Limited Partnership (Owner) & Flint Acquisitions LLC (Appli-**
205 **cant); Hollis Road (Rear), PIN #: 002-012-002 – Request for relief from Article IV,**
206 **Section 4.3, Paragraph A to construct a warehouse in the Residential/Rural Dis-**
207 **trict. Zoned Residential/Rural.**

208
209 **2. CASE #: PZ15532-032122 –VARIANCE**
210 **TANA Properties Limited Partnership (Owner) & Flint Acquisitions LLC (Appli-**
211 **cant); 11 Northern Blvd/Bon Terrain Drive, PIN #: 002-026-000–Request for relief**
212 **from Article IV, Section 4.11, Paragraph H.2 to allow by Conditional Use Permit the**
213 **construction of a parking area and warehouse building in the Wetland and Water-**
214 **shed Conservation District. Zoned Industrial.**

215
216 **3. CASE #: PZ15531-032122 –VARIANCE**
217 **TANA Properties Limited Partnership (Owner) & Flint Acquisitions LLC (Appli-**
218 **cant); Hollis Road (Rear), PIN #: 002-012-002 –Request for relief from Article IV,**

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219 **Section 4.3, Paragraph D.4 to allow a new structure to be constructed with a floor**
220 **area ratio of approximately 55% where no greater than 15% floor area is permit-**
221 **ted. Zoned Residential/Rural.**

222

223 **4. CASE #: PZ15533-032122 –VARIANCE**

224 **TANA Properties Limited Partnership (Owner) & Flint Acquisitions LLC (Appli-**
225 **cant); Hollis Road (Rear), PIN #: 002-012-002 –Request for relief from Article IV,**
226 **Section 4.3, Paragraph D.4 to allow a new structure to be constructed to a height up**
227 **to 55 feet where 40 feet is permitted. Zoned Residential/Rural.**

228

229 OTHER BUSINESS:

230

231 **1. Minutes: September 21, 2021 & January 18, 2022**

232

233 **Danielle Pray moved to approve the minutes of September 21, 2021, as presented.**

234 **Jamie Ramsay seconded.**

235 **Voting: 5-0-0; motion carried unanimously.**

236

237 *It was noted that Charlie Vars was present remotely and he took his seat on the Board.*

238

239 **Danielle Pray moved to approve the minutes of January 18, 2022, as presented. Ja-**
240 **mie Ramsay seconded.**

241 **Voting: 3-0-2; motion carried (D. Kirkwood and T. McInnis abstaining).**

242

243 The Board noted that it would need to speak clearly and loudly at the next meeting, as the acous-
244 tics in the Souhegan High School auditorium are different. It was noted that there has generally
245 been limited participation from other towns regarding regional impact, but that it is important to
246 afford them the opportunity to participate.

247

248 **Jamie Ramsay moved to adjourn the meeting at 7:53pm. Tracy McInnis seconded.**

249 **Voting: 5-0-0; motion carried unanimously.**

250

251

252

253 Respectfully submitted,

254 Kristan Patenaude