

TOWN OF AMHERST
Zoning Board of Adjustment

March 19, 2024

DRAFT

1 In attendance: Danielle Pray (Vice Chair), Jamie Ramsay (Secretary), Charlie Vars, Tony Ortiz,
2 and Tim Kachmar.

3 Staff present: Nic Strong, Community Development Director
4

5 Danielle Pray called the meeting to order at 7:00 pm. She outlined the process for the meeting
6 and introduced the Board members.
7

8 **REHEARING:**

9 **1. CASE #: PZ18136-110223 –VARIANCE**

10 **Divest LLC (Owner & Applicant); County Road & Thornton Ferry Road II; PIN**
11 **#: 004-142, 142-10, 142-12, 142-13** –Request for relief from Article III, Section
12 3.9, Paragraphs B, C & D to maintain three existing reduced frontage lots as
13 previously approved, and from Article IV, Section 4.3, Paragraph C.2. to maintain an
14 existing corner lot as previously approved. *Zoned Residential Rural*.
15

16 Jamie Ramsay read and opened the case.
17

18 Attorney Brad Westgate, Winer and Bennett, LLC, representing the applicant; Jaron Slattery,
19 Divest, LLC., and David Petropulos, Etchstone Properties, Inc., addressed the Board. Attorney
20 Westgate explained that Etchstone Properties, Inc., is a Nashua-based developer that has been in
21 existence for approximately 40 years. This case involves an application that Divest, LLC., filed
22 back in October. On November 21, 2023, the Board granted a variance from the sections as cited.
23 The variance pertains to four lots on the 14-lot subdivision that the Planning Board approved in
24 2005. The plan was recorded timely with the Registry of Deeds including the necessary
25 documents that were required by conditions of approval. This subdivision plan contemplated
26 only frontage lots. No new public road or Town infrastructure was required for this project. The
27 variance granted on November 21st gave relief from three paragraphs in Section 3.9 of the
28 Zoning Ordinance that pertained to reduced frontage lots. These paragraphs were adopted in
29 2023 by the voters to make changes to the Zoning Ordinance regarding reduced frontage lots.
30 The variance also granted relief from Section 4.3 C.2., relative to frontage requirements for
31 corner lots. The 2005 plan approved by the Planning Board never expired, as Amherst does not
32 have time limits on subdivision approvals.
33

34 Attorney Westgate noted that the Staff Report gives an excellent summary on the history of the
35 process leading up to the November 2023 Zoning Board hearing. Prior to that meeting, in 2022,
36 the applicant sought guidance from the Community Development Department on how to
37 proceed. At that time, the only zoning change that was affecting the proposal was the corner lot
38 provision. Up until 2022, corner lots only had to have 200' of frontage on one street. Through the
39 2022 change to the Zoning Ordinance, corner lots must have 200' of frontage on both streets that
40 it corners or abuts. The applicant maintained that the Zoning Ordinance changes should not be
41 applicable, but the Community Development Director, Nic Strong, ruled otherwise, and this was
42 accepted by the applicant. The applicant then needed to deal with stormwater management and
43 the changes in the Zoning Ordinance, both regarding corner lots and reduced frontage lots.
44

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45 During this process in 2023, the applicant's project engineer analyzed the stormwater
46 management designed in 2005 against the more current regulations. The opinion was that the
47 system met the current regulations. This was confirmed by a peer review by the Town's civil
48 engineer, Steve Keach, of Keach Nordstrom. The applicant then needed to deal with the variance
49 for the changes in the Zoning Ordinance relative to reduced frontage lots and corner lots, which
50 was granted.

51
52 On or about December 21, 2023, Patricia and Gerard Pelletier, sent an e-mail to Nic Strong. The
53 Board treated that e-mail as a request for rehearing, and, on February 20, 2024, the Board
54 granted the rehearing. Last Friday, the applicant became aware of a memorandum that the
55 Pelletier's counsel, Michael Harris, had filed with the Board. In granting the request for a
56 rehearing, the Board expressed some concerns about whether the variance granted last November
57 was appropriate in light of the changes to the reduced frontage lot provisions. The applicant
58 began to consider possible alternatives to get in sync with the reduced frontage lot changes. One
59 consideration involved a 13-lot subdivision, with frontage lots, and some peculiar layouts, while
60 another involved restructuring the whole project to a Planned Residential Development. The
61 applicant felt that the reduced frontage lot approach makes more sense. In order to deal with the
62 reduced frontage lot issue, the applicant has agreed to merge the three reduced frontage lots from
63 the 2005 recorded plan into one lot. This will leave the applicant with two modest variance
64 requests.

65
66 The merged reduced frontage lot is approximately 7.5 acres in total. The reduced frontage lot
67 changes from 2023 mandate a five-acre minimum for reduced frontage lots. The 2023
68 regulations also require 50' of frontage for each reduced frontage lot. Originally there was 33' of
69 frontage, for each lot, leading to 105' of frontage for the one reduced frontage lot. The merger
70 process would not require a public hearing before any Board but simply completing a merger
71 document that the Planning Board created to be recorded.

72
73 The rehearing request that the Pelletier's filed focuses essentially on the five-acre lot concerns.
74 The purpose of this change to the Zoning Ordinance is to maintain open space for wildlife habitat
75 and wildlife corridors. When a motion for rehearing is filed by an abutter, or even by an
76 applicant, the Rules of Procedure require that all grounds for it be submitted, and it be noted as to
77 why the decision order was unlawful and unreasonable. The Pelletiers appropriately focused on
78 the key issue but the Pelletiers' motion for rehearing and Attorney Harris' follow-up
79 memorandum do not address the corner lot variance that was pending, nor the other variance that
80 the applicant would need. If the three lots are merged, the two variances still needed would be
81 the corner lot frontage requirement of 200' or more on each road, meaning County Road and
82 Thornton Ferry Road II, and the 500' intersection separation requirement, per Section 3.9.D. of
83 the Zoning Ordinance enacted in 2023. This essentially states that the access to a reduced
84 frontage lot needs to be 500' or more away from the intersection of two Town roads. The one
85 reduced frontage lot has frontage on County Road and will be serviced by a private, common
86 driveway named Barrington Way. This private common driveway and the easement location was
87 set up to serve the original three reduced frontage lots and two conventional lots, Lots 6 and 7.
88 495' is the approximate distance from the center line of Barrington Way, which will now service

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89 the one reduced frontage lot and the two conventional lots, to the intersection of Conifer Lane
90 and County Road. The Zoning Ordinance does not describe whether this distance should be
91 calculated from centerline to centerline or edge to edge. The requirement is 500', so the applicant
92 is seeking a modest variance from that required distance.

93
94 Lot 4-142-10 is a proposed corner lot, which has frontage on both County Road and Thornton
95 Ferry Road II. Extracting the distance on those frontages, leads to approximately 350' of
96 frontage on County Road for Lot 10 and approximately 145' of frontage on Thornton Ferry Road
97 II. In November, the Board approved a driveway for that corner lot off County Road. This
98 removes the need to have a driveway on Thornton Ferry Road II. The conditions of approval
99 established in November 2023 for the corner lot included that the driveway servicing Lot 10
100 would be no more than 125' from the corner of Lots 9 and 10, to keep it away from the nearby
101 intersection. Lot 4-142-11 needs a driveway but does not require a variance as it is not a corner
102 lot and has 200' of frontage. Regarding a driveway location, the condition of approval was that
103 the driveway would not be any more than 75' from the corner of Lot 11 and Lot 4-58-1. The
104 applicant found those conditions of approval acceptable. The plans include a 50' buffer along the
105 backside of the complex as well as the Thornton Ferry Road II side for Lot 11.

106
107 Attorney Westgate explained that he drafted a couple of motions for the Board to consider on
108 these topics. He asked how the Board would like to proceed. He suggested he focus on the corner
109 lot variance and the 500' intersection separation variance. He asked that the testimony submitted
110 on November 21, 2023, be made part of the record, though the Board is only being asked to
111 determine whether to grant the variances for the 500' separation and for less than 200' of
112 frontage on Thornton Ferry Road II for the corner lot.

113
114 Danielle Pray asked if, procedurally the applicant is taking the variance for the reduced frontage
115 lots off of the table. Attorney Westgate stated that he is not and asked the Board to review his
116 draft motions. He explained that the idea is to make the aspect of the variance for the five-acre
117 minimum and the 50' frontage minimum moot by agreeing that, as a condition of approval, the
118 three reduced frontage lots will be merged into one. This would mean that there is no longer any
119 need for those two aspects of the variance to apply. If the Board felt that withdrawing those two
120 was the more appropriate procedural standard, the applicant could consider this as well. One
121 motion explains how the applicant agrees, as a condition of approval, that the three lots be
122 merged. The proposed motion would vacate the November 21, 2023, grant and approve the
123 variance application with conditions that the three lots be merged, that the driveway for Lot 4-
124 142-10 on County Road be no more than 125' from the Lot 9/Lot 10 corner, and that the
125 driveway for Lot 4-142-11 be no more than 75' from Lot 4-58-1.

126
127 Danielle Pray asked if the Board already vacated the November decision by granting a rehearing.
128 Attorney Westgate stated that he is unclear of that procedure.

129
130 Charlie Vars asked if the applicant's stance is that the reduced frontage lot has merged with the
131 7+ acre area, so that Barrington Way has a 50' right of way and the applicant would still have a
132 105' right of way. Attorney Westgate explained that this is not a right of way, but a private

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133 common driveway. The frontage of the merged lot is 105' with a common driveway up the
134 middle to serve both sides.
135

136 Charlie Vars stated that the merged lots would require three driveways along Barrington Way
137 instead of the five originally proposed. Attorney Westgate agreed. Charlie Vars asked why the
138 proposed driveway comes so deep into the lot. Attorney Westgate explained that he only
139 replicated what the existing 2005 plan set shows. Charlie Vars explained that this would dictate
140 distance away from Barrington Way of the front of any house on those lots. Originally it was
141 okay for any house to be built within 100' of an existing home on Lot 4-57-17. Attorney
142 Westgate stated that he is not proposing any setback constraints on the merged lots, other than
143 what the Town imposes. Charlie Vars asked if what is being shown could drop back
144 approximately 50'. Attorney Westgate explained that it could. He might then amend the
145 declaration of common driveway to replicate the actual usage. Lots 4-142-6 and 4-142-7 have no
146 need to travel past their entrances. There is also no need to split the end point, and this could be
147 shorter.
148

149 Charlie Vars stated that this was the only thing brought before the Board through the rehearing
150 request. There was no argument regarding the location of the two driveways on Lots 4-142-11 or
151 4-142-10. This proposal seems to meet the objection stated through the rehearing and should not
152 require the applicant to go back to the Planning Board.
153

154 Jamie Ramsay had no questions or comments at this time.
155

156 Tony Ortiz asked if there was any discussion regarding merging Lots 4-142-10 and 4-142-11.
157 Attorney Westgate stated that there was not. Tony Ortiz explained that the 500' separation does
158 not concern him, but Lots 10 and 11 do. Attorney Westgate explained that the request for
159 rehearing does not address the corner lot concern at all. Following the Board's Rules of
160 Procedure and the statute for rehearing, there were no grounds submitted on the corner lot issue
161 in order to discuss the correctness of the Board's decision on November 21, 2023. The lot has
162 over 500' of total frontage, the driveway location will be on County Road, and the driveway will
163 be no more than 125' from the corner of Lots 9 and 10. The idea of 200' of frontage for a corner
164 lot is so that a corner lot will not end up with a driveway on the shorter frontage road. This
165 property has 350' of frontage on County Road and the driveway can be placed there with no
166 impact on Thornton Ferry Road II.
167

168 Tom Kachmar stated that he agrees with the points made by Charlie Vars. The reasons for this
169 rehearing seem to be regarding the three back lots and frontage, not the corner lots.
170

171 Danielle Pray stated that the 500' intersection was proposed originally, under Section 3.9.D.
172 Sections B., for the five acres, and C., for the 50' of frontage, are not needed. The corner lot item
173 is under Section 4.3.C.2.
174

175 Attorney Westgate asked the Board to incorporate into the record testimony of all parties from
176 the November 21, 2023 hearing. Attorney Westgate addressed the five criteria for the two

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177 necessary variances. This property is in the Rural Residential District and has a total of
178 approximately 30 acres. This is located in a relatively developed area of Amherst, and most of
179 the properties around it contain residential development. As noted, the common driveway of
180 Barrington Way would now service three lots, the reduced frontage lot and two others. Planning
181 Board approval was granted in 2005 and had a variety of conditions, such as setting up a
182 homeowner's association, common driveway access, a drainage easement agreement, and a 100'
183 buffer along the frontage of County Road. All of these have been completed. Divest, LLC., is
184 dedicating 1/3 of an acre of land to the widening of County Road, as shown on the plans.
185

186 Attorney Westgate noted that the 14 lots have been taxed separately since the subdivision in
187 2005. He would submit that the core goals expressed by the 2023 Zoning Ordinance
188 amendments are met by the merger of the three lots as proposed. A variance is no longer needed
189 for those acreage and frontage requirements. If a variance is not granted tonight for the corner lot
190 and the 500' intersection separation, the applicant will have to go back to the drawing board
191 which is not a good planning practice contemplated for this property. The area around this
192 property has not changed materially since 2005. Merging the lots meets the philosophy of the
193 2023 concerns. This proposal is not contrary to the public interest. Approval of both the corner
194 lots and the 500' separation variances, is based on the condition that the three reduced frontage
195 lots are merged and the additional conditions regarding the placement of the driveways for Lots
196 4-142-10 and 4-142-11. The spirit of the Ordinance is observed for the same reasons. The
197 proposal keeps the good planning practices of this subdivision in place and brings the proposal in
198 concert with the 2023 reduced frontage lot changes. It also keeps the conditions of approval of
199 the Board from November 21, 2023. This proposal maintains the buffer along County Road. This
200 proposal allows the driveway to Lot 4-142-10 on the road frontage that best accommodates it.
201

202 Attorney Westgate explained that, regarding if substantial justice is done, this is measured by
203 whether the general public realizes no appreciable gain from denying the variance. If denied, the
204 applicant must go back to the drawing board. These two variances are modest in nature, and do
205 not injure the public if granted. The separation difference is practically not discernible to the
206 naked eye.
207

208 Attorney Westgate noted that this proposal will not diminish the value of surrounding properties
209 given the modest nature of the variances. A letter from a real estate professional was submitted
210 in November 2023 stating that the proposal will not adversely affect property values.
211

212 Attorney Westgate stated that literal enforcement of the ordinance would result in an
213 unnecessary hardship. The property has specific circumstances distinguishing it from others. The
214 previously approved 14-lot subdivision is still in effect. It is subject to the changes in the Zoning
215 Ordinance and this plan tries to accommodate those changes. The location of the common
216 driveway for the reduced frontage lot is sensibly located. It is not across from another driveway
217 or roadway. The corner lot is unique as it has 500+' of frontage on both roads, but this is not
218 evenly divided. The Ordinance provision can be met in theory and in spirit. Regarding the two-
219 prong test, these Ordinance provisions do not serve a fundamental public purpose when applied
220 here, because the separation item is nominal, and the sight distance is not a question. Merging

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221 the three lots removes the fundamental concerns of the reduced frontage lot amendments from
222 2023. The use is reasonable. Stormwater management has been handled properly and satisfied by
223 the Town's peer review.

224

225 Charlie Vars asked if the first motion regarding merging the lots is needed. Danielle Pray stated
226 that she believes it is. Attorney Westgate noted that the three conditions proposed are agreeable
227 to the applicant.

228

229 Danielle Pray asked for public comment.

230

231 Gerry Pelletier, 1 Newbury Drive, explained that the request for rehearing emphasizes how much
232 of an impact the original plan had on them as abutters. The new plan agrees with the Ordinance
233 changes and satisfies the original concerns regarding overcrowding and other items stated in the
234 rehearing documents. In the future, he would like there to be more emphasis paid to the concerns
235 of citizens, as he does not feel this was addressed at the original hearing for this item. The
236 original plan did impact the community and neighborhood. The new proposal lessens the impact,
237 and this is appreciated. Regarding the frontage issues, the Board can decide that item. The
238 burden was placed on residents to come back to the Board and make sure the Ordinance is
239 upheld.

240

241 Patricia Pelletier, 1 Newbury Drive, stated that the voters voted for the five-acre lot minimum
242 which was ignored in November by the Board. As innocent abutters, it ended up costing attorney
243 fees and legal fees in order to have this recognized by the Board. She further noted that they had
244 decided not to have their attorney present at this meeting because of the cost.

245

246 There was no further public comment at this time.

247

248 **Jamie Ramsay moved to close the public hearing for this item. Charlie Vars**
249 **seconded.**

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

251

252 **PUBLIC HEARINGS:**

253

254 **2. CASE #: PZ18647-030424 –VARIANCE**

255 **Karl & Louise Norwood (Owners) & NAI Norwood Group (Applicant); 86**

256 **Chestnut Hill Road, PIN #: 011-010-000** – Request for relief from Article IV, Section
257 4.11, Paragraph (F)(1)b and (G) for the construction of a single-family home at the
258 south easterly corner of the property that would involve an impact to the wetland buffer
259 of about 1,403 square feet bringing the proposal within 21.4 feet to the wetland
260 buffer. *Zoned Northern Rural.*

261

262 Jamie Ramsay read and opened the case.

263

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264 Tom Burns, TF Moran, stated that this lot at 86 Chestnut Hill Road is located across the street
265 from the applicant's primary property. The parcel is approximately 4.7 acres and has been in
266 their ownership for over 50 years. The lot is challenged by the fact that, despite its size, it is
267 encumbered by a significant amount of wetlands on the property. As a result, it has a limited
268 buildable area outside of the required buffers for those wetlands. The application is to allow for
269 construction of a single-family home that would encroach within the 50' wetland buffer located
270 along the southeast corner of the property. Some of the buildable envelope exists outside of the
271 wetland buffer and outside of the required frontage and side setbacks of the property. This area is
272 approximately 3,300 s.f. and has an irregular geometry. The house is proposed on the only
273 buildable area on the lot that would not impact the wetlands directly and would minimize
274 impacts to the buffer itself. The applicant along with the builder looked at a number of different
275 house options. The proposed option would be complementary to this neighborhood. Nearby are
276 very high-end homes. The road itself is a designated scenic road. The home is proposed to fit
277 well within the neighborhood aesthetic without creating unnecessary impacts to the wetland
278 buffer or to the wetland itself. The house would have a front entry driveway and be served by an
279 onsite well outside of the wetland. The property would have an onsite wastewater disposal
280 system, with a leach field located in the frontage to keep it away from the wetland and maintain
281 the minimum setback requirements of 75' away from wetlands per the State regulations and 100'
282 by the Town's regulations. The requested variance is for encroachment of the house in the buffer.
283

284 Tom Burns addressed the five criteria:
285

- 286 1. *How will granting the variance not be contrary to the public interest?*
287 Here the applicant is seeking to construct a modest single-family residence. Wetland
288 buffer relief is needed given the proximity of the wetlands to the west of the buildable
289 area. By granting the variance there would be no harm to the public's interest because
290 allowing the dwelling's construction will still conform to the area's essential character,
291 which is residential homes. There is likewise no threat to the public health, safety, and
292 welfare for the same reason. A residential single-family home in a residential zone will
293 not adversely impact or threaten public safety. There are no traffic concerns as the
294 property sits along a rural road with minimal traffic. As stated, the property is quite large
295 and other than the immediate relief being asked for, the proposal is otherwise compliant
296 with the AZO. Furthermore, given the strict buffer requirements of the AZO involving
297 wetlands coupled with the challenges of this property, relief would need to be sought to
298 construct any size or manner of a dwelling. The intent of the AZO wetland buffer is to
299 protect the wetlands and we fully recognize the need for such protections. The relief
300 requested is minor as the closest point from the wetlands is 21.4'. In conclusion, if relief
301 is granted to allow for this one single family residence, the essential character of the
302 neighborhood would remain unchanged, residential, and there would be no threat to the
303 public safety, allowing one modest house on a rural road
304
- 305 2. *How will the granting of the variance ensure that the spirit of the ordinance will be*
306 *observed?*

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307 The spirit of the ordinance is observed for the reason that the granting the variance is not
308 contrary to the public interest, because again, the proposal is to construct a residential
309 home in a residential neighborhood with construction in the buffer, which is unavoidable,
310 with no encroachment or impact of the wetland itself.

311

312 3. *How will substantial justice be done?*

313 Substantial justice is done because the applicant has the right to be able to make the
314 highest and best use of their investment. The applicant has designed a reasonable and, for
315 the most part, zoning compliant plan that will fit with the surrounding area. The public
316 will experience no negative effects if this variance is granted because the zoned area is
317 residential, and the applicant is proposing a residential use. Put simply, denial of the
318 variance will not result in any gain to the public, while conversely a denial would rob the
319 applicant of a reasonable return in their investment.

320

321 4. *How will the value of the surrounding properties not be diminished?*

322 The values of surrounding properties will not be diminished because the area at hand is
323 completely residential. There is no evidence to suggest that any of the property values in
324 the area will be negatively impacted as a result of allowing the proposal to move forward.
325 Indeed, the proposal is for the construction of a modest and handsome single-family
326 home that would logically enhance the property values in the area.

327

328 5. *Literal enforcement of the provisions of the ordinance would result in unnecessary*
329 *hardship because:*

330 (A) *For the purpose of this sub paragraph, “unnecessary hardship” means that*
331 *owing to special conditions of the property that distinguish it from other*
332 *properties in the area:*

333 (i) *No fair and substantial relationship exists between the general public*
334 *purposes of the ordinance provision and the specific application of that*
335 *provision to the property,*

336 *and*

337 (ii) *The proposed use is a reasonable one:*

338 Those special conditions are satisfied for the following reasons: the property is quite
339 large at 4.768 acres, far exceeding the required size of a building lot; however, the vast
340 majority of the property is wetland. Nonetheless, there is a small corner that is suitable to
341 build a modest home like the one being proposed. The ask is reasonable in light of the
342 challenges of this property. Any proposal for any size or manner of a house would require
343 relief from the AZO wetland buffer requirements.

344

345 Skipping ahead to (c), the proposed use is residential, and the applicable zone allows for
346 residential use. Thus, the proposed use is reasonable.

347

348 (B) *Explain how, if the criteria in subparagraph A above are not established, an*
349 *unnecessary hardship will be deemed to exist if, and only if, owing to special*
350 *conditions of the property that distinguish it from other properties in the area, the*

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351 *property cannot be reasonably used in strict conformance with the ordinance, and*
352 *a variance is therefore necessary to enable a reasonable use of it:*

353 Therefore, here the remaining question is (b) whether no fair and substantial relationship
354 exists between the general public purposes of the ordinance provision and the specific
355 application of that provision to the property. Again, if the variance is granted, the
356 question is if it will unreasonably frustrate the purpose of the AZO. The purpose of the
357 applicable sections of the AZO at issue are clearly to protect the wetlands. Despite being
358 a large lot, the buildable area is small enough that relief from the aforementioned sections
359 of the AZO would need to be sought in order to construct just about anything. The
360 proposal comes within 21.4' of the wetland. Therefore, the impact of the wetland buffer
361 is minimal but unavoidable since this proposal is for one single family home.

362
363 Alternatively, even if hardship was not satisfied under NH RSA 674: 33, I (b) (1), which
364 we contend it is, then hardship is satisfied under NH RSA 674: 33, I (b) (2), which states,
365 "If the criteria in subparagraph 1 are not established, an unnecessary hardship will be
366 deemed to exist if, and only if owing to special conditions of the property that distinguish
367 it from other properties in the area, the property cannot be reasonably used in strict
368 conformance with the ordinance, and the variance is therefore necessary to enable a
369 reasonable use of it." Here the property cannot be developed in any reasonable manner
370 due to its special conditions (wetlands) without seeking relief from the AZO, despite the
371 fact that the property is nearly five acres. As such, hardship is satisfied under both NH
372 RSA 674:33, I, (b), (1) and (2).

373
374 Charlie Vars asked if there are test pits on the property. Tom Burns stated that these are not yet
375 in place. A wetland scientist has reviewed the wetlands and soils of the site. NRCS soils maps of
376 the lot have been received. Charlie Vars asked if the water table is high. Tom Burns stated that it
377 is. His estimate, based on the elevation of wetlands and soil mapping, is approximately 24".

378 Charlie Vars noted that this will likely be a slab on grade. Tom Burns stated that the intent is to
379 raise the house. The grade rises as one moves south on the lot. The southeast corner is at 192',
380 moving to 188' north along the roadway. The proposal is to raise the house elevation to create a
381 basement and allow an elevated leach field. There may not be able to be a walkout basement, but
382 this is being explored. The garage would be located on the northerly side of the property.

383
384 In response to a question from Jamie Ramsay, Tom Burns explained that this is a wooded lot.
385 There is a stand of existing trees that runs along the edge of the wetland which is not proposed to
386 be removed.

387
388 In response to a question from Jamie Ramsay, Tom Burns stated that the builder's desire is to
389 have a gravity septic system. The proposed leach field could be slid back on the property to stay
390 further from the road and 100' from the wetlands. An Advanced Enviroseptic system is proposed
391 to allow a reduction in footprint of the system, 60% of a typical pipe and stone system. If this
392 needs to be a pump system, it can still work with the septic system with bypass venting. This will
393 be dealt with through DES.

394

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395 Tony Ortiz asked how much of the proposed building sits within the wetland buffer. Tom Burns
396 stated that there will be approximately 1,400 s.f. of permanent impact within the buffer, or about
397 55% of the proposed house. Tony Ortiz noted that the applicant has said there will be no impact
398 to the wetland itself but asked how this can be assured, as the closest point sits 21.4' away from
399 the wetland. Tom Burns stated that the builder will put up erosion control measures, such as silt
400 sock and silt fence, along the buffer. No trees will be removed from within the buffer. This is a
401 tight building envelope, and the builder will have to maintain the buffer. If it is impacted, the
402 builder will have to seek relief from the Town and State.

403

404 Jamie Ramsay stated that the building permit should contain information that the builder will
405 erect and maintain a silt barrier throughout the construction progress. Tom Burns agreed that this
406 will have to be maintained throughout the course of construction. He has spoken with the builder
407 about this. The intention is that any area outside the house footprint and within the buffer will be
408 restored to existing conditions.

409

410 Tony Ortiz asked about the plan for the backyard area below the deck and porch to the wetland.
411 Tom Burns explained that the intention is to maintain the tree line. If an area is currently grass, it
412 will be left as such. No impervious surfaces will be placed in that area.

413

414 Tony Ortiz asked about driveway sanding/salting, as the edge of the driveway is right near the
415 buffer. Tom Burns stated that he has accounted for this in other projects. He could recommend
416 other products to the owner. Jamie Ramsay stated that a directive would be better. It was noted
417 that this could be made a condition of approval.

418

419 Tim Kachmar asked what kind of wetlands are on the site. Tom Burns explained that these are
420 classified by DES as very poorly drained wetlands. There are some areas of standing water, but
421 not directly adjacent to this property. The property contains an area of shallow permanent open
422 water, including a stream, which is poorly drained. This area requires a 50' setback. The back
423 wooded area is classified as very poorly drained and requires a 75' buffer. There are pockets of
424 inaccessible upland in the middle.

425

426 In response to a question from Jamie Ramsay, Tom Burns stated that the intent is not to clear
427 trees on the buffer line, though some branches on the canopy may be trimmed.

428

429 Tony Ortiz noted that, if this variance was not sought, the applicant would likely have to seek
430 variances for the side/front setbacks. He asked if any other proposals to shift the house outside
431 the wetland buffer were considered. Tom Burns explained that this is located on a scenic road,
432 which usually has a 100' setback. This lot predates that requirement and has a 50' setback. The
433 intention is to place the house back from road so as to be not as visible. This places the leach
434 field in front, pushing the house back. The applicant reviewed a few different house
435 options/models and considered some that straddle the front setback, but the proposed location fits
436 better. Tony Ortiz stated that any construction activity in a wetland buffer is a concern, but
437 building within a wetland buffer is a larger concern.

438

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439 Danielle Pray asked if the driveway, parking area, and septic system areas are buildable. Tom
440 Burns stated that these are not buildable for structure itself. Danielle Pray asked if that is only
441 true for this structure chosen. Tom Burns stated that the applicant could not place a house in the
442 50' setback but a leach field is okay. Danielle Pray asked if the applicant considered seeking
443 relief from the front setback. Tom Burns stated that this is an option. Danielle Pray asked if the
444 applicant could fit a house in the buildable envelope. Tom Burns stated that only limited sized
445 houses could fit there and these may not be in keeping with the neighborhood. A 24'x36' split
446 level house could fit, but it would not match aesthetically with the neighborhood. The proposed
447 house is a compact size while fitting aesthetically. Jamie Ramsay stated that the proposed
448 envelope actually has a large footprint. Danielle Pray noted that the Board must discuss if it is
449 more important for the home to fit aesthetically or impact the wetland.

450
451 Danielle Pray asked Tom Burns if he read the email from the Amherst Conservation Commission
452 (ACC). Tom Burns stated that he did not, but he attended a meeting with the group and was told
453 before the meeting that the ACC could not support any impact within the buffer. However, it was
454 noted that the applicant has a case for a hardship as it is unclear where else the house could be
455 placed on the lot. It was recommended that the applicant seek relief from the ZBA. Danielle Pray
456 noted that the email states that the property is part of a very large wetlands complex that serves
457 as the headwaters for surface water drainage extending to and through the Town's Joe English
458 Reservation. Impacts from additional wetlands disturbance, wastewater infiltration, and
459 stormwater runoff associated with this proposal should be avoided. Tom Burns stated that, if
460 there is significant concern with the proposal, it could be shifted 30' into the front setback. The
461 applicant could also look at other house options. He asked the Board's opinion. Danielle Pray
462 explained that the Board cannot give advice. The Board will consider the impact to the wetlands
463 and buffer, concerns of the ACC, and purpose of the Ordinance, against a balance with the
464 aesthetics and potential traffic impacts. The Board will only consider the potential wetland
465 impacts tonight. Tom Burns noted that, if the house was slid into the front setback, there could
466 likely still be some encroachment into the buffer with the same house design.

467
468 Jamie Ramsay asked why it is impossible to move the structure uphill and closer to the road.
469 This would likely more than maintain the 21.4' from the deck to the wetland edge and 23.2' from
470 the corner of the house to the wetland. This achieves many of the objectives. Tom Burns stated
471 that the placement was to aid in sight distance from the driveway looking south along the
472 roadway. The driveway was pushed as north as possible but could be shifted a bit. Jamie Ramsay
473 stated that shifting this north toward Chestnut Hill Road will help with many of the concerns.

474
475 Charlie Vars stated that he would be more comfortable with a topographical map to review. Tom
476 Burns stated that the site pitches west and north. The southeast corner is at 192'. It then pitches
477 toward the wetland. The center of the proposed house is at 189', and the wetland is at 187'.
478 Charlie Vars noted that there is a 50' setback off the property line at the stonewall, but Chestnut
479 Hill Road is then 10'-12' further beyond that. He would be more comfortable with a 40' variance
480 request, knowing there is extra space between the road and the stonewall. This would still leave a
481 50' visual appearance. It could also help with the septic system, as less fill would be needed.

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482 Tom Burns thanked the Board for its feedback and stated that the applicant would look into ways
483 to minimize impacts to the wetland.

484

485 Tim Kachmar suggested a site walk. The Board agreed.

486

487 Charlie Vars asked if the proposed location of the well could be swung toward the house. Tom
488 Burns stated that he would like to keep this in an open area but can relocate it a bit on the site.

489

490 Danielle Pray asked for public comment at this time.

491

492 Nicole Sperry, 90 Chestnut Hill Road, expressed support for the plans to build on this lot. This is
493 in the best interest of the neighborhood.

494

495 Richard Szum, 82 Chestnut Hill Road, stated that he believes setting the house in the proposed
496 location would threaten the public health, safety, and welfare, as it would block some of the view
497 from his driveway. This creates a safety concern on the road. The speed limit is 30 miles per
498 hour along the road but many vehicles speed. The setback of the house impacts his ability to see
499 up the road. As he backs out of his driveway, he will not be able to see as far up the road. He
500 stated that the requirement is a 50' setback from the road and he would not like to see this
501 reduced. Reducing it would impact vision to the road.

502

503 Danielle Pray noted that the Board would have a site walk and retake this item at its next
504 meeting.

505

506 Chris Norwood, who grew up in Norwood house nearby, asked if any decisions will be made on
507 the site walk. Danielle Pray explained that no decisions will be made until the next meeting on
508 this item.

509

510 There was no additional public comment at this time.

511

512 The Board agreed to a site walk on Thursday, April 4, 2024, at 5pm.

513

514 **Charlie Vars moved to table this application to April 16, 2024, at 7pm, at Town**
515 **Hall. Jamie Ramsay seconded.**

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

517

518 **Charlie Vars moved to enter deliberations. Tim Kachmar seconded.**

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

520

521 **CASE #: PZ18136-110223 –VARIANCE**

522 **Divest LLC (Owner & Applicant); County Road & Thornton Ferry Road II; PIN #: 004-**
523 **142, 142-10, 142-12, 142-13**

524

525 **Jamie Ramsay moved no regional impact. Tim Kachmar seconded.**

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

527

528 Jamie Ramsay stated that he believed everything was fine with the two corner lots as part of the
529 original application. He suggested leaving this item out of the discussion. Danielle Pray stated
530 that, as a rehearing, she believes both variance requests need to be covered. One variance request
531 deals with the corner lot frontage, per Section 4.3.C.2.; the other item is from Section 3.9.D. for
532 the distance from the intersection.

533

534 Danielle Pray stated that proposed condition #1 for the merger of lots should be considered as
535 part of the variance criteria.

536

537 In response to a question from Tim Kachmar, Nic Strong stated that the proposed merger of the
538 lots still needs to be approved by the Planning Board.

539

540 The Board reviewed the variance criteria tests:

541

542 **1. The Variance will not be contrary to the public interest.**

543

544 • C. Vars – true, this proposal contains a significant reduction in the number of curb
cuts, and it addresses the items for the rehearing.

545

546 • J. Ramsay – true, for the reasons previously stated.

547

548 • T. Ortiz – false, the Zoning Ordinance is, in fact, the public interest. This was
demonstrated when the residents of Amherst approved the amendments to the
Ordinance in question. Furthermore, granting the variance would contradict the very
purpose of the Ordinance.

549

550 • T. Kachmar – true, the main concern for the rehearing was the abutter’s concern. The
abutter stated during the meeting that this concern is allayed based on the proposal to
merge the lots.

551

552 • D. Pray – true, this is not against the public interest. The siting for the required 500’
distance between a driveway and an intersection is shown on the plan to be 495’. This
is not detrimental to the public health, safety, or welfare. The reduced corner lot is
proposed at 140’ where 200’ is required, but the driveway is sited on County Road
which does not affect the public health, safety, and welfare.

553

554 **4 True, 1 False**

555

556 **2. The Variance will ensure that the spirit of the ordinance will be observed.**

557

558 • J. Ramsay – true, for the reasons previously stated for the last criteria.

559

560 • T. Ortiz – false, the residents in Town decide what is in the Ordinances and voted to
change those in question. While this plan was acceptable when originally approved in
2005, it does not meet the current zoning standards and is not consistent with the
current Zoning Ordinance as amended which includes, among other things,
preserving open space.

561

562 • T. Kachmar – true, for the reasons previously stated.

563

564

565

566

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- 568 • C. Vars – true, this proposal is a step forward from what was originally proposed.
569 Merging the three lots promotes good land use planning practices. He does not
570 believe the Planning Board would make many changes if reviewing this.
571 • D. Pray – true, for the reasons previously stated for the first criteria.
572 **4 True, 1 False**
- 573 **3. Substantial justice is done.**
- 574 • T. Ortiz – false, the applicant has other options for developing this property to
575 achieve the plan of development. The general public voiced their concerns when they
576 approved amendments to the Town Ordinances.
577 • T. Kachmar – true, there are other development options for the property, but this was
578 approved many years ago.
579 • C. Vars – true, the reconfiguration is likely close to what would happen if the
580 Planning Board was to rehear this today. The proposal solves the problem that was
581 brought to the ZBA’s attention.
582 • J. Ramsay – true, the ZBA cannot predict the Planning Board’s outcome, but this new
583 proposal proposes to merge the lots to eliminate the only problem addressed by this
584 rehearing.
585 • D. Pray – true, this criteria is a balancing test to review the public interest versus the
586 applicant’s interest. The corner lot frontage is a 140’ encroachment into the 200’
587 required on each side of that lot. The applicant has demonstrated that they will place
588 the driveway on County Road and not on Thornton Ferry Road II where less than
589 200’ is present. The 500’ frontage requirement is a very minimal encroachment which
590 does not have an impact on the public interest.
591 **4 True, 1 False**
- 592 **4. The values of the surrounding properties will not be diminished.**
- 593 • T. Kachmar – true, once the proposed merger of lots is approved by the Planning
594 Board, this will be better for abutters than the previous proposal.
595 • C. Vars – true, testimony was provided from The Masiello Group that there will be no
596 diminution to the value of surrounding properties. The houses to be constructed in
597 this area will likely be more expensive than those around them.
598 • J. Ramsay – true, this will be a change to the neighborhood, but not a deterrent.
599 Diminution of surrounding property value is moot.
600 • T. Ortiz – true, there was no information presented to show that this proposal will
601 diminish surrounding property values.
602 • D. Pray – true, the letter from the real estate professional indicated there would be no
603 loss in value of surrounding properties and there was no evidence to this point
604 presented this evening.
605 **5 True**
- 606 **5. Literal enforcement of the provisions of the ordinance would result in an
607 unnecessary hardship**
608

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- 609 • C. Vars – true, the applicant indicated a hardship, and the proposal eliminates the
610 objections of the rehearing. There are special conditions of the lot which are
611 reasonable to show a hardship.
612 • J. Ramsay – true, one hardship is that the Zoning Ordinance has changed while the
613 property was previously approved. The Board should listen to the proposed successful
614 solution to the abutter’s concern.
615 • T. Ortiz – false, the applicant can achieve planned development on the site using
616 alternative methods. Denying this variance is not a hardship to the applicant.
617 • T. Kachmar – true, this location has similar PRDs and lot sizes surrounding it. The
618 revised proposal shows a hardship.
619 • D. Pray – true, the property is long in shape. It received prior Planning Board
620 approval many years ago. The property is different than others in the area as it has a
621 lot of frontage on County Road. The applicant has situated a driveway for the two lots
622 in this area, one of which requires 200’ and has 140’. The applicant created a
623 combined driveway from the previous plan, which has no better position than the
624 current location. The driveway encroaches a small amount and situating it in a
625 different area on the road would be a considerable hardship. The proposed use is a
626 reasonable one. The proposed plan is the least impactful to the neighborhood and to
627 the Town.

628 **4 True, 1 False**

629
630 **Tim Kachmar moved that the testimony from the November 21, 2023, hearing be**
631 **incorporated into the record. Jamie Ramsay seconded.**

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

633
634 Danielle Pray reviewed the proposed conditions for the Divest, LLC, variance application.

- 635 1. That lots 4-142, 4-142-12, and 4-142-13 depicted on Hillsborough County Registry of
636 Deeds Plan #34336 be merged voluntarily by Divest, LLC, resulting in one reduced
637 frontage lot which, as merged, would then comply with the minimum lot area
638 requirement of Article 3, Section 3.9.B. of the Zoning Ordinance and with the minimum
639 50’ frontage requirement of Article 3, Section 3.9.C of the Zoning Ordinance;
640 2. That the driveway servicing Lot 4-142-10 on plan #34336 be no more than 125’ from the
641 property corner of Lot 4-142-9 and Lot 4-142-10, as shown on plan #34336; and,
642 3. That the driveway servicing Lot 4-142-11 on plan #34336 be no more than 75’ from the
643 property corner of Lot 4-142-11 and Map Lot 4-58-1.

644
645 **Charlie Vars moved that the application be approved with the outlined conditions.**

646 **Tony Ortiz seconded.**

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

648
649 **Tony Ortiz moved to exit deliberations. Charlies Vars seconded.**

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

651
652 *Tim Kachmar exited the meeting at approximately 9:10pm.*

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653

654 **OTHER BUSINESS:**

655

656 **1. Minutes: December 19, 2023; February 20, 2024**

657

658 **Tony Ortiz moved to approve the meeting minutes of December 19, 2023, as**
659 **presented. Jamie Ramsay seconded.**

660 **Voting: 4-0-0; motion carried unanimously.**

661

662 The Board agreed to table discussion of the February 20, 2024, minutes to a future meeting.

663

664 **2. Any other business that may come before the Board**

665

666 The Board stated that it would hold its elections in April. The Rules of Procedure need to be
667 updated shortly as well.

668

669 **Charlie Vars moved to adjourn the meeting at 9:16 pm. Tony Ortiz seconded.**

670 **Voting: 4-0-0; motion carried unanimously.**

671

672 Respectfully submitted,

673 Kristan Patenaude