

November 1, 2023

APPROVED

1 In attendance at Town Hall: Arnie Rosenblatt, Tracie Adams, Cynthia Dokmo, Bill Stoughton –
2 Board of Selectmen Ex-Officio, Tom Silvia, Rob Clemens (alternate), and Pam Coughlin
3 (alternate).
4

5 Staff present: Nic Strong (Community Development Director), and Kristan Patenaude
6 (Recording Secretary) (remote)
7

8 Arnie Rosenblatt called the meeting to order at 7:00pm.
9

10 *Rob Clemens sat for Tom Quinn. Pam Coughlin sat for Chris Yates.*
11

12 **COMPLETENESS REVIEW OF APPLICATION AND PUBLIC HEARING IF**
13 **APPLICATION IS ACCEPTED AS COMPLETE:**
14

- 15 **1. CASE #: PZ17700-080823 – Beaver Meadow Investments, LLC (Owners &**
16 **Applicants); 48 Ponemah Road, PIN #: 004-025-007 – Subdivision Application.** To
17 condominiumize the existing eight residential rental units in two existing
18 buildings. *Zoned Residential Rural. Continued from October 4, 2023.*
19

20 Arnie Rosenblatt read and opened the case.
21

22 Arnie Rosenblatt asked if there are any issues with completeness. Nic Strong explained that the
23 applicant requested a waiver for the required studies. In the past, the Board has approved the
24 application as complete, while reserving the right to request those studies at a later date.
25

26 **Tom Silvia moved that the application is complete, with the understanding that**
27 **studies can be required at a later date, if needed. Seconded by Rob Clemens.**
28 **Vote: 6-0-0 motion carried unanimously.**
29

30 Arnie Rosenblatt explained that the Board will first hear from the applicant. The Board will then
31 have an opportunity to ask any questions and make any comments and will then hear public
32 comment. The application will then come back to the Board for further discussion.
33

34 Brad Westgate, lawyer for the applicant with Winer & Bennett LLP, explained that this property
35 contains an eight-unit multifamily property, which has been in existence for approximately 26
36 years. The purpose of this application is to convert the two structures to condominium forms of
37 ownership. The eight units have been a rental property, owned by Beaver Meadow Investments
38 LLC. When converting any property from a single ownership to a condominium form of
39 ownership, this invokes the Town subdivision regulations. Even though there are no changes
40 proposed to the site or existing buildings, this project still falls within the subdivision
41 regulations. The subdivision application was filed by Meridian Land Services, and this has been
42 diligently reviewed by Staff. The first of three Staff reports is a key report that identified three
43 core areas of items. One area was identifying potential waivers, one was identifying items that
44 are not applicable in the subdivision checklist given the pre-existing and built out nature of this

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45 property, and the third is items for which a better explanation was needed. Following that Staff
46 Report, Randy Haight, of Meridian Land Services, filed a waiver request and a detailed response
47 letter to address the points that were either not applicable or needed better explanation. That
48 filing was supplemented with an e-mail on September 18th, which addressed a few items such as
49 the real estate taxes with an updated title from the time of Beaver Meadow's purchase to now
50 and submitting the Declaration of Condominium, to be reviewed by Town Counsel.

51
52 Brad Westgate noted that the Staff Report for tonight's meeting identifies a few remaining items,
53 including that the Department of Public Works (DPW) had no comment, the Fire Department
54 was okay with the plan, and the Superintendent of Schools indicated that this proposal has no
55 material impact on the schools. A waiver request has been submitted. One additional item in the
56 Staff Report that needed clarification was regarding the unnecessary need for soil studies, given
57 the fact that septic systems already exist, and this site is built out. Randy Haight supplemented
58 the waiver request with technical information. The response letter also addressed all the other
59 non-waiver items. Town Counsel has reviewed the Declaration of Condominium and a couple of
60 small changes need to be made. One correction needed on the plan set includes an approval date
61 on Note 7 that should be changed from June to April 16, 1997, as this date pertains to the
62 existing septic systems. He requested that the Board consider granting the waivers and approve
63 the application tonight, subject to conditions of approval listed in the Staff Report.

64
65 Tracie Adams stated that she had no questions or comments at this time.

66
67 Tom Silvia asked if the units will be sold once turned into condominiums. Attorney Westgate
68 stated that the intent is to sell them, but he is unclear of the proposed price point. Tom Silvia
69 asked if the overall usage of the building and the property would then change. Attorney Westgate
70 stated that the use will not change at all. This will stay a residential property. There will be no
71 changes whatsoever in terms of the property's function and use.

72
73 Cynthia Dokmo stated that she had no questions or comments at this time.

74
75 Bill Stoughton stated that he read in the Staff Report this was at one time affordable housing. He
76 asked if it is still. Attorney Westgate stated that it was at the time the original covenant was
77 established, but that was an eight-year time frame and the covenant expired by its terms.

78
79 Bill Stoughton thanked the applicant and Nic Strong for completing Staff identified issues ahead
80 of the meeting.

81
82 Rob Clemens asked if the property has a community water supply. Attorney Westgate stated that
83 two separate wells, one for each building, and separate septic systems were originally approved.
84 This is a community water system but not a public water system, because the property has under
85 ten units total, so the approval process does not rise to the level of public water system approval.

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87 Rob Clemens asked, with regard to the wells, if testing the water would now fall on a new
88 homeowner's association. Attorney Westgate agreed, as would all common land area
89 maintenance.

90

91 Pam Coughlin stated that she had no questions or comments at this time.

92

93 There was no public comment at this time.

94

95 **Bill Stoughton moved to grant the waivers requested in the Meridian letter dated**
96 **October 31, 2023, to the various sections of the ordinance and subdivision**
97 **regulations, as the Board has determined that strict conformity with the**
98 **requirements would pose an unnecessary hardship on the applicant because of the**
99 **existing built out nature of the project and the waiver would not be contrary to the**
100 **spirit and intent of the regulations. Seconded by Tom Silvia.**

101 **Vote: 6-0-0 motion carried unanimously.**

102

103 **Bill Stoughton moved to approve CASE #: PZ17700-080823 for Beaver Meadow**
104 **Investments, LLC, for the above-cited subdivision condominium conversion of Map**
105 **4 Lot 25-7, 48 Ponemah Road, with the conditions set forth in the Staff Report and**
106 **the condition that the corrections from the legal review be included and the plan set**
107 **approval date amended accordingly. Seconded by Cynthia Dokmo.**

108 **Vote: 6-0-0 motion carried unanimously.**

109

110 The Board addressed the Findings of Fact.

111

112 **Findings of Fact for 48 Ponemah Rd.**

113

114 Application Description:

115 CASE #:PZ17700-080823 Beaver Meadow Investments, LLC (Owner and Applicant); 48
116 Ponemah Road, PIN #: 004-025-007 – Subdivision Application - Plan to condominiumize the
117 existing 8 residential units in two existing buildings. *Zoned Residential Rural*. The Staff Report
118 is adopted into the record and can be referred to for further details.

119

120 Application Completeness

121 Per Subdivision Regulations Section 202, the Planning Board reviewed documents provided and
122 determined that the application was sufficiently complete to proceed with consideration by the
123 Board per RSA 676:4. I (b).

124

125 Compliance with Regulations

126 Per Subdivision Regulations Section 206, this application refers to an existing eight residential
127 units in two existing buildings that are in compliance.

128

129 Land Usage Requirements

130 Per Subdivision Regulations Section 208, the proposed land use meets the existing land uses

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131 permitted in the Zoning District which is Residential Rural.

132

133 Environmental Requirements

134 The plan presented does not materially impact the environment since the buildings are pre-
135 existing and no changes are proposed to the buildings or land.

136

137 Studies

138 Studies: Drainage, Environmental, Fiscal, Hydrogeological, Traffic, Water Supply, etc.

139 The Planning Board granted a waiver for preparation of the studies, reserving the right to request
140 any or all of the studies if deemed necessary upon hearing the application. After the application
141 was presented, no studies were required noting that the existing buildings will remain the same
142 as previously built.

143

144 Waivers

145 Per Subdivision Regulations Section 202.3 the Planning Board may approve waiver requests.

146 The following waiver(s) requested by the applicant(s) were approved by the Planning Board.

147

148 • Article 2 Section 207 Waiver to determination by the Planning Board that the character of
149 the land is appropriate for subdivision due the fact that the project and appurtenances are
150 already built.

151 • Article 2 Section 210.2 A.8. Waiver to final review phase requirement to have soil
152 investigations completed due to the fact that the State Septic System Operational
153 Approval is recorded and noted on the plan.

154 • Article 2 Section 210.2 A.2. Waiver of demonstration of topography with sufficient detail
155 to indicate stormwater runoff due to the fact that no alterations to the site will be made.
156 Existing site controls are working effectively per verification July 2023.

157 • Article 2 Section 210.3 B.8. Waiver to the plans being based on a survey with max error
158 1/10,000 since original plans of the subdivision of land were prepared by others (as
159 recorded) and sited as reference plans.

160 • Article 2 Section 210.3 B.11. Waiver of required acknowledgment that subdivider must
161 assume responsibilities for land maintenance, injuries and damage occurring on land
162 dedicated for public lands because no land is being dedicated for public use.

163 • Article 2 Section 210.3 B.23. Waiver to studies (Drainage, Environmental, Fiscal,
164 Hydrogeological, Traffic, Water Supply, Others deemed necessary by the Planning
165 Board) due to fact that the project and appurtenances are already built.

166

167 Stormwater Management

168 The Stormwater Management plan was not required for this application due to the project and
169 appurtenances already being built.

170

171 Conditions

172 The applicant acknowledges the conditions precedent and conditions subsequent in the Staff
173 Report as well as any additions from the Planning Board are required.

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175 Summary

176 The Planning Board finds that the application meets the spirit and intent of the Ordinances and
177 Regulations and is approved.

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179 **Tracie Adams moved to approve the Findings of Fact for 48 Ponemah Road, as**
180 **presented. Seconded by Tom Silvia.**

181 **Vote: 6-0-0 motion carried unanimously.**

182

183 **PUBLIC HEARING(S):**

184

185 **2. CASE #: PZ17708-080923 – Riley Investment Properties, LLC c/o Tom Riley**
186 **(Owner & Applicant); 125 NH Route 101A, PIN #: 002-035-001-C.** Non-Residential
187 Site Plan. To amend the previous site plan approval for Phase C involving the
188 construction of a 12,000 square foot single story retail building and propose a 2,400
189 square foot single story drive-thru only café. *Zoned Commercial. Continued*
190 *from October 4, 2023.*

191

192 Arnie Rosenblatt read and opened the case. He noted that this application was previously
193 accepted as complete. He explained that the primary purpose of the continuance was due to
194 concerns raised with respect to traffic and there was an agreement and a requirement that a traffic
195 study be prepared and submitted. A continuance has been requested on behalf of an abutter via
196 Attorney Tom Pappas on behalf of Dunkin' Donuts, which is objected to by the applicant.

197

198 Arnie Rosenblatt explained that he would like to hear from both parties to determine if there
199 were any standing relationships which would require him to recuse himself. He disclosed that he
200 has known Attorney Pappas for approximately 35 years, and they were business partners at one
201 time. He noted that he and Attorney Pappas currently represent parties who are opposed to each
202 other in another matter. He would like to hear if this is a concern for either party in this case.

203

204 Neither party voiced a concern on this matter.

205

206 Attorney Pappas, representing an abutter, explained that at the Board's September meeting Carl
207 Andrade, Dunkin' Donuts' owner, raised the issue of traffic, along with some members of the
208 Board, and a traffic study was requested. Mr. Andrade has retained a traffic engineer to critique
209 and provide a peer review of the traffic study from the applicant. The applicant submitted a
210 traffic study recently, and his client's traffic engineer is reviewing it, but he has not yet
211 completed the review. It seems that the Board should receive a full airing of the traffic issue and
212 there is a question as to whether the submitted traffic study contains sufficient data, as it was
213 only based on one weekday in July. This does not take into consideration weekend or evening
214 traffic and does not consider vehicle data from any of the other abutting properties. His client
215 would like the Board to have complete data on vehicles in this area and a peer review before it
216 considers what to do with this application. If the Board is not interested in continuing this item,
217 his client would still like the opportunity to present to the Board a peer review of the data that
218 was presented. He urged the Board to continue this item to its December meeting.

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Attorney Andy Sullivan, of Sullivan Law Office representing the applicant, explained that the applicant complied with the requirements. Whenever there is potential commercial competition there can be issues between companies. At a certain point in time there has to be an end to the constant need for additional time and back and forth. The applicant completed a thorough traffic study and is willing to review it with the Board tonight. It is not appropriate to continue this matter at this time.

Arnie Rosenblatt asked Attorney Sullivan if his client's position is that the Board should make a final determination tonight, without giving the abutter further opportunity to review, analyze, and comment on the traffic study. Attorney Sullivan stated that is correct because the process and the timing was adhered to by his client. He stated that Mr. Andrade pointed out at the September 6th hearing that he wanted a traffic study, but a timeframe was never discussed. This was accommodated. There was an opportunity for Mr. Andrade to receive the traffic study memorandum earlier. The applicant did not miss a timeframe, as one was never discussed. The applicant did as the Board asked.

Arnie Rosenblatt asked Attorney Sullivan if it is his position that the applicant would be prejudiced by delaying this hearing by a month. Attorney Sullivan stated that this is his position. In commercial development, timing is everything and the faster it gets done the better. A continuation would not kill the deal, but time is money. He stated that the Board has the information at hand to make its decision. Additional traffic studies are not needed, as the one submitted is so thorough. He stated that he has never seen a peer review, especially from an abutter, that does not find something.

Tom Riley, principal managing partner Riley Investment Properties, LLC, stated that he has done 4-5 developments for the Andrade family and Dunkin' Donuts and anticipated this might happen. Thus, he submitted a very thorough traffic study which is very precise. He included documentation regarding the exact number of cars accessing Taco Bell and Dunkin' Donuts. He also hired, as an additional traffic study, the traffic company that completed Mr. Andrade's traffic reports in the past. He just received this additional report which substantiates his original traffic report and stated that he would submit it now to the Board and the abutter's attorney.

Tom Riley stated that the only developments he has ever had traffic problems with are near Dunkin' Donuts locations, as they have a high volume at certain times. Thus, he wanted to sufficiently document the traffic report information. All of the traffic studies showed that the proposal is more than adequate, if not overdone, even through the New Hampshire Department of Transportation. He stated that an additional opinion and delay, in his view, is unnecessary. A full traffic study takes a long time to complete, and this was submitted to the Town a week ago. The applicant could have obtained it in the past number of days from the Town. This is only being delayed because of competition. The abutter feels the proposal is a café, not a restaurant. While someone may get a Dunkin' Donuts coffee at a gas station, they will not get a Starbucks coffee from there. This is two different clientele.

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263 Attorney Pappas stated that his office called the Town asking about the traffic study and asked to
264 know when it was received. His office diligently kept inquiring about the traffic study and only
265 learned by contacting the Town that the study had just been received a few days ago. It is a
266 misunderstanding that his client was not diligently following this item and it has been clear since
267 September that his client was interested in this traffic study and wanted a chance to review it.
268

269 Arnie Rosenblatt asked if the Board had any questions for either legal team. There were no
270 questions at this time. Arnie Rosenblatt asked the Board if it had any comments to make.
271

272 Bill Stoughton stated that the back and forth regarding the delay is entirely unproductive. He is
273 interested in what is in the best interest of the Town. While he appreciates the second traffic
274 review from the applicant, he does not appreciate getting it this evening, without time to consider
275 this technical report. If the applicant would like this item considered, he would argue in favor of
276 a continuance. Secondly, the Board allows abutters to comment for a reason. This is to help the
277 Board reach the best decision. It is not unreasonable for an abutter to ask for a continuance to
278 allow time to review a traffic study. Third, the Board's statutory deadline for deciding this
279 application is December 10th. The applicant himself asked for a previous continuance of another
280 month to complete the initial traffic study. He stated that he is inclined to vote in favor of a
281 continuance, as the Town will be better served when the Board has all the information. He stated
282 that he was impressed with the traffic study submitted, as it did seem to consider many of the
283 Board's concerns. He is also sensitive to the fact that Mr. Andrade seemed initially to want to
284 prevent competition from Dunkin' Donuts and he has no interest in this Board stepping in to
285 prevent competition. He stated that he welcomes competition in this Town and will not
286 countenance any opposition based on suppressing competition.
287

288 Arnie Rosenblatt noted that the reason for the previous continuance was primarily, if not
289 exclusively, for the traffic study. Bill Stoughton stated that one item was a traffic study and the
290 other was to allow the Town's engineer to comment on the plan itself, which has been
291 completed. Arnie Rosenblatt asked Bill Stoughton why he believes this should be continued, if
292 not with respect to traffic study. Bill Stoughton stated that he believes the Board can make
293 progress if it can narrow the number of issues that are left to be resolved. The Staff Report had
294 some outstanding items, but these may have been resolved. He would continue this hearing to
295 give the abutter an opportunity to address traffic study items and hopefully make a determination
296 at the next hearing.
297

298 Cynthia Dokmo stated that she believes this should only be continued for two weeks. Arnie
299 Rosenblatt stated that he would like to make sure the applicant has an opportunity to have a
300 review and prepare a written review, and that the Board has an opportunity to receive the review
301 and digest it prior to the meeting. This may not be able to occur in two weeks.
302

303 Sam Foisie, Meridian Land Services, stated that, if this is only being continued for the abutter to
304 respond to the traffic report, he would imagine that two weeks is enough time. The Board would
305 then probably be able to review that response in less time than the typical week submittal, in
306 which case the two weeks continuance would be appropriate.

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307

308 Tom Silvia agreed with the comments made by Bill Stoughton and stated the receipt of
309 additional information this evening gives him pause. He asked if the Board should review the
310 application this evening and then decide on a continuation to make sure there are no additional
311 items needed.

312

313 Tracie Adams agreed that the Board could consider what the applicant needs to have for the next
314 meeting before continuing the hearing. The Board does not like to receive new information at the
315 last minute, such as the traffic study submitted this evening.

316

317 Rob Clemens echoed Bill Stoughton's comments.

318

319 Arnie Rosenblatt stated that there seems to be a consensus that there will be a continuance but
320 the timeline for this is yet unclear. He agreed that the Board should also have a conversation
321 about what else is needed. The Board seems to believe this is a positive thing, but it needs to be
322 sensitive to traffic issues and abutter concerns regarding traffic, but not competition. It is in
323 everyone's best interest for the Board to address this item fairly. He stated that he will be asking
324 the abutter's counsel for an opinion on this.

325

326 Arnie Rosenblatt asked the Board to consider other questions it has with respect to the
327 application other than traffic.

328

329 Rob Clemens asked if the Board would hear from the applicant this evening. Arnie Rosenblatt
330 agreed.

331

332 Sam Foisie stated that the site plan has not substantially changed, barring a couple of signage
333 changes to help improve the traffic situation and address specific comments from the Board.
334 Since the last meeting, it was determined that an updated Alteration of Terrain (AoT) permit is
335 needed, and this application was submitted at the beginning of last month. The DOT driveway
336 permit was updated and has received approval as renewed and revised, following the conditions
337 of the original driveway permit. The Staff Report highlighted an error of his which stated that the
338 impact fees would be changed to Retail instead of Industrial, and he agreed with the Staff Report.
339 Regarding a waiver for needing 10' of landscaping within the front of the building, this will not
340 be possible as it is proposed to be a drive through facility. This waiver requested has since been
341 updated. There is an additional waiver requested for the requirement of a landscape architect.
342 Cynthia Dea Boisvert has been doing landscaping in Town for some time now and this is
343 requested as part of the waiver. The applicant is in agreement with all of the comments made by
344 Keach Nordstrom, Town Engineer, including two changes to the site. One of which is a one-way
345 arrow into the drive through kiosk area, so as to not encourage a split into two lanes. The other
346 change includes that the drainage structure (manhole) that receives the flow from the adjacent
347 sites was upsized to make sure it accommodated the numerous pipes going into it. Outside of
348 these changes, the only concern left for the Board is traffic, which the applicant will defer to the
349 next meeting.

350

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351 Arnie Rosenblatt asked the Board to consider other questions it has with respect to the
352 application other than traffic.

353

354 Rob Clemens and Pam Coughlin stated that they had no questions at this time.

355

356 Bill Stoughton noted that the Staff Report contained a question regarding the lighting hours on
357 the plan. Sam Foisie stated that the applicant desires to have lighting on from dusk to dawn, but
358 the lighting ordinance requires that this be dimmed at 11:00 PM. The store is proposed to be
359 open until 10pm. The plans will state that the lighting hours would be from dusk to dawn, with
360 lighting dimmed between 11pm and 4am, as the store opens at 5am.

361

362 Bill Stoughton stated that there was also a question regarding whether infiltration will be
363 allowed. Sam Foisie stated that he has had conversations with AoT about this. As there already is
364 an infiltration basin on the site, AoT suggested a waiver request from this requirement. There has
365 been a verbal acceptance that infiltration will be allowed, but not a formal acceptance yet.

366

367 Bill Stoughton asked if the applicant has submitted an updated stormwater management report.
368 Sam Foisie stated that he does not believe one was included, but he will provide this to Staff.

369

370 Bill Stoughton noted that the Board needs to discuss active and substantial development when it
371 is ready to act on the application.

372

373 Cynthia Dokmo stated that she did not have any questions at this time.

374

375 Tom Silvia asked if the Board would address waivers at the next meeting. Sam Foisie stated that
376 he would prefer these be addressed this evening. Arnie Rosenblatt agreed.

377

378 Sam Foisie stated that the first waiver requested was from the item to provide a minimum of 10'
379 depth area of trees and shrubs around building sides with public access. This site is located off
380 Route 101A and the private driveway in the front could be considered public access, thereby
381 requiring a 10' landscape strip between the building and any pavement there. This is not possible
382 given the proposed drive through use. The drive through needs to be adjacent to the building. He
383 stated that he believes the intent of this can be met with landscaping between the parking area
384 and the access drive. Thus, the spirit or intent of the regulation is met, while the exact physical
385 location of the plantings cannot be met.

386

387 Sam Foisie stated that the second waiver request deals with the landscape plan. The Board may
388 waive the requirement of this section where the cost of the site and building are less than
389 \$500,000. The site will be less than \$500,000 while the building will be more than that. Cynthia
390 Dea Boisvert, Arago Land Consultants, has done numerous landscape plans in Town and is
391 familiar with the landscape regulations. She was doing landscaping prior to the State having a
392 landscape license, so she is more than qualified and vetted to provide a landscape plan that meets
393 the Town's requirements. Thus, a waiver from the landscape architect requirement is also being
394 requested.

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Tracie Adams noted that the Staff Report mentioned that the driveway permit should confirm where proposed traffic will exit the site. Sam Foisie explained that the traffic will still utilize the existing signal intersection, as a cross access easement has been granted along the front. To help alleviate concerns from Board member Chris Yates, signage has been included to encourage southbound traffic to travel right out of the entrance, thereby avoiding the area of concern.

Arnie Rosenblatt asked about public comment for items other than traffic concerns. He noted that abutters and interested parties will not be precluded from making additional comments at the next meeting. There was no public comment at this time.

Tom Silvia moved to grant a waiver requested to Section 6.2.A which addresses providing a minimum 10' deep area with trees and shrubs around building sides with public access, as the Board has determined that specific circumstances relative to the site plan or conditions of the land in such site plan, namely the design of the building with a drive through window at the front of the building, prohibits this waiver to be executed and the waiver will properly carry out the spirit and intent of the regulations. Seconded by Bill Stoughton.

Vote: 6-0-0 motion carried unanimously.

Tracie Adams moved to grant the waiver from Section 5.1 under the Landscaping Standards for relief from the requirement for a landscape plan to be provided and endorsed by a licensed landscape architect; the landscape plan preparer was noted to have created many successful landscape plans in Amherst, her career began prior to the adoption of the licensing requirement, the waiver as suggested would achieve the spirit and intent of the regulation, and it would be an unnecessary hardship for the applicant to go forth with a different landscape plan. Seconded by Bill Stoughton.

Vote: 6-0-0 motion carried unanimously.

The applicant team requested a continuance for two weeks. Attorney Pappas stated that his client would request a continuance to the December meeting. His client now has two traffic studies to review and comment on. The Board needs to weigh giving the abutter full time for an adequate review and to provide comments versus if two additional weeks will adversely affect this project. He stated that he would weigh the balance in favor of allowing the abutter's engineer sufficient time to review and comment on the two studies, and the Board time to absorb any comments. Attorney Westgate stated that he does not believe it will take as long to review both of the studies, as they will address the same issues. Tom Riley stated that, if the Board gets the information one week before the meeting and has sufficient time to review it, the abutter's engineer should also have sufficient time. He stated that he has full faith and confidence in the traffic reports. He will call the Town every day in order to review any comments submitted. He noted that he is unsure if Sam Foisie will be available for a meeting in two weeks, but he would like to move forward anyway. He stated that there is a substantial cost for every delay.

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439 Arnie Rosenblatt asked if there is any interest on the Board in having a Town peer review of the
440 traffic studies. Rob Clemens asked if Keach Nordstrom has reviewed the initial traffic study. Nic
441 Strong stated that they have not. The Town usually uses a different company for traffic peer
442 reviews. Arnie Rosenblatt noted that it is one thing to have a traffic study from the applicant, and
443 another to have a competing traffic study from an abutter. The applicant's traffic engineer is
444 staking out a position to favor the applicant and the abutter's engineer is staking out a position to
445 support the abutter. The Board should consider whether or not it wants its own peer review. Bill
446 Stoughton stated that he does not believe the site is that complicated and he is fairly confident
447 the Board can sort the two reports out in a way that protects the Town's interests. Arnie
448 Rosenblatt agreed.

449
450 The Board discussed its meeting agendas for two weeks and the December meeting. Bill
451 Stoughton stated that he is in favor of meeting in two weeks to resolve this item. Tracie Adams
452 stated that she was in favor of continuing it until December. Cynthia Dokmo agreed with Bill
453 Stoughton, as did Rob Clemens. Arnie Rosenblatt stated that he is sympathetic to the applicant's
454 concern in terms of timing and recognizes that construction will be an issue, however, he does
455 not want an approval that is in any way tainted by someone who is vigorously opposing this, and
456 the abutter is opposing it. Not having an adequate opportunity to address and comment on the
457 traffic study could be a mistake for the Board and the applicant. He would recommend four
458 weeks rather than two weeks. The prejudice of the two-week delay is less in the long run than the
459 potential prejudice to the abutter and to the process in limiting it to two weeks. Tom Silvia stated
460 that he is leaning towards two weeks because the abutter will only be responding to one study
461 and is only submitting a response instead of a study from scratch. He noted that he will not be
462 available in two weeks.

463
464 Tom Riley stated that he would acquiesce to the December date, as long as he can get the report
465 back in two weeks in order to have time to comment on it.

466
467 Bill Stoughton noted that, if this is continued for a month, the normal deadline for submission of
468 materials to be considered is a week before the meeting. He would like any abutter materials to
469 be submitted a week before the meeting, in order to not have another continuance.

470
471 **Bill Stoughton moved to continue this hearing to December 6, 2023, at 7pm, at Town**
472 **Hall. Seconded by Tom Silvia.**

473 **Vote: 6-0-0 motion carried unanimously.**

474
475 Bill Stoughton again stated that he would like the abutter's information submitted a week prior to
476 the meeting, so that it may be reviewed by the applicant.

477
478 Arnie Rosenblatt stated that the hearing is continued to December 6th. At that time, the abutter
479 will have an opportunity to submit responses to the traffic study one week before the meeting.
480 The applicant will have an opportunity to consider it and the applicant will have an opportunity
481 to respond to that response at the hearing.

482

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483 Tom Riley requested that the Town enforce the site plan that is approved for Dunkin' Donuts to
484 utilize the correct drive through avenues for the site. The company is currently utilizing an access
485 that was approved as an emergency and delivery access. Arnie Rosenblatt asked if this is part of
486 the application process. Tom Riley stated that it is part of the traffic report. Arnie Rosenblatt
487 stated that this can be considered at the continued hearing.
488

489 **OTHER BUSINESS:**

491 **3. Discussion re: Proposed Zoning Amendments for 2024**

492
493 Arnie Rosenblatt explained that the Board has a number of zoning amendments that were
494 initially addressed at the last meeting. The purpose of this meeting is to determine whether there
495 are any comments with respect to the language in amendments. Nic Strong asked if the Board
496 would first address amendment #4, regarding wetlands, as Jared Hardner was present to give the
497 Amherst Conservation Commission's (ACC's) input.
498

499 Jared Hardner explained that the ACC found three important areas for updates within the Zoning
500 Ordinance. The first is that the Ordinance should refer to the most current versions of guidance
501 documents including, for delineation of wetlands, the 2012 version of the US Army Corps of
502 Engineers Regional Supplement and, for the classification of wetlands, the most recent version
503 of the New Hampshire Method [*Method for Inventorying and Evaluating Freshwater Wetlands*
504 *in New Hampshire*]. The second issue relates to the fact that in the Definitions section for
505 wetlands and vernal pools, there is functional information, such as quantitative thresholds, one
506 would only know about if flipping back and forth between the main body of the ordinance and
507 the Definitions section. Some important components of that information should be pulled up into
508 the main Ordinance. This will make it longer to read but there are critical pieces of information
509 to be included. This is important in discussions with people that are not dealing with the
510 Ordinance on a daily basis, as they are not familiar with the important language that is buried in
511 the Definitions Section of the Zoning Ordinance.
512

513 Jared Hardner explained that, also, at the end of the Definitions section, there is a paragraph that
514 asked the reader to use a document from 1991 and the current document is dated 2023. The 1991
515 version of the document gives the liberty to cut off wetlands if they narrow to 50' or less. The
516 purpose of that would be to create what is called an evaluation unit or an assessment unit. Once
517 the units are created, the next step is to use the size of the unit to determine how important it is
518 and how big the buffers on it should be. He explained that he reviewed this item with one of the
519 principal authors, Rick Van de Poll, of the New Hampshire Method and that person stated that
520 there was a good reason the 50' rule was removed from the latest version of the New Hampshire
521 Method, in that it has no basis in science. The author also mentioned that it is recommended to
522 keep wetland systems whole unless there is good reason to break the complex into two or more
523 evaluation units. This suggestion is being sent to Keach Nordstrom for their opinions. Meridian
524 Land Services also agreed that it made sense to remove this section. The current version of the
525 New Hampshire Method provides a methodology for determining when to break up wetlands and
526 it does not include the 50' rule.

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527

528 Jared Hardner explained that the last issue relates to the fact that it is challenging for wetland
529 scientists when they evaluate a large wetland to determine how large it actually is, if it extends
530 off the subject property. The challenge is that the scientist may not necessarily have permission
531 from the adjacent landowner to continue the delineation and give a proper assessment of the size
532 of the wetland. This offers a potential loophole, to stop at the edge of the property and only size
533 the portion of the wetland that is on the subject property. A wetland could trigger the 100' buffer
534 because of its size, but a property line along the edge could reduce it to having a 25' buffer. The
535 wetland would have the same hydrological and ecological importance, but the arbitrary property
536 line running through it changes the level of protection. This has an effect on residents of the
537 Town, especially as it relates to hydrology, because wetland buffers are green infrastructure, very
538 important for managing floodwaters, etc. Removing these buffers that are protecting those
539 wetlands effectively creates cumulative effects over time which could eventually require built
540 infrastructure to substitute for these natural functions. Based on a recommendation from Rick
541 Van de Poll, the suggestion is that when wetlands extend off a property, wetland scientists
542 provide an estimate of the size using a topographic map based on LiDAR, which gives a 2-ft.
543 contour, and/or color infrared maps, which show changes in vegetation, and any photographs or
544 other evidence. The scientist should document how they determined the estimated size, with an
545 exhibit depicting the supporting data.

546

547 Arnie Rosenblatt asked if these wetland items were not addressed at the last meeting. Bill
548 Stoughton stated that this language is new to the Board. Jared Hardner noted that all of these
549 suggestions will be sent to Keach Nordstrom for external input. He has also submitted them to
550 Ken Clinton, Meridian Land Services, who was supportive of these changes as a practitioner. He
551 also sent the suggested changes to Rick Van de Poll.

552

553 In response to a question from Arnie Rosenblatt, Jared Hardner stated that Ken Clinton and Rick
554 Van de Poll support the language as currently submitted. He is awaiting comments from Keach
555 Nordstrom.

556

557 Arnie Rosenblatt asked for comments from the Board.

558

559 Nic Strong stated that Jared Hardner's language was put into the format regularly used for
560 zoning amendments. The first change is adding in the wetlands definitions, and up to date
561 citations for the reference documents to be used. Further down in the Definitions section, vernal
562 pools had incorrect references to a DES rule and two other definitions had no reference to the
563 DES rule at all. As these are definitions from the State, she proposed to add that language. On
564 the next page, in the Wetlands District section, she agreed with Jared Hardner regarding pulling
565 up parts that currently are in the definitions but are Town of Amherst specific. She suggested that
566 language regarding determining what a protection wetlands/significant wetlands/other wetlands
567 and the way to determine the tiers for vernal pools be included in the Wetlands and Watershed
568 Conservation District section.

569

570 Tracie Adams had no comments at this time.

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571
572 Tom Silvia asked why it is better to include this language in the main text, instead of only in the
573 Definitions section. Nic Strong stated that the Board should not regulate in the definitions
574 section. A definition should be a description of what an item is and the actual wording for what
575 to do should be in the body of the work.
576
577 Bill Stoughton asked about the abutting landowner's written permission item. If a wetland
578 stretches over 3-4 lots and the applicant is on the end lot, there is only one abutter but the whole
579 wetland should still be defined. Jared Hardner agreed. Bill Stoughton suggested deleting "the
580 abutting" and instead say "with landowners' written permission." Jared Hardner agreed.
581
582 Rob Clemens, Pam Coughlin, and Cynthia Dokmo had no additional comments at this time.
583
584 Bill Stoughton explained that the Board previously discussed topics for amendments, rather than
585 looking at specific language for each amendment.
586
587 Arnie Rosenblatt asked if there were any Board comments with respect to proposed amendment
588 #1. There were not.
589
590 Arnie Rosenblatt asked if there were any Board comments with respect to proposed amendment
591 #2. There were not.
592
593 Arnie Rosenblatt asked if there were any Board comments with respect to proposed amendment
594 #3. Bill Stoughton stated that he previously asked if the Board can be more stringent than these
595 changes to the floodplain language that are required by the feds. Nic Strong stated that the Board
596 can be, and in fact is encouraged to be more stringent, but there does not seem to be enough time
597 to make additional changes at this time.
598
599 Arnie Rosenblatt asked if there were any Board comments with respect to proposed amendment
600 #4. Nic Strong explained that, regarding the vernal pool definition change, the change is only to
601 the first line, while the rest of the definition itself is much longer and not affected by the
602 proposed change. The current language could be confusing. Arnie Rosenblatt suggested a bracket
603 after the proposed change, stating that the rest of the language will remain as it currently exists in
604 the Ordinance.
605
606 Arnie Rosenblatt asked if there were any Board comments with respect to proposed amendment
607 #5. Nic Strong explained that the Nashua Regional Planning Commission provided a matrix of
608 potential zoning amendments or items that need clarification or have inconsistencies. The first
609 item involves incorrect numbering in the Table of Contents. This is not a zoning amendment and
610 can be fixed at any time.
611
612 Nic Strong stated that the second item is that Section 2.3 contains a reference to Board of
613 Adjustment versus Zoning Board of Adjustment, which occurs throughout the whole document.
614 She asked if the Board would like this amended. Bill Stoughton stated that he does not mind if

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615 these are not all fixed now, and he would like to know whether any of these matrix items are
616 important enough to consider for this year. He noted that there is only one Board of Adjustment
617 in Town and does not believe this is confusing.

618
619 Nic Strong stated that the next item in NRPC's matrix suggests that listing site plan requirements
620 in the Zoning Ordinance should be deleted. This is specifically in reference to equestrian events
621 which is not spelled out in the site plan review regulations so she thinks this language should
622 remain in the Zoning Ordinance. Arnie Rosenblatt agreed. Nic Strong stated that the next item is
623 regarding whether to include a hyphen in the word "pre-existing." Arnie Rosenblatt stated that
624 this is not an item of concern at this time.

625
626 Nic Strong explained that the next item is regarding Section 3.2 about nonconforming uses. This
627 is already in the Board's matrix of items to be worked on because it needs detailed review that
628 could not be done this year. Arnie Rosenblatt agreed.

629
630 Continuing through the matrix from NRPC, Nic Strong stated that the next item is regarding
631 square feet versus s.f. This is in a table in the Sign Ordinance, and it is specified in the document
632 that s.f. can be used after the first instance where "square feet" is spelled out. Arnie Rosenblatt
633 agreed.

634
635 Nic Strong stated that the next item is regarding duplex versus two-family. There are two
636 occurrences of duplex and only one of two-family in the whole Ordinance. She proposed not
637 making this change because she thought that there were differences between the two in the
638 Building Code that could be an issue. Arnie Rosenblatt agreed.

639
640 Nic Strong stated that the next item is within Section 3.7 which suggested adding a date to the
641 Building Code. She explained that the Board could consider including the word "current"
642 instead, but this is not needed. Arnie Rosenblatt agreed.

643
644 Nic Strong stated that the next item, adding a hyphen to the word "high water," does not need an
645 amendment.

646
647 Nic Strong stated that the next item dealt with the lighting ordinance and that the definitions are
648 not in the beginning as they are in some other sections. Arnie Rosenblatt stated that he did not
649 want to address that this year.

650
651 Nic Strong explained that, for the next item, the Northern Transitional Zone was added in 1988
652 and #6 on the list of permitted uses was "all other development in the zone other than Planned
653 Residential Development shall adhere to the following:" which continued directly into the
654 sections on setbacks and frontages, etc. The language has changed over time and other items
655 have been added to the list, and the colon no longer makes sense. This number could either be
656 moved to the end of the list or it could be reworded, or the Board could delete this because a
657 separate Planned Residential Development section exists in the ordinance and a separate set of

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658 regulations. Arnie Rosenblatt agreed that the section should be deleted, and this item should be
659 included on the ballot.

660

661 Nic Strong stated that the next item involves changing language to be consistent regarding
662 frontage. There are seven occurrences that could be changed within one amendment. The Board
663 agreed to include a change of language to “frontage on a Class V or better road,” on the ballot.

664

665 Nic Strong stated that the next item deals with moving special exceptions and prohibited use
666 language around in all the sections. The Board agreed not to pursue this item at this time.

667

668 Nic Strong stated that the next item involves making a table of all the dimensional requirements
669 across the districts which would be a good thing to have but there was not time to do it this year.
670 The Board agreed not to pursue this item at this time.

671

672 Nic Strong stated that the next item points out the difference between a ‘building’ and a
673 ‘structure’ definition in the floodplain district. She explained that these are not the same as the
674 Town-wide definitions, so no change is required at this time. The Board agreed.

675

676 Nic Strong stated that the next item suggests being very specific with a statute reference and she
677 believes only referencing the parent statute is fine. Arnie Rosenblatt agreed.

678

679 Nic Strong explained that the next item points out that the Accessory Dwelling Unit section is
680 actually called Accessory Apartment. The statute language is for accessory dwelling units, and it
681 would be good to make that change at some point. The Board agreed to include this proposed
682 change on the ballot.

683

684 Nic Strong stated that the final change is another statute reference, and she again believes that
685 only referencing the parent statute is fine. Arnie Rosenblatt agreed.

686

687 Nic Strong explained that these proposed changes also need to go through Town Counsel. The
688 Board will not have an additional meeting to review this language prior to the December 6th
689 public hearing. The Board acknowledged this.

690

691 **Bill Stoughton moved to send to public hearing the proposed ordinance**
692 **amendments, as amended in the discussion tonight and as will be drafted. Seconded**
693 **by Tracie Adams.**

694 **Vote: 6-0-0 motion carried unanimously.**

695

696 **4. Minutes: October 18, 2023**

697

698 **Tracie Adams moved to approve the minutes of October 18, 2023, as amended [Line**
699 **161: reword to say “...only has so many slots;” Line 279: change to “Planned.”]**

700 **Seconded by Tom Silvia.**

701 **Vote: 6-0-0 motion carried.**

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702

703

5. Any other business that may come before the Board.

704

Cynthia Dokmo moved to adjourn the meeting at 8:42pm. Seconded by Tom Silvia.

705

Vote: 6-0-0 motion carried unanimously.

706

707 Respectfully submitted,

708 Kristan Patenaude

709

710 Minutes approved: December 6, 2023