

**Town of Amherst**  
**UNOFFICIAL RECORD OF VOTES OF THE TOWN COUNCIL**

Monday, December 19, 2022

5:30 p.m.

Councilors in attendance: De Angelis, Devlin Gauthier, Griesemer, Hanneke, Lopes, Rooney, Schoen, Steinberg, Taub, Walker

Councilors participating remotely: Miller, Pam, Walker

Councilors Absent: Bahl-Milne

Staff and others in attendance: Town Manager Bockelman, Clerk of the Council O’Keeffe, IT Director Hannon

Staff and others Participating Remotely: Assistant Town Manager Ziomek, School Committee Chair McDonald, Assistant School Superintendent for Diversity, Equity, and Human Resources Cunningham, Library Director Sharry, Planning Director Brestrup, Senior Planner Malloy

**When remote participation is used, all votes will be taken by roll call.**

Per MGL Chapter 30A Section 20(f), this meeting is being recorded and broadcast by Amherst Media.

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President Griesemer called the Town Council meeting to order at 5:30 p.m.; adjourned at 8:48 p.m.

**1. Call to Order**

**3. Hearings – *None***

**5. Consent Agenda**

The following items were selected because they were considered to be routine and it was reasonable to expect they would pass with no controversy. To remove an item from the consent agenda for discussion later in the meeting, ask that it be removed when the President lists the consent agenda items. The request to remove an item from the consent agenda does not require a second.

**MOVED:** To move the following items, and the printed motions thereunder and approve those items as a single unit:

- 8.a. Proposed Amendments to Zoning Bylaw Article 3, Use Regulations, Article 5, Accessory Uses, Article 11, Administration and Enforcement, and Article 12, Definitions:
  - (1) Adoption of revisions to Food and Drink Establishments – Article 3, Use Regulations
  - (2) Adoption of revisions to Zoning Bylaw Article 5, Accessory Uses and Article 11, Administration and Enforcement
  - (3) Adoption of revisions to Zoning Bylaw Article 12, Definitions
- 8.b. Proposed Revisions to Zoning Bylaws Article 2, Zoning Districts, Article 3, Use Regulations, and Article 16, FEMA Floodplain Overlay District; Zoning

Bylaw: Official Zoning Map – FEMA Floodplain Overlay District; Flood Insurance Rate Maps (FIRM); Flood Insurance Study dated February 9, 2023

- (1) Adoption of revisions to Zoning Bylaws Article 2, Zoning Districts and, Article 3, Use Regulations, and a new Article 16, FEMA Floodplain Overlay District
- (2) Adoption of Zoning Bylaw – Official Zoning Map – FEMA Floodplain Overlay District
- (3) Adoption the Flood Insurance Rate Maps (FIRM)
- (4) Adoption of the Flood Insurance Study dated February 9, 2023
- 8.c. Adoption of revisions to General Bylaw 3.22: Discharging of Firearms
- 8.e. Referral of Proposed Surveillance Use Policy and Surveillance Technology Impact Report - Police Department: In-cruiser Video and Audio to Town Services and Outreach Committee
- 9.a.1-5) Approval of Town Manager Appointments to:
  - Board of Health
  - Human Rights Commission
  - Recreation Commission
  - Registrar of Voters
  - Transportation Advisory Committee

Motion by: Griesemer

Seconded by: Hanneke

**ROLL CALL VOTE:** 12-0, 1 absent

**Yea:** De Angelis, Devlin Gauthier, Griesemer, Hanneke, Lopes, Miller, Pam, Rooney, Schoen, Steinberg, Taub, Walker

**Nay:** None

**Present (Abstain):** None

**Absent:** Bahl-Milne

**6. Resolutions and Proclamations – *None***

**8. Action Items**

**a. Proposed Amendments to Zoning Bylaw Article 3, Use Regulations, Article 5, Accessory Uses, Article 11, Administration and Enforcement, and Article 12, Definitions – Second Reading**

**(1) VOTED** via consent agenda to adopt the revisions to Food and Drink Establishments – Article 3, Use Regulations of the Zoning Bylaw by deleting all current language and tables in Section 3.352 and replacing it with the language shown on page 10 of the draft Motions Sheet.

**(2) VOTED** via consent agenda to adopt the revisions to Zoning Bylaw Article 5, Accessory Uses and Article 11, Administration and Enforcement, by adding the language shown in ***bold italic font*** and deleting the language shown in ~~red strikethrough font~~, as shown on pages 11-24 of the draft Motions Sheet.

(3) **VOTED** via consent agenda to adopt the revisions to Zoning Bylaw Article 12, Definitions, by replacing the phrase “is only” with “may be” in Section 12.06, by deleting Section 12.11, and by renumbering all subsequent sections in Article 12.

b. **Proposed Revisions to Zoning Bylaws Article 2, Zoning Districts, Article 3, Use Regulations, and Article 16, FEMA Floodplain Overlay District; Zoning Bylaw: Official Zoning Map – FEMA Floodplain Overlay District; Flood Insurance Rate Maps (FIRM); Flood Insurance Study dated February 9, 2023 – Second Reading**

(1) **VOTED** via consent agenda to adopt the revisions to Zoning Bylaws Article 2, Zoning Districts and, Article 3, Use Regulations, by deleting the language shown in ~~red strikethrough font~~ and adding the language in **bold italic font**, as shown on pages 25-26 of the Motion Sheet and a new Article 16, FEMA Floodplain Overlay District, as shown on pages 27-34 of the Motion Sheet, effective February 9, 2023.

(2) **VOTED** via consent agenda to adopt Zoning Bylaw – Official Zoning Map – FEMA Floodplain Overlay District as presented at <https://www.amherstma.gov/DocumentCenter/Index/5212>, effective February 9, 2023.

(3) **VOTED** via consent agenda to adopt the Flood Insurance Rate Maps (FIRM), as presented at <https://www.amherstma.gov/DocumentCenter/Index/5212>, effective February 9, 2023.

(4) **VOTED** via consent agenda to adopt the Flood Insurance Study dated February 9, 2023, as presented at <https://www.amherstma.gov/DocumentCenter/View/64485/Amherst---2022-Flood-Insurance-Study>, effective February 9, 2023.

c. **Proposed Amendments to General Bylaw 3.22: Discharging of Firearms – Second Reading**

**VOTED** via consent agenda to adopt the revisions to General Bylaw 3.22: Discharging of Firearms, by deleting the language shown in ~~red strikethrough font~~ and adding the language in **bold red font**, as follows:

A. In accordance with M.G.L. c. 269, § 12E, no person shall fire or discharge a gun, fowling piece, or other firearm except as otherwise provided in § 12E. To the extent not inconsistent with the law of the Commonwealth, the provisions of this section shall not apply to **the discharge of firearms:**

~~(1) the discharge of shotguns or air guns; or~~

~~(2) the discharge of firearms:~~

a. **(1)** in the lawful defense of the person;

b. **(2)** for the humane dispatch of injured animals;

c. **(3)** by a person lawfully on a target, trap, or skeet range established for these purposes;

d. **(4)** by a duly authorized peace officer acting in the proper performance of duty;

- e. ~~(5)~~ by a duly authorized military personnel participating in scheduled military exercises;
  - f. ~~(6)~~ by a person using blank cartridges in theatrical performances or sporting events;
  - g. ~~(7)~~ by an owner or tenant of land (or if authorized by either, a member of the immediate family or person permanently employed by the owner or tenant) but only upon that land and for the limited purposes of:
    - 1. a. shooting a bird or other animal found to be damaging or posing the imminent threat of damage to the property; or
    - 2. b. shooting domestic animals raised as livestock.
- B. Notwithstanding the provisions of Sections A(7)a. ~~2)(g)(1)~~ and A(7)b. ~~2)(g)(2)~~ above, no person shall discharge a gun, fowling piece, shotgun, air-gun, or other firearm, or bow and arrow otherwise permitted under Sections A(7)a. ~~(g)(1)~~ and A(7)b. ~~2)(g)(2)~~ within 150 feet of or in the direction of:
- (1) the paved surface of a State Rail Trail; or
  - (2) the paved parking areas or entrance/exit ramps associated with a State Rail Trail.
- C. Loaded guns, fowling pieces, shotguns, air-guns, or other firearms or bows and arrows shall not be carried on or within 150 feet of a State Rail Trail.

So that the bylaw reads:

- A. In accordance with M.G.L. c. 269, § 12E, no person shall fire or discharge a gun, fowling piece, or other firearm except as otherwise provided in § 12E. To the extent not inconsistent with the law of the Commonwealth, the provisions of this section shall not apply to the discharge of firearms:
- (1) in the lawful defense of the person;
  - (2) for the humane dispatch of injured animals;
  - (3) by a person lawfully on a target, trap, or skeet range established for these purposes;
  - (4) by a duly authorized peace officer acting in the proper performance of duty;
  - (5) by a duly authorized military personnel participating in scheduled military exercises;
  - (6) by a person using blank cartridges in theatrical performances or sporting events;
  - (7) by an owner or tenant of land (or if authorized by either, a member of the immediate family or person permanently employed by the owner or tenant) but only upon that land and for the limited purposes of:
    - a. shooting a bird or other animal found to be damaging or posing the imminent threat of damage to the property; or
    - b. shooting domestic animals raised as livestock.
- B. Notwithstanding the provisions of Sections A(7)a. and A(7)b. above, no person shall discharge a gun, fowling piece, shotgun, air-gun, or other firearm, or bow and arrow otherwise permitted under Sections A(7)a. and A(7)b. within 150 feet of or in the direction of:

- (1) the paved surface of a State Rail Trail; or
- (2) the paved parking areas or entrance/exit ramps associated with a State Rail Trail.

C. Loaded guns, fowling pieces, shotguns, air-guns, or other firearms or bows and arrows shall not be carried on or within 150 feet of a State Rail Trail.

**d. Transfer of a Portion of Hickory Ridge property on West Pomeroy Lane to the Recreation Commission and Appropriation and Transfer for Acceptance of PARC Grant**

Automatic referral to Finance Committee.

**e. Proposed Surveillance Use Policy and Surveillance Technology Impact Report - Police Department: In-cruiser Video and Audio – Consent Agenda**

**VOTED** via consent agenda to refer the Proposed Surveillance Use Policy and Surveillance Technology Impact Report - Police Department: In-cruiser Video and Audio to the Town Services and Outreach Committee for review and recommendation to the Town Council by April 3, 2023.

**f. 2023 Town Manager Goals**

No action.

**g. FY24 Financial Guidelines**

**MOVED:** To adopt the FY24 Financial Guidelines, as presented.

Motion by: Griesemer

Seconded by: Schoen

**ROLL CALL VOTE:** 10-1, 1 present (abstain), 1 absent

**Yea:** De Angelis, Devlin Gauthier, Griesemer, Hanneke, Lopes, Miller, Rooney, Schoen, Steinberg, Taub

**Nay:** Walker

**Present (Abstain):** Pam

**Absent:** Bahl-Milne

**9. Appointments**

**a. Town Manager Appointments – Consent Agenda**

**1) Board of Health: Premila Nair**

**VOTED** via consent agenda to approve the Town Manager appointment of Premila Nair to the Board of Health, as filed with the Town Clerk on December 12, 2022, and recommended by the Town Services and Outreach Committee on December 15, 2022, effective immediately, for a term to expire June 30, 2025.

**2) Human Rights Commission: Rani Parker, Tylar Matsuo, LaVerne Kelly**

**VOTED** via consent agenda to approve the following Town Manager appointments to the to the Human Rights Commission, as filed with the Town Clerk on December 12, 2022, and recommended by the Town Services and Outreach Committee on December 15, 2022, effective immediately:

- For a term to expire June 30, 2025: Rani Parker

- For a term to expire June 30, 2024: Tylar Matsuo
- For a term to expire June 30, 2023: LaVerne Kelly

**3) Recreation Commission: Sara Ewell**

**VOTED** via consent agenda to approve the Town Manager appointment of Sara Ewell to the Recreation Commission, as filed with the Town Clerk on December 12, 2022, and recommended by the Town Services and Outreach Committee on December 15, 2022, effective immediately, for a term to expire June 30, 2025.

**4) Registrar of Voters: Stephen George**

**VOTED** via consent agenda to approve the Town Manager appointment of Stephen George as a Registrar of Voters, as filed with the Town Clerk on December 12, 2022, and recommended by the Town Services and Outreach Committee on December 15, 2022, effective immediately, for a term to expire June 30, 2025.

**5) Transportation Advisory Committee: Tracy Zafian (reappointment), Marcus Smith (reappointment), Kimberly Tremblay (reappointment), Tate Coleman, Joseph Fattorusso**

**VOTED** via consent agenda to approve the following Town Manager appointments to the Transportation Advisory Committee, as filed with the Town Clerk on December 12, 2022, effective immediately:

- For a term to expire June 30, 2025:
  - Tracy Zafian (reappointment)
  - Marcus Smith (reappointment)
- For a term to expire June 30, 2024:
  - Kimberly Tremblay (reappointment)
  - Tate Coleman
  - Joseph Fattorusso

11. **Approval of Minutes – None**

15. **Executive Session – None**

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**Zoning Bylaw Article 3, Use Regulations**

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## ARTICLE 5 ACCESSORY USES

### SECTION 5.04 RETAIL BUSINESS AND CONSUMER SERVICE USES

- 5.040 The rental of automobiles, trucks, trailers and farm implements may be granted under a Special Permit as accessory to establishments selling motor vehicle fuel, related products and services.
- 5.041 Seasonal outdoor dining, including sidewalk cafes, courtyard or terrace dining and similar uses may be permitted in the B-G, B-L, B-VC, B-N and COM districts as an accessory use to ***a principal use authorized by Section 3.3 and subject to the same review as*** : ~~1) a restaurant, café, lunchroom, cafeteria, refreshment stand, drive-up, fast food eatery or similar eating establishment, or; 2) to a bakery, deli, or other similar establishment for the production and sale of food or beverage on the premises, or; 3) to a retail store or convenience store selling prepared and packed food or beverage on the premises, under a Special Permit or Site Plan Review approval, whichever is~~ required for the principal use. In the case of a retail or convenience store selling prepared and packaged food on the premises, any unpackaged food or beverage such as ice cream or soft drinks sold in association with any accessory seasonal outdoor dining use shall be sold and served only through a limited-access walk-up window or similar facility, to be consumed out of doors. ***In the B-N district, any outdoor dining shall be located no closer than 100 feet from any residential dwelling in a residential district.***

In residential districts, seasonal outdoor dining may be permitted under a Special Permit as an accessory use to a farm stand restaurant. Where appropriate, health, fire and building permits have been obtained, seasonal outdoor dining uses may also include the outdoor preparation and cooking of food or beverages.

The following conditions shall apply to any seasonal outdoor dining permitted under this section:

- 5.0410 ~~Except as may be specifically allowed under conditions attached to said Site Plan Review or Special Permit, no~~ Any structure, framework, planter box, fence, wall or furnishing used in conjunction with the operation of an outdoor dining use shall be allowed to remain in the ***outdoor dining*** area ***so long as the accessory use is active and operational used between November 1 and the April 1 following thereafter.*** In the B-G District, such temporary structures and furnishings shall be exempt from the provisions of Sections 6.20 and 6.23. No such exemption shall apply to fixed or permanent structures or furnishings.
- 5.0411 Where a site for a proposed outdoor dining facility is partly or completely situated upon a sidewalk within the public way or upon other publicly-owned land, evidence of a lease and/or license allowing the use of

the site by the applicant shall be provided prior to the issuance of an occupancy permit.

5.0412 The permit-granting authority shall receive from the Building Commissioner a statement that the outdoor dining use will not unduly hinder safe exit from or access to the establishment in the event of a fire or other emergency.

5.0413 Except as may be specifically allowed under conditions attached to said Site Plan Review or Special Permit, no wall or fence related to an outdoor dining facility shall have a height of more than four (4) feet. ~~No such facility shall be equipped with free-standing heating and cooling devices or served by the HVAC system(s) of adjacent and associated buildings, except for fans.~~

***5.042 Live or pre-recorded entertainment involving music and/or human voice, whether amplified or unamplified, may be permitted in the B-G, B-L, B-VC, B-N and COM districts as an accessory use to any principal use in Section 3.3 ~~a restaurant, bar, inn~~ or bed and breakfast (Section 5.0102 only) under a Special Permit or Site Plan Review, whichever is required for the principal use, except that a Special Permit shall be required whenever any accessory entertainment is proposed and any outside wall of that portion of the building occupied by the principal use is located 150 feet or less from a residential dwelling in a Residence district. In the B-N district, there shall be no entertainment outside the building.***

The following conditions shall apply to any entertainment permitted under this section:

5.0420 Such entertainment shall be clearly accessory and incidental to the principal use.

5.0421 Sound produced by the proposed entertainment shall not generally exceed 70 dB (A) as measured at any boundary of the property on which the establishment is located, as determined by the regulations adopted pursuant to Section 5.0422.

5.0422 In order to develop reasonable and effective conditions under this section, the Planning Board shall develop regulations for the measurement of sound undertaken under Section 5.0421, and may require such information as it may deem necessary. The permit granting board or authority may impose a probationary period involving one or more monitoring tests, including but not limited to sound measurements taken during live performances and/or use of sound systems. Permit conditions may include, but are not limited to, requirements for sound-proofing, limits on

volume within rooms where entertainment occurs, and any other reasonable measures the permit granting board or authority may deem necessary.

#### 5.043 Drive-Through Facilities

Any attached or free-standing structure designed or operated to provide goods or services for patrons who drive to the structure and remain in their vehicles while receiving said goods or services shall be considered a drive-through facility, and accessory to Principal Uses under this Bylaw. Stand-alone automated teller machines or similar unattended facilities shall be regulated under this section. Exceptions shall be ~~drive-in restaurants (Section 3.352.2)~~, automotive filling stations (Section 3.381) and car washes (Section 3.383), where associated drive-through facilities shall be considered part of the Principal Use and regulated accordingly. No drive-through facility shall be permitted in any zoning district except as hereinafter provided. Existing drive-through facilities accessory to any existing legal non-conforming use shall be regulated under the provisions of Section 9.2.

5.0430 No drive-through facility shall be permitted in the B-G, B-N, OP, PRP or LI Districts. Drive-through facilities may be permitted in those portions of the B-L District abutting the B-G District under a Special Permit issued by the Special Permit Granting Authority authorized to act under the applicable section of the Bylaw for the Principal Use.

5.0431 In the COM District and in those outlying B-L districts not abutting the B-G District, drive-through facilities may be permitted as accessory to any permitted retail or consumer service use, or motor vehicle related use under the applicable Site Plan Review approval or a Special Permit required for the associated Principal Use, either proposed or existing.

5.0432 A drive-through facility serving as the entrance/exit structure for the control of access, payment of access fees, and the like may be permitted as accessory to any extensive use, institutional use, governmental/public service use or public parking use in any zoning district under a Site Plan Review or Special Permit, whichever is required for the Principal Use. Where the associated Principal Use is permitted by right in the applicable zoning district, an accessory drive-through facility shall require Site Plan Review approval.

## **ARTICLE 11 ADMINISTRATION AND ENFORCEMENT**

### **SECTION 11.0 AMENDMENT**

#### **SECTION 11.1 EXECUTION**

#### **SECTION 11.2 SITE PLAN REVIEW**

#### **SECTION 11.3 MAINTENANCE OF COMMON AREAS, LANDSCAPING AND IMPROVEMENTS**

#### **SECTION 11.4 ENFORCEMENT**

### **SECTION 11.0 AMENDMENT**

11.00 This Bylaw, and all the maps incorporated in it, may be amended as provided in Chapter 40A of the General Laws.

11.01 After a public hearing in accordance with Article III – Public Hearing, of the Planning Board Rules and Regulations, the Planning Board may request and the Town Clerk may make nonsubstantive corrections including the following: reordering, renumbering, and correcting cross reference numbering where needed throughout this Bylaw.

#### **SECTION 11.1 EXECUTION**

The Building Commissioner shall enforce the provisions of this Bylaw as hereinafter provided. No building shall be constructed, altered, moved, or changed in use in the Town without a permit from the Commissioner. Such permit shall be withheld unless such construction, alteration or proposed use is in conformity with all provisions of this Bylaw. Where a Special Permit or Site Plan Review approval is required (pursuant to the provisions of this Bylaw), or where an appeal or petition involving a variance is pending, the Building Commissioner shall issue no such permit except in accordance with the written decision of the appropriate Board.

#### **SECTION 11.2 SITE PLAN REVIEW**

##### **11.20 PURPOSE**

The purpose of this section is to protect the health, safety, convenience and general welfare of the inhabitants of the Town by providing for a review of plans for uses and structures which may have significant impacts, both within the site and in relation to adjacent properties and streets, on pedestrian and vehicular traffic; public services and infrastructure; environmental, unique and historic resources; abutting properties; and community needs.

##### **11.21 ADMINISTRATION & APPLICABILITY**

*11.210* In all instances where Site Plan Review is required, no work shall commence to alter a site, no change of use shall occur, and no

building permit shall be issued to construct, alter or relocate the exterior of a building until Site Plan Review has been granted by the Planning Board ***unless otherwise permitted by this Section***. Uses for which Site Plan Review is required are in accordance with Section 3.3, Table of Uses.

**11.211 *Site Plan Review shall not be required when:***

~~11.2110 No Change to Building or Site: Site Plan Review shall not be required when~~ **There is** no physical change ~~will occur~~ to the exterior of either a building or site;

~~11.2111 Signage: Site Plan Review shall not be required when~~ **The** only change to the exterior of a building or site includes the installation of signs in compliance with Article 8 of this Bylaw; ~~and-~~

~~11.2112 Change of Use: In cases where a~~ change of use is proposed and no physical changes to the exterior of a building or site will occur, ~~Site Plan Review may be waived if~~ **and** the Building Commissioner determines that the change will not conflict with the purpose of this Bylaw and finds that the proposed use will not result in the need for further review under Section 11.243.

~~11.2113 Administrative Approval for~~ Minor Alteration to Building Exterior or Site: The Building Commissioner may authorize work to proceed without Site Plan Review for minor alterations provided the following criteria are satisfied:

- a. The proposed alteration shall not violate any provision of this Bylaw.
- b. The proposed alteration does not result in an expansion of the building footprint other than those required by the building code related to means of egress or accessibility.
- c. The proposed alteration does not change the height or roof lines of any building.
- d. The proposal does not result in any substantial change in lot coverage.
- e. The applicant demonstrates that the proposal does not increase the volume or rate of storm water runoff.

- f. Measures are taken to avoid any excessive noise, odor, dust, vibration, flood, light pollution, or visual impact resulting from the proposed alteration.

**11.212 *Administrative Approval in instances where Site Plan Review is not required by Section 11.211 no work shall commence until the Building Commissioner has authorized work or the use to proceed. The Building Commissioner may approve, approve with conditions, or deny the proposal. Decisions shall be made in writing, filed with the Town Clerk and kept on record with the Conservation and Development Department. The Building Commissioner in consultation with the Planning Director shall be authorized to apply any design review criteria found in Article 3, Section 3.204 Design Review Principles and Standards.***

**11.213 Other Review:** The Building Commissioner may seek guidance in reviewing the above criteria from other Town staff and may require application to the Design Review Board and/or Historical Commission.

**11.214 Changes to Approved Site Plans and Buildings:** Any revision or alteration to a previously approved site plan or building plan shall be submitted to the Building Commissioner to determine if the change is significant. The Building Commissioner shall either approve the alteration as minor or advise the applicant to make submission to the Planning Board for its review under Site Plan Review.

## 11.22 SUBMISSION PROCEDURE

11.220 An applicant for site plan review shall file with the Planning Department an application form, fee, the required number of copies the site plan, and any additional information as may be required, in the Planning Board's Rules and Regulations. A copy of the application shall be filed with the Town Clerk.

11.221 The following information shall be filed at the time of application: a site plan, which shall include landscape, utility and drainage information, building elevations, and a traffic study and plan. An application shall not be considered complete until all required information and fees are submitted.

11.222 The Planning Board may waive all or any of the requirements for site plan submittal review and approval.



11.223 The exact form and contents of the application, fees, plans and information shall be as required by the Rules and Regulations of the Planning Board. The Board shall adopt, and may periodically amend, after a public hearing, such Rules and Regulations relating to the procedures and administration of this section and such Rules and Regulations shall be on file at the Planning Department and Town Clerk's office.

## 11.23 REVIEW PROCEDURE

11.230 The Planning Board shall transmit copies of the application and site plan to appropriate Town Boards, and departments which may include: the Town Engineer, Fire Chief, Conservation Department, Building Commissioner, Board of Health, Historical Commission, Public Transportation Committee, Leisure Services Commission, and others as necessary. These Boards and departments shall have thirty-five (35) days to report to the Planning Board their findings and recommendations. Failure to report in the allotted time shall constitute approval by that Board or Department of the application submitted.

11.231 Notice, including notice to parties of interest, and public hearing shall be done in accordance with the procedures required for Special Permits, as found in Chapter 40A. In addition to the notice requirements of M.G.L. Chapter 40A, the following requirements shall also apply:

In any instance where a Special Permit or Site Plan Review application is filed with the Town and there are tenants or lessees on the property which is the subject of the permit request, the applicant shall provide notice of the permit request to the tenants or lessees of the units by distributing a notice of the request, with the date, time and location of the public hearing, to those tenants or lessees, or by posting notice in one or more common areas such as will likely result in actual notice to tenants or lessees. The applicant shall submit a notarized letter to the permit granting authority stating that this requirement has been met and by what means.

If said notification requirements have been met to the satisfaction of the permit granting authority, a circumstance where individual tenants or lessees fail to receive notification shall not serve to invalidate the public hearing.

11.232 The Planning Board, or its designated subcommittee, shall schedule a viewing of the property for the purpose of making an informed decision, unless, pursuant to Section 11.222, the Board judges the change to be insignificant and does not require a visit.

## 11.24 REVIEW CRITERIA/DESIGN GUIDELINES

The following criteria and guidelines shall be used by the Board in evaluating the site plan and all information submitted as part of the application.

### 11.240 GENERAL

- 11.2400 Conformance with all appropriate provisions of the Zoning Bylaw and the goals of the Master Plan.
- 11.2401 Protection of Town amenities and abutting properties through minimizing detrimental or offensive actions.
- 11.2402 Protection of abutting properties from detrimental site characteristics resulting from the proposed use, including but not limited to air and water pollution, flood, noise, odor, dust vibration, lights or visually offensive structures or site features.
- 11.2403 Provision of adequate recreational facilities, open space and amenities.

### 11.241 ENVIRONMENTAL

- 11.2410 Protection of unique or important natural, historic or scenic features.
- 11.2411 Adequacy of proposed methods of refuse disposal
- 11.2412 Ability of proposed sewage disposal and water supply systems within and adjacent to the site to serve the proposed use.
- 11.2413 Adequacy of the proposed drainage system within and adjacent to the site to handle the increased runoff resulting from the development.
- 11.2414 Provision of adequate landscaping, including the screening of adjacent residential uses, provision of street trees, landscape islands in the parking lot and a landscape buffer along the street frontage. When a non-residential use adjoins a residential district, an uninterrupted vegetated buffer shall, to the extent feasible, be established and maintained between buildings associated with uses under this section and the nearest residential property boundary. Where natural, undisturbed vegetation already exists on-site prior to site preparation and clearing, the majority of that vegetation may be retained and included as part of the buffer, along with the addition of such new plantings,

selective removals, and other management of site plantings as are determined to be necessary to maintaining an effective year-round visual screen. See Section 11.3.

- 11.2415 Adequacy of the soil erosion plan and any plan for protection of steep slopes, both during and after construction.
- 11.2416 Protection of adjacent properties by minimizing the intrusion of air and water pollution, flood, noise, odor, dust and vibration through appropriate site and structure design and the use of appropriate design and materials for containment, ventilation, filtering, screening, sound-proofing, sound-dampening and other similar solutions.
- 11.2417 Protection of adjacent properties by minimizing the intrusion of lighting, including parking lot and building exterior lighting, through the use of cut-off luminaries, light shields, lowered height of light poles, screening or similar solutions. Except for architectural and interior-lit signs, all exterior site lighting shall be downcast and shall be directed or shielded to eliminate light trespass onto any street or abutting property and to eliminate direct or reflected glare perceptible to persons on any street or abutting property and sufficient to reduce a viewer's ability to see. All site lighting, including architectural, sign, and parking lot lighting, shall be kept extinguished outside of those business hours established under an approved site management plan, except for lighting determined to be necessary for site security and the safety of employees and visitors.
- 11.2418 Protection from flood hazards as stated in Section 3.22, considering such factors as: elevation of buildings; drainage; adequacy of sewage disposal; erosion and sedimentation control; equipment location; refuse disposal; storage of buoyant material; extent of paving; effect of fill, roadways or other encroachment on floor runoff and flow; storage of chemicals and other hazardous substances.
- 11.2419 Protection of wetlands by building in accordance with the provisions of the Wetlands Protection Act, Chapter 131, Section 40, and the Amherst Wetlands Bylaw.

#### 11.242 DESIGN

- 11.2420 Within the B-L, B-VC, B-N, COM, OP, LI and PRP Districts, and any residential zoning district where the project in question occurs within the boundaries of a National Historic Register

District, the Permit Granting Authority shall, if it deems the proposal likely to have a significant impact on its surroundings, be permitted to use the design principles and standards set forth in Sections 3.2040 and 3.2041, 1) through 9) to evaluate the design of the proposed architecture and landscape alterations. Within the B-G and abutting B-L districts, and for any Town project within any district, the provisions of Section 3.20, Design Review, shall remain in effect.

- 11.2421 The development shall be reasonably consistent with respect to setbacks, placement of parking, landscaping and entrances and exits with surrounding buildings and development.
- 11.2422 Building sites shall avoid, to the extent feasible, the impact on steep slopes, floodplains, scenic views, grade changes and wetlands.
- 11.2423 If there is more than one building on the site, the buildings shall relate harmoniously to each other in architectural style, site location and building exits and entrances.
- 11.2424 Screening shall be provided for storage areas, loading docks, dumpsters, rooftop equipment, utility buildings and similar features.

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## 11.243 TRAFFIC/PARKING

- 11.2430 The site shall be designed to provide for the convenience and safety of vehicular and pedestrian movement both within the site and in relation to adjoining ways and properties.
- 11.2431 The location and number of curb cuts shall be such to minimize turning movements, and hazardous exits and entrances.
- 11.2432 The location and design of parking spaces, bicycle racks, drive aisles, loading areas and sidewalks shall be provided in a safe and convenient manner.
- 11.2433 Provision for access to adjoining properties shall be provided as appropriate.
- 11.2434 Where possible, driveways located in commercial and business districts shall be located opposite each other.
- 11.2435 Joint access driveways between adjoining properties shall be encouraged.
- 11.2436 A traffic impact report shall be required, unless waived under Section 11.222. Information required as part of this report shall be as set forth in the Rules and Regulations of the Planning Board.
- 11.2437 When a traffic impact report is required, the proposed development shall comply with the following standards:
1. Level of Service (LOS) at nearby intersections shall not be degraded more than one level as a result of traffic generated by the proposed development, nor shall any nearby intersection degrade below the Level of E.
  2. Adjacent streets shall not exceed design capacity at the peak hour as a result of traffic generated by the proposed development.
  3. Safety hazards shall not be created or added to as a result of traffic generated by the proposed development.
  4. If any of the standards in Section 11.2437 1 - 3 are violated, the applicant shall provide alternative proposals to meet the standards, including but not limited to; reduction in the size of the development, change in proposed uses on the site,

contributions to off-site street and intersection improvements or construction of off-site street and intersection improvements.

## 11.25 PLANNING BOARD DECISION

11.250 The concurring vote of a majority of the members of the Board participating and voting shall be required for any decision on a site plan application (abstaining members being considered not to be voting). The Board's written decision shall consist of either:

11.2500 Approval of the site plan based on a determination that the proposed project meets all of the requirements of Section 11.2.

11.2501 Denial of the site plan based on a determination that either: a) insufficient information was submitted with the application in order for the Board to adequately review the proposal, or; b) a determination that the project does not meet the requirements of Section 11.2.

11.2502 Approval of the site plan subject to conditions, modifications and reasonable restrictions necessary to ensure compliance with the requirements of Section 11.2. Such conditions may include the following:

11.25020 Controls on location and type of access to the site.

11.25021 Requirements to reduce the traffic impact of the proposed development in accordance with Section 11.243.

11.25022 Requirements to minimize impacts on the capacities of infrastructure serving the site, including but not limited to, water, sewer, storm drains, and sidewalks.

11.25023 Requirements to minimize any environmental degradation during construction.

11.25024 Other conditions designed to ensure compliance with the criteria and guidelines of Section 11.24.

11.251 The Planning Board shall render a decision within ninety (90) days of the public hearing and shall file its written decision with the Town Clerk's office and other appropriate parties in accordance with the provisions of MGL Chapter 40A.

11.252 For the purpose of securing the performance of all proposed work, including landscaping and off-site improvements, the Board may require any of the following: a performance bond, deposit of money, bank passbook, or letter of credit in an amount determined by the Board to be sufficient to cover the cost of all or any part of improvements required.

11.253 Any site plan approval granted under this Section shall expire in two (2) years if substantial construction has not begun by such date.

11.254 Violations of the approved site plan or any conditions of approval shall be subject to the provisions of Section 11.45 of the Zoning Bylaw.

### **SECTION 11.3 MAINTENANCE OF COMMON AREAS, LANDSCAPING AND IMPROVEMENTS**

11.30 The recipient of any permit under this Bylaw, or any successor, shall be responsible for maintaining all common areas, landscaping and other improvements or facilities required by this Bylaw or any permit issued in accordance with its provisions. Those areas, improvements, or facilities for which an offer of dedication to the public has been accepted by the appropriate public authority are excluded. Such improvements shall include, but are not limited to, private roads and parking areas, water and sewer lines, passive and active recreational facilities, and vegetation and trees used for screening and landscaping. Such improvements shall be properly maintained so that they can be used in the manner intended. Vegetation and trees indicated on approved site plans shall be replaced if they die or are destroyed.

11.31 The minimum planting size for landscape material shall be 1-1/2" caliper for trees and 5 gallon for shrubs. The Amherst Landscaping Guidelines should be used for reference in the preparation of landscape plans.

### **SECTION 11.4 ENFORCEMENT**

11.40 If the Building Commissioner shall be informed or have reason to believe that any provision of this Bylaw or any permit or decision thereunder has been, is being, or is about to be violated, the Commissioner shall make an investigation of the facts, including the inspection of the premises where the violations may exist. Where written complaint is made to the Commissioner, the Commissioner shall take action upon such complaint within 14 days of receipt thereof and shall report such action in writing to the complainant.

11.41 If the Commissioner finds no violation or prospective violation, any person aggrieved by said decision, or any officer or Board of the Town, may within 30 days appeal to the Board of Appeals.

11.42 If the Commissioner finds a violation or prospective violation, the Commissioner

shall give immediate notice in writing to the owner and to the occupant of the premises and shall order the person(s) in lawful control of the premises to cease and desist and refrain from such violation. Any person aggrieved by said decision or, any officer or Board of the Town, may within 30 days appeal to the Board of Appeals.

- 11.43 If after such order, such violation continues and no appeal to the Board of Appeals is taken within 30 days, and Town Manager shall, upon notice from the Building Commissioner forthwith make applications to the Superior Court for an injunction or order restraining the violation and shall take such other action as is necessary to enforce the provision of this Bylaw.
- 11.44 If after action by the Building Commissioner, appeal is taken to the Board of Appeals, and after a public hearing, the Board of Appeals finds that there has been a violation or prospective violation, the Commissioner shall issue an order to cease and desist and refrain from such violation unless such order has been previously issued. If such then continues, the Town Manager shall, upon notice from the Building Commissioner, forthwith make application to the Superior Court for an injunction or order restraining the violation and shall take such other action as may be necessary to enforce this Bylaw.
- 11.45 Any violation of the provisions of this Bylaw, the conditions of a permit granted under this Bylaw, or any decisions rendered by the Zoning Board of Appeals or Planning Board under this Bylaw, shall be liable to a fine of not more than one hundred dollars (\$100.00) for each violation. Each day such violation continues shall be deemed a separate offense.

In addition to the procedures for enforcement as described above, the provisions of this Bylaw, the conditions of a permit granted under this Bylaw, or any decisions rendered by the Zoning Board of Appeals or Planning Board under this Bylaw, may be enforced, by the Building Commissioner, by non-criminal complaint pursuant to the provisions of General Laws, Chapter 40, Section 21D. The fine for any violation disposed of through this procedure shall be one hundred dollars (\$100.00) for each offense. Each day such violation continues shall be deemed a separate offense.

- 11.46 Construction or operations under a building permit or special permit shall conform to any subsequent amendment of this Bylaw unless the use or construction is commenced within a period of six months after issuance of the permit; additionally, in cases involving construction begun within such six-month period, such construction shall be continued through to completion as continuously and expeditiously as is reasonable.



## ARTICLE 2 ZONING DISTRICTS

To see if the Town will amend Article 2, Section 2.0, Subsection 2.05, Resource Protection Districts, of the Zoning Bylaw by adding the language in ***bold italics***, as follows:

### ***FEMA Floodplain Overlay District***

***The FEMA Floodplain Overlay District is an overlay district intended to provide protection of, and regulation of activities in, the special flood hazard areas designated on the Town of Amherst's Flood Insurance Rate Maps (FIRM) issued by the Federal Emergency Management Agency for the administration of the National Flood Insurance Program, the exact boundaries of which are defined by the 1% chance base flood elevations shown on the FIRM and further defined by the Flood Insurance Study (FIS), and shown on the Official Zoning Map for the Town of Amherst, entitled "Official Zoning Map, Amherst, Massachusetts, May 2011", as amended.***

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## ARTICLE 3 USE REGULATIONS

To see if the Town will amend Article 3, Section 3.13 and 3.22 of the Zoning Bylaw by adding the language in ***bold italics*** and deleting the language shown in ~~red strikethrough~~, as follows:

### 3.13 Development in Floodways

All encroachments including fill, new construction, substantial improvements to existing structures and other developments are prohibited in the floodway, unless certification is provided demonstrating that such encroachment will not result in any increase in flood levels during the occurrence of a 100-year flood. Such certification shall be provided by a registered professional engineer or any other person, who, in the opinion of the Planning Board, is qualified to make such determination. Floodways are shown on the ~~Floodway and Flood Boundary Map~~ ***Flood Insurance Rate Maps (FIRMs)***, as amended, produced by the Federal Emergency Management Agency. This section shall not supersede any of the requirements of the Flood Prone-Conservancy District. ***See also Article 16, FEMA Floodplain Overlay District.***

### 3.22 Flood Prone - Conservancy (FPC) District

3.220 This section does not authorize any person to trespass, infringe upon or injure the property of another, and it does not excuse any person of the necessity of complying with other sections of this Bylaw or other applicable laws, regulations and bylaws. ***The floodplain management regulations found in Article 16, FEMA Floodplain Overlay District, shall take precedence over any less restrictive conflicting provision of this section of bylaw or other local bylaw, regulation, or code.***

## **ARTICLE 16 FEMA FLOODPLAIN OVERLAY DISTRICT**

### **SECTION 16.0 INTENT & PURPOSE**

*The FEMA Floodplain Overlay District is herein established as an overlay district. The FEMA Floodplain Overlay District includes all special flood hazard areas designated on the Town of Amherst's Flood Insurance Rate Maps (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program, dated February 9, 2023. These maps indicate the 1%-chance regulatory floodplain. The exact boundaries of the FEMA Floodplain Overlay District shall be defined by the 1%-chance base flood elevations shown on the FIRM and further defined by the Flood Insurance Study (FIS) report dated February 9, 2023. The effective FIRM and FIS report are incorporated herein by reference and are on file with the Town Clerk, Inspection Services, Conservation Department, and Planning Department.*

*The purpose of the floodplain management regulations is to protect the public health, safety, and general welfare and to minimize the harmful impacts of flooding upon the community. More specifically, the purpose of the FEMA Floodplain Overlay District is to:*

- 16.00 Ensure public safety through reducing the threats to life and personal injury;*
- 16.01 Eliminate new hazards to emergency response officials;*
- 16.02 Prevent the occurrence of public emergencies, contamination and pollution of water resources resulting from flooding, so as to protect public safety and avoid damage to wildlife habitat;*
- 16.03 Avoid the loss of utility services which if damaged by flooding would disrupt or shut down the utility network and impact regions of the community beyond the site of flooding;*
- 16.04 Eliminate costs associated with the response and cleanup of flooding conditions;*
- 16.05 Reduce damage to public and private property resulting from flooding waters; and*
- 16.06 Allow the floodplain to operate naturally and drain flood waters without development that can add to flooding.*

### **SECTION 16.1 DEFINITIONS**

*The following definitions comply with FEMA Region 1 standards and shall apply only within the FEMA Floodplain Overlay District. The definitions are based on State Building Code, standard references found in the State Building Code (i.e. ASCE 24), and FEMA regulations found in the Code of Federal Regulations.*

***“Development”*** – Any man-made change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

***“Flood Boundary and Floodway Map”*** – An official map of a community issued by FEMA that depicts, based on detailed analyses, the boundaries of the 100-year and 500-year floods and the 100-year floodway.

***“Floodway”*** – The channel of the river, creek or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated elevation shown on the approved FIRM maps.

***“Functionally Dependent Use”*** – A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

***“Highest Adjacent Grade”*** – The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

***“Historic Structure”*** – Any structure that is:

- a) ***Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;***
- b) ***Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;***
- c) ***Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or***
- d) ***Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:***
  - (1) By an approved state program as determined by the Secretary of the Interior or***
  - (2) Directly by the Secretary of the Interior in states without approved programs.***

***“New Construction”*** – Structures for which the start of construction commenced on or after the effective date of the first floodplain management code, regulation, ordinance, or standard adopted by the authority having jurisdiction, including any subsequent improvements to such structures. New construction includes work determined to be substantial improvement.

***“Recreational Vehicle” – A vehicle which is:***

- a) Built on a single chassis;***
- b) 400 square feet or less when measured at the largest horizontal projection;***
- c) Designed to be self-propelled or permanently towable by a light duty truck;***
- d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use; and***
- e) Fully licensed and highway ready such that the wheels must be inflated; have no attached deck, porch or shed; and have quick-disconnect sewage, water and electrical connections. The vehicle must be ready to relocate immediately upon notification of the possibility of flooding in the area.***

***“Regulatory Floodway” – see Floodway.***

***“Special Flood Hazard Area” – The land area subject to flood hazards and shown on a Flood Insurance Rate Map or other flood hazard map as Zone A, AE, A1-30, A99, AR, AO, or AH.***

***“Start of Construction” – The date of issuance of a building permit for new construction and/or substantial improvements to existing structures. The actual start of construction must commence within 180 days of issuance of the building permit.***

***The actual start of construction means the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of a slab or footings, installation of pilings or construction of columns.***

***Permanent construction does not include land preparation (such as clearing, excavation, grading or filling), the installation of streets or walkways, excavation for a basement, footings, piers or foundations, the erection of temporary forms or the installation of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main building. For a substantial improvement, the actual “start of construction” means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building.***

***“Structure” – For floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.***

***“Substantial Repair of a Foundation” – When work to repair or replace a foundation results in:***

- a) the repair or replacement of a portion of the foundation with a perimeter along the base of the foundation that equals or exceeds 50% of the perimeter of the base of the foundation measured in linear feet, or***
- b) repair or replacement of 50% of the piles, columns or piers of a pile, column or pier***

*supported foundation, the building official shall determine it to be substantial repair of a foundation.*

*Applications determined by the building official to constitute substantial repair of a foundation shall require all existing portions of the entire building or structure to meet the requirements of 780 CMR.*

*“Variance” – A grant of relief by a community from the terms of a flood plain management regulation.*

*“Violation” – The failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in §60.3 is presumed to be in violation until such time as that documentation is provided.*

## **SECTION 16.2 DESIGNATION OF FLOODPLAIN ADMINISTRATOR**

*The Town of Amherst hereby designates the position of the Planning Director to be the official Floodplain Administrator for the Town. In the event that the Planning Director position is vacant or the Planning Director is absent, their designee shall fulfill the duties of the Floodplain Administrator.*

*The Floodplain Administrator shall have the authority to interpret this bylaw consistent with its intent and purpose, and may establish policies and procedures in order to clarify the application of its provisions. Such interpretations, policies, and procedures shall not have the effect of waiving requirements specifically provided in this bylaw without the granting of a variance pursuant to sections below in this bylaw.*

*The duties of the Floodplain Administrator may include:*

- a) Applying the regulations for development in the FEMA Floodplain Overlay District;*
- b) Ensuring that permits are applied for when development of any kind is proposed in the FEMA Floodplain Overlay District;*
- c) Coordination with other local departments and municipal officials including Inspection Services, Department of Public Works, Planning Board, Zoning Board of Appeals, and Conservation Commission;*
- d) Notifying adjacent communities prior to alteration of a watercourse;*
- e) Working with the appropriate local staff to coordinate compliance issues and enforcement actions such as activities to correct violations of the bylaw;*
- f) Maintaining current and historic FEMA maps available for public inspection;*
- g) Signing the Community Acknowledgement Form when a property owner wishes to file for a Letter of Map Revision (LOMR) with FEMA; and*

- h) Notifying FEMA if the Town acquires data that changes the Base Flood Elevation in the FEMA mapped Special Flood Hazard Areas, within 6 months of such changes by submitting the technical or scientific data that supports the changes to FEMA Region 1 Risk Analysis and to the Massachusetts NFIP State Coordinator.*

### **SECTION 16.3 REGULATIONS**

*The floodplain management regulations found in the FEMA Floodplain Overlay District section shall take precedence over any less restrictive conflicting local laws, bylaws, or codes. The degree of flood protection required by this bylaw is considered reasonable by the Town but does not imply total flood protection.*

*If any section, provision, or portion of this bylaw is deemed to be unconstitutional or invalid by a court, the remainder of the bylaw shall be effective.*

- 16.31 Local Permitting.** *The Town of Amherst requires a permit for all proposed construction or other development in the FEMA Floodplain Overlay District, including new construction or changes to existing buildings, placement of manufactured homes, placement of agricultural facilities, placement of fill, fences, sheds, storage facilities or drilling, mining, paving and any other development that might increase flooding or adversely impact flood risks to other properties.*

*The Town's permit review process includes the requirement that the proponent obtain all local, state, and federal permits that will be necessary in order to carry out the proposed development in the FEMA Floodplain Overlay District. In addition to any building permit or other local, state, or federal permits needed, any development in the FEMA Floodplain Overlay District shall require review by the Wetlands Administrator to determine if review and approval by the Conservation Commission is required.*

- 16.32 Floodway Encroachment.** *In Zones A and AE, along watercourses that have not had a regulatory floodway designated, the best available Federal, State, local, or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.*

*In Zones A and AE, along watercourses that have a regulatory floodway designated on the Town's FIRM maps, encroachments are prohibited, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the*

*occurrence of the base flood discharge.*

- 16.33 Unnumbered A Zones.** *In A Zones, in the absence of FEMA Base Flood Elevation data and floodway data, Inspection Services will obtain, review and reasonably utilize base flood elevation and floodway data available from a Federal, State, or other source as criteria for requiring new construction, substantial improvements, or other development in Zone A and as the basis for elevating residential structures to or above base flood level, for floodproofing or elevating nonresidential structures to or above base flood level, and for prohibiting encroachments in floodways.*
- 16.34 Subdivision Approvals.** *All subdivision proposals and development proposals in the FEMA Floodplain Overlay District shall be reviewed by Town staff to assure that:*
- a) Such proposals minimize flood damage and, to the maximum extent feasible, locate all structures, roads, utilities, and other infrastructure out of the FEMA Floodplain Overlay District.*
  - b) Public utilities and facilities are located and constructed so as to minimize flood damage.*
  - c) Adequate drainage is provided to reduce exposure to flood hazards.*
  - d) Existing 1' topographic contours shall be included on the plans, as well as elevations of existing and proposed structures.*

*Where such development is subject to Site Plan Review under Article 11 of the Zoning Bylaw, and any other sections of the Amherst Zoning Bylaw, the Planning Board shall incorporate these standards into their review. Where such development is subject to the Rules and Regulations Governing the Subdivision of Land, the Planning Board shall incorporate these standards into their Subdivision Plan review.*

- 16.35 Base Flood Elevation Data for Subdivision Proposals.** *When proposing subdivisions or other developments greater than 50 lots and/or 5 acres, the proponent must provide technical data to determine base flood elevations for each developable parcel shown on the design plans.*
- 16.36 Recreational Vehicles.** *In Zones A and AE, all recreational vehicles to be placed on a site must be elevated and anchored in accordance with the FEMA's flood zone regulations for foundation and elevation requirements, or be on the site for less than 180 consecutive days, or be fully licensed and highway ready. See definition of Recreational Vehicles in Section 16.1.*
- 16.37 Watercourse Alterations or Relocations in Riverine Areas.** *In a riverine situation, the Floodplain Administrator shall notify the following of any proposed or actual alteration or relocation of a watercourse:*
- a) Adjacent Communities, especially upstream and downstream;*
  - b) Bordering States, if affected;*



- c) *Massachusetts NFIP State Coordinator; and*
- d) *FEMA Region 1 NFIP Program Specialist.*

**16.38** *State Variances to Building Code Floodplain Standards. The Floodplain Administrator shall request from the State Building Code Appeals Board a written and/or audible copy of the portion of the hearing related to the variance, and shall maintain this record in the community's files.*

*The Floodplain Administrator shall also issue a letter to the property owner regarding potential impacts to the annual premiums for the flood insurance policy covering that property that (i) the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and (ii) such construction below the base flood level increases risks to life and property.*

*Such letter shall be maintained with the record of all variance actions for the referenced development in the FEMA Floodplain Overlay District.*

**16.39** *Variances from Amherst's Zoning Bylaw related to community compliance with the National Flood Insurance Program. An application for a variance from the requirements of the FEMA Floodplain Overlay District, requested from the Zoning Board of Appeals, must meet all the requirements set out by State law (MGL Chapter 40A) and the Zoning Bylaw (see Section 10.2 of the Zoning Bylaw). However, a variance shall not be issued within any designated regulatory floodway if the variance will result in any increase in flood levels during the base flood discharge would result from the application. In addition to those requirements, a variance may only be granted if:*

- a) *Good and sufficient cause and exceptional non-financial hardship exist;*
- b) *The variance will not result in additional threats to public safety, extraordinary public expense, or fraud or victimization of the public; and*
- c) *The variance is the minimum action necessary to afford relief.*

#### **SECTION 16.4 ENFORCEMENT**

*The Building Commissioner will be responsible for issuing a notice of non-compliance to the property owner for any non-compliant floodplain development in the FEMA Floodplain Overlay District. Such notice will identify the non-compliant development and will contain instructions regarding the actions that the property owner must take in order to come into compliance. Such actions may include, but are not limited to, removal of the fill, structures or paving that might increase flooding or adversely impact flood risks to other properties. Any person violating the FEMA Floodplain Overlay District Bylaw shall be subject to a penalty of \$300.00 for each offense. Each day that such violation continues shall constitute a separate offense. The Building Commissioner may enforce this Bylaw by*

*non-criminal complaint pursuant to the provisions of General Laws Chapter 40, Section 21D.*

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