

AMHERST PLANNING BOARD
Wednesday, July 17, 2013 – 7:00 PM
Town Room, Town Hall
MINUTES

PRESENT: David Webber, Chair, Sandra Anderson, Bruce Carson, Rob Crowner, Kathleen Ford, Connie Kruger, Stephen Schreiber, Greg Stutsman, and Richard Roznoy

ABSENT: none

STAFF: Jonathan Tucker, Planning Director
Christine Brestrup, Senior Planner

Mr. Webber opened the meeting at 7:07 PM. He welcomed new Planning Board member, Greg Stutsman.

I. MINUTES

Mr. Carson MOVED to approve the Minutes of June 5, 2013. Ms. Anderson seconded and the vote was 8-0-1 (Stutsman abstained).

Mr. Carson MOVED to approve the Minutes of June 18, 2013. Ms. Ford seconded and the vote was 5-0-4 (Kruger, Schreiber, Anderson and Stutsman abstained).

Mr. Carson MOVED to approve the Minutes of June 19, 2013. Ms. Anderson seconded and the vote was 5-0-4 (Kruger, Schreiber, Anderson and Stutsman abstained).

II. PUBLIC HEARING – SCENIC ROAD – JOINT HEARING WITH TREE WARDEN

Proposed Driveway Construction – 666 South East Street (*continued from 6/5/13*)

Mr. Webber summarized the proceedings from June 5th. The applicants are proposing to move their driveway which they say is in a dangerous location. In order to do so they will need to remove some trees that stand on public property. Because South East Street is a Scenic Road the Tree Warden shares authority over these public shade trees with the Planning Board and thus a Joint Public Hearing is being held.

Christopher Benfey and Mickey Rathbun presented information about their proposal to relocate the driveway at 666 South East Street. Mr. Benfey asserted that the changing the location of the driveway was an issue of public safety. The house and driveway were built when the street was a quiet road. It is now a commuter route. Entering and exiting the existing driveway is very dangerous. Mr. Benfey and Ms. Rathbun have consulted with engineers, architects and landscape designers about how to make the driveway safer. According to Mr. Benfey everyone has agreed that moving the driveway entrance 60 feet to the north would improve safety. On May 24, 2012, they met with a representative of the DPW, Tom Caprarella, and discussed the driveway relocation. Mr. Benfey read from an email that Mr. Caprarella had sent. After that meeting the DPW posted warning signs and a 25 mph speed limit sign.

Mr. Benfey reported that the Tree Warden recommended that up to 10 trees need to be removed since they would be affected by the construction. Mr. Benfey and Ms. Rathbun are willing to agree with this number. They have consulted with Peter Wells of The Berkshire Design Group who advised them that this number of trees would be affected by the driveway relocation. Five of the trees are mature White Pines that are close to the road. Assistant Fire Chief Don McKay has stated that the White Pines are a hazard to the roadway, to electrical lines and to emergency vehicles and should be removed. The Planning Board had requested a survey and an engineering study and test holes to determine the depth of ledge so that the

number of trees to be affected could be accurately determined. Mr. Benfey and Ms. Rathbun requested a waiver from that request because the reason for the studies was to determine the number of trees that need to be removed and they now agree with the number listed. They also requested that no penalty or replacement fee be imposed on them for the tree removal. Mr. Benfey contended that the trees were being removed to improve public safety.

Mr. Benfey reported that the cost to move the driveway to the north would range from \$12,000 to \$18,000. The initial fee quoted by the Tree Warden for removal of the trees was \$11,500. This additional cost will make the project financially impossible. Mr. Benfey stated that he had explored the possibility of moving the driveway to the south to the crest of the hill, but that this was also very expensive and would require removal of more trees and ledge. This stretch of South East Street is dangerous to cars, bicyclists and runners traveling in both directions, he asserted. Mr. Benfey welcomed any efforts of the town to install traffic calming devices. He welcomed cooperation from the town in facilitating the relocation of the driveway. He warned of serious accidents that may occur.

Mr. Benfey called attention to letters received from Assistant Fire Chief Don McKay and from Marylou Theilman, a neighbor, supporting the relocation of the driveway.

Alan Snow, Tree Warden, stated that he did not yet have detailed information on the depth of proposed fill or excavation and therefore it is difficult to determine exactly how many trees will need to be removed.

Ms. Rathbun stated that it was pointless to spend money to do a survey and engineering work to confirm the number of trees to be removed because she and her husband were willing to agree to the number estimated by Mr. Snow.

Mr. Snow stated that he would ultimately determine which trees need to be taken down, but he needs more information to do this. He offered to work with the applicant and with the contractor during construction to determine which trees could be saved and which ones must be taken down.

Mr. Snow gave an assessment of the number and species that would need to be removed and those that might be saved. He stated that an assessment of \$90 per inch will be imposed on the trees that are ultimately removed.

Assistant Fire Chief Don McKay reported that emergency access to the house would not be a problem if the driveway were relocated. The Fire Department would operate off South East Street, not from the driveway. He supported the proposal to move the driveway 60 feet to the north and stated that this would be a safer location for emergency vehicles to set up. The current driveway location provides no reaction time for cars coming over the hill. The proposed location would allow reaction time and a safer location for emergency vehicles parked there. He noted that this entire stretch of South East Street would be subject to icing conditions in the winter due to the heavy shade. In his opinion, removal of some trees would help to alleviate the icing problem.

Ms. Brestrup reported that she had consulted with the DPW about the number of driveways that will be allowed at this property. The DPW will allow the southernmost driveway (the farm road at the bottom of the hill) to remain. However, the DPW will only allow one driveway entrance at the top of the hill, so the applicants will need to remove the existing driveway in order to install the new driveway. The DPW is willing to grant the curb cut permit for the new driveway once the Planning Board and the Tree Warden have approved the tree removal.

Mr. Carson asked if the new replacement trees could be planted where the old driveway is located. The applicants' response was that it would not be helpful to plant more trees in this location because of issues related to the sight line.

Mr. Crowner asked "If the Planning Board were to endorse the recommendation of the Tree Warden and it turned out that more trees needed to be removed due to damage during construction, would that trigger a new hearing?"

Mr. Snow again offered to work with the contractor to determine which trees could be saved and which ones would need to be removed and to assure proper root zone protection. He stated that he would not hold the applicants responsible for trees that needed to be removed in the future.

Mr. Schreiber noted that it was unusual for the Planning Board to have no plans to which to refer when deciding on the issue of tree removal. He was bothered by the argument of public safety. He agreed that the driveway relocation would improve conditions for this particular driveway but he was not willing to concede that this was a public safety issue. He was not willing to waive the fee for tree removal on the basis that this is an issue of public safety.

There was further discussion about the issue of public safety. Ms. Rathbun contended that the town and the DPW should take responsibility for making this dangerous stretch of road safer for those who use the road.

Ms. Kruger summarized that the applicants were asking for a waiver from the requirement for a survey and engineering plan, a waiver from the tree replacement fee and an approval for the tree removal. She asked if the Planning Board had jurisdiction in the area of the fee.

Ms. Brestrup explained that while the Planning Board may advise the Tree Warden with respect to the replacement fee, the replacement fee is in the Tree Warden's jurisdiction. The Planning Board's jurisdiction is limited to approval or disapproval of the tree removal.

Mr. Roznoy agreed with the applicants that the property is unique. He noted that land use issues are "equitable issues". Because the property is unique he was uncomfortable approving the tree removal without a plan showing where the trees are located and how much fill is required. He referred to the Minutes from June 5th which outlined the Planning Board's request for a detailed site plan showing the location of the new driveway and where the trees are located.

Mr. Webber stated that he found Assistant Chief McKay's testimony with regard to public safety to be compelling. He noted that the applicant had agreed with the Tree Warden with regard to the number of trees that need to be removed and that therefore a site plan is not needed. He stated that he was inclined to approve the proposed tree removal and hoped that a compromise could be reached with regard to the tree replacement fee.

Mr. Snow noted that since June 5th he had reassessed and reduced the number of trees that need to be removed by two and had agreed not to charge the replacement fee for one of the trees that will be removed. In the end the charge for three of the trees had been removed from the fee that was quoted on June 5th.

Mr. Crowner stated that he was not inclined to give a waiver on the replacement fee. He noted that the town is in the process of replacing the tree canopy that has been neglected for decades and that the removal of trees sets back this process. He will not vote for a reduction in the fee.

Janet McGowan of 706 South East Street spoke in support of the driveway relocation and stated that she would allow replacement trees to be planted on her property which is nearby on South East Street.

Mr. Snow recommended that if the driveway is allowed to be relocated, the homeowners should allow the old driveway to re-vegetate back to native trees and shrubs. It should not be kept mowed, except to maintain the line of sight. The old driveway location should not have its trees cut down as they begin to fill in. The asphalt or gravel in the old driveway should be removed and replaced with soil and coarse wood chips. It should be allowed to grow back naturally with native plant material.

Mr. Schreiber noted that the area in question is public land.

Mr. Benfey agreed with the recommendation to allow the area of the old driveway to re-vegetate naturally. He noted that the cost of relocating the driveway is approaching \$20,000 including the cost of removing the trees. If the applicants are required to pay the replacement fee the cost for the driveway relocation will be too high for them to afford to do the work. He reiterated his previous statement about public safety and life safety.

Mr. Webber and Mr. Snow estimated the replacement cost for tree removal to be between \$6,255 and \$6,795 based on the revised list. Mr. Snow reiterated his recommendation that a detailed plan showing tree locations should be provided to him and to the Planning Board.

Ms. Kruger asked about the lack of a plan and whether the Board had enough information to approve the tree removal. There was discussion about whether the information was adequate. Mr. Webber noted that Mr. Snow had a sketch of the driveway location and tree location. Ms. Brestrup explained that the sketch plan is not an engineered plan. It was prepared by the contractor for cost estimating purposes.

Ms. Anderson spoke in favor of approving the tree removal for driveway relocation. She stated that the fee is a hardship. She asked if the replacement trees should be installed on site.

Mr. Webber agreed with Ms. Anderson's position. He characterized the removal of the trees as a public service and stated that the cost of removing the trees is enough of a cost.

Ms. Kruger questioned whether the Board should approve the tree removal without the proper plans having been submitted. She noted that the Board did not have any input on the increase in the replacement fee when it went up to \$90 per inch.

Mr. Snow explained the replacement cost for public shade trees. He stated that trees provide services to the community, including absorption of storm water and cleaning of the air. Mature trees take 60-80 years to replace. He urged the Board to consider the town tree canopy as a whole and stated that the town needs funding to replace lost trees.

Mr. Schreiber MOVED to recommend approval of the driveway relocation including the proposed tree removal, to require that the old driveway be removed and the area be mulched with bark mulch and that the Board recommend to the Tree Warden that the replacement fee be reduced by one-half.

Mr. Roznoy MOVED to close the public hearing.

Mr. Schreiber withdrew his motion.

Ms. Kruger seconded Mr. Roznoy's motion to close the hearing and the vote was 8-0-1 (Stutsman abstained).

Mr. Schreiber MOVED to recommend approval of the driveway relocation including the proposed tree removal, that the Board recommend to the Tree Warden that the replacement fee be reduced by one-half, that the pavement of the old driveway be removed and that the area be loamed and mulched

and allowed to re-vegetate, and that the Board withdraws its request for further information. Ms. Kruger seconded and the vote was 5-3 (Crownier, Anderson and Snow opposed) -2 (Stutsman and Roznoy abstained).

Ms. Anderson stated that she was in support of relocating the driveway and removing the trees but she was opposed to the motion because she supported waiving the replacement fee entirely.

III. PUBLIC HEARINGS – SITE PLAN REVIEW & SPECIAL PERMIT

SPR2013-00009/M16948, 417 West Street – Ronald LaVerdiere

(continued from 4/17, 6/5 and 6/19/13)

Amended request for approval of a mixed use building with offices and 17 apartments with a total of 19 bedrooms; originally request involved construction of a mixed-use, three-story, office and apartment building with offices on the first floor and 12 apartments. (Map 19D/Parcel 2; B-VC/FPC Zoning District)

SPP2013-00001/M18703, 417 West Street – Ronald LaVerdiere

Request Special Permits for new mixed-use building (referenced in public hearing notice for SPR2013-00009) under Zoning Bylaw Table 3, Footnote “a” to modify maximum front setback and under Zoning Bylaw Section 6.19 to modify height (Map 19D/Parcel 2, B-VC/FPC Zoning District)

Mr. Webber announced that the public hearings for the Special Permit and the Site Plan Review would be held simultaneously.

The public hearing for Site Plan Review application SPR2013-00009 was continued from April 17, June 5 and June 19, 2013. The Site Plan Review request was amended to reflect an increase in the number of residential units in the proposed building and the notice of public hearing for the Site Plan Review application was re-advertised simultaneously with the notice for the Special Permit.

Mr. Webber read the preamble for the public hearing for Special Permit and opened the public hearing.

Ms. Brestrup explained who was eligible to vote on these applications. She noted that although the public hearing for the Site Plan Review was initially opened on April 17th no testimony was taken on that date. Nine Planning Board members attended the public hearing on June 5th, including Mr. O’Keeffe whose term has since expired. Three Planning Board members who attended the first session of the public hearing at which testimony was taken (on June 5th) did not attend the continued public hearing session on June 19th. These Board members, Ms. Kruger, Mr. Schreiber and Ms. Ford, submitted letters certifying that they had examined all the evidence received at the missed Planning Board public hearing session on June 19th. Therefore, in accordance with the “Mullin Rule”, MGL Ch. 39, Section 23D and the Amherst Planning Board Rules and Regulations, Section 3, Hearing Procedure, these three Board members, along with other Board members who had attended all sessions of the public hearing, would be eligible to vote on these applications. Mr. Stutsman, a new member of the Planning Board who had not attended previous sessions of the public hearing would not be eligible to vote on these applications.

Mr. LaVerdiere and Mr. Garrity presented new information that has been submitted since June 19th.

Mr. LaVerdiere distributed a letter, dated July 15, 2013, presenting information on parking at the Phase I building and requesting that the number of residential units in the Phase II

building be revised and requesting that the parking requirements be waived to allow construction of 13 fewer parking spaces than would be required by the Zoning Bylaw for this mixed-use building. Along with the letter, Mr. LaVerdiere submitted revised building elevations.

Mr. LaVerdiere reviewed the Special Permits that would be required to construct the proposed building as designed. These Special Permits result from changes that were made to the Zoning Bylaw at the Spring Annual Town Meeting. They are as follows:

- 1) Allow the building to be constructed further than 20 feet from the front property line because the building is separated from the roadway by a wetland;
- 2) Allow the building to be taller than allowed in the Zoning Bylaw in order to allow parking spaces to be included in the basement and to accommodate window wells and the varied grades at the rear of the building.

Mr. LaVerdiere explained that the need for the parking waiver for 13 parking spaces is due to two changes: 1) the Planning Board had suggested at a previous session of the public hearing that some parking spaces (3) be eliminated to allow for the creation of more outdoor space for tenants; 2) the building will now contain 5 additional dwelling units, requiring 10 additional parking spaces (at 2 spaces per dwelling unit). The number of bedrooms will not increase.

The building is a mixed-use building with office space and residences. Mr. LaVerdiere contended that the site plan supplies adequate parking for the building [57 spaces] given that the office use will require parking spaces during the day and the residential use will require parking spaces at night.

Mr. LaVerdiere clarified the request for waiver of the height requirement. The zoning amendment (Article 32) passed by Town Meeting changes the way building height is measured. For peaked or sloped roofs the measurement will henceforth be taken at the mid-point of the main section of the roof. In addition, the zoning amendment allows the Board to modify the height requirement by up to 10 feet over the 40 feet maximum listed in the Dimensional Requirements. The building will be approximately 42'-6" high measured at the mid-point of the roof on the east side of the building. At the back (north side) the building will be about 42' high.

Mr. Garrity presented the revised site plan and showed pedestrian linkages to abutting properties. He noted that the Board members had received copies of the revised site drawings. He showed the new walkway, increased open space with site furniture, and the walk around the northwest side of the building leading to a paved patio on the north side. He presented a plan showing the context of the site, including pedestrian linkages to the properties to the south.

Richard Slobody of 916 South East Street, owner of the property to the south of Amherst Office Park and on the opposite corner, spoke in support of the applications and in support of the creation of a Village Center.

The Board acknowledged receipt of a letter from Mr. Garrity regarding the FPC (Flood Prone Conservancy) zoning district, explaining how this site plan met the criteria in Section 3.228 of the Zoning Bylaw for the FPC district.

Mr. Roznoy MOVED to close the public hearings. Ms. Ford seconded and the vote was 8-0-1 (Stutsman abstained).

Mr. Webber noted that the Board had reviewed the Development Application Report at a previous session of the public hearing.

Ms. Kruger stated that she was pleased that the applicant was responsive to the Planning Board's comments and had revised the Site Plan accordingly. She stated that she was in favor of the modifications requested in the Special Permit application and that the context plan provided by the applicant should become a standard requirement of the Planning Board for all applications.

Ms. Kruger also noted that the applicant had changed the number of units and the number of bedrooms per unit. She supports the proposal but she expressed concern that this change in the number of bedrooms would leave out families with children and single parents with children because of the reduction in the number of units with 2 bedrooms. She did not agree that people with children would not wish to live in an office park.

Ms. Anderson stated that this was an excellent plan, it was responsive to the concerns of the Planning Board and that shared parking is a good idea because it means that less parking needs to be built.

Mr. Webber noted that there were several modifications of the dimensional requirements and waivers requested by the applicant, including:

- 1) Special Permit to modify two dimensional requirements (front setback and height);
- 2) Waiver of parking requirements;
- 3) Waiver of Traffic Impact Statement;
- 4) Waiver of Sign Plan.

The Board found under Section 11.24 of the Zoning Bylaw, Site Plan Review, as follows:

- 11.2400 – The project is in conformance with all appropriate provisions of the Zoning Bylaw, with the exception of the parking requirement, the height requirement and the front setback requirement; parking requirements will be waived under Section 7.9 of the Zoning Bylaw; a Special Permit has been requested for modification of the height and front setback requirements;
- 11.2401 – Town amenities and abutting properties will be protected because detrimental or offensive actions are not planned for this site;
- 11.2402 – Abutting properties will be protected from detrimental site characteristics resulting from the proposed use to the extent possible during and after construction;
- 11.2403 – Adequate recreational facilities, open space and amenities will be provided because the Site Plan provides for outdoor sitting and picnicking spaces for tenants;
- 11.2410 – N/A
- 11.2411 – Proposed methods of refuse disposal are described in the Management Plan; they are considered to be adequate;
- 11.2412 – The ability of the proposed sewage disposal and water supply systems to serve the proposed use is considered to be adequate; the property will be connected to the town sewer and water systems; the Town Engineer has not expressed concerns with the proposal regarding these issues;
- 11.2413 – The ability of the proposed drainage system within and adjacent to the site to handle any increased runoff resulting from the development is considered to be adequate; the Town Engineer has not expressed concerns with the proposed system;

- 11.2414 – Provision of adequate landscaping, including screening of adjacent uses, provision of street trees, landscape islands in the parking lot and a landscape buffer along the street frontage is considered to be satisfactory;
- 11.2415 – The Soil Erosion Plan is considered to be adequate;
- 11.2416 – Adjacent properties will be protected from the intrusion of various types of nuisances, including pollution and noise; no actions are planned that would cause or increase these types of intrusions;
- 11.2417 – Protection of adjacent properties by minimizing the intrusion of lighting has been discussed; the applicant has submitted catalog cuts showing the proposed lighting; all new exterior lighting will be downcast and will not shine onto adjacent properties; fixtures will be dark-sky compliant;
- 11.2418 – Protection from flood hazards as stated in Section 3.22 is considered to be adequate; the applicant has submitted a letter describing how the project complies with the criteria listed in Section 3.228 and the Board has accepted the applicants statements;
- 11.2419 – Wetlands have been protected in accordance with the provisions of the Wetlands Protection Act, Chapter 131, Section 40 and the Amherst Wetlands Bylaw; the project has received an Order of Conditions from the Amherst Conservation Commission;
- 11.2420 – N/A
- 11.2421 – The development is consistent with respect to setbacks, placement of parking, landscaping and entrances and exits with surrounding buildings and development; as part of a mixed-use development it is compatible and complementary;
- 11.2422 – N/A
- 11.2423 – The buildings on the site will relate harmoniously to each other in architectural style, site location and building exits and entrances;
- 11.2424 – Screening is considered to be adequate for storage areas and other utility areas;
- 11.2430 – The site has been 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 have been designed to minimize turning movements, and hazardous exits and entrances;
- 11.2432 – The location and design of parking spaces, bicycle racks and drive aisles will be provided in a safe manner; a waiver from the parking space requirement has been requested and will be granted; a bike rack will be provided;
- 11.2433 – Provision for access to adjoining properties is considered to be appropriate;
- 11.2434 – N/A; due to funding requirements this property will have its own separate entrance from a public way;
- 11.2435 – N/A
- 11.2436 – The requirement for a Traffic Impact Statement will be waived; the Board members agreed by consensus to waive this requirement;
- 11.2437 – N/A

Mr. Webber stated that the Planning Board needed to make findings with respect to Section 3.228 of the Zoning Bylaw regarding the FPC zoning district because a portion of the parking lot falls within the FPC. He noted that the applicant had submitted a letter dated July 10, 2013, outlining how the Site Plan met the requirements of the FPC zoning district. By consensus the Planning Board agreed that the contents of the letter satisfied the criteria outlined in Section 3.228.

The Board found, under Section 10.38 of the Zoning Bylaw, Special Permit, with respect to both the height and setback modifications, as follows:

- 10.380 – The proposal is suitably located in the neighborhood in which it is proposed and/or the total Town;
- 10.381 – The proposal is compatible with existing uses and other uses permitted by right in the same district;
- 10.382 – The proposal would not constitute a nuisance due to air and water pollution, flood, noise, odor, dust, vibration, lights or visually offensive structures or site features;
- 10.383 – The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians;
- 10.384 – Adequate and appropriate facilities will be provided for the proper operation of the proposed use,
- 10.385 – The proposal reasonably protects the adjoining premises against detrimental or offensive uses on the site;
- 10.386 – The proposal ensures that it is in conformance with the Parking and Sign regulations respectively (Articles 7 and 8) of the Zoning Bylaw; there will be a waiver of the parking requirements under Section 7.9 and from the requirement for a Sign Plan, as requested;
- 10.387 – The proposal provides convenient and safe vehicular and pedestrian movement within the site, and in relation to adjacent street, property or improvements;
- 10.388 – The proposal ensures adequate space for the off-street loading and unloading of vehicles, goods, products, material and equipment incidental to the normal operation of the use; there is adequate space in the parking lot to accommodate these needs; there will be storage space available to tenants in the basement of the building;
- 10.389 – The proposal provides adequate methods of disposal and/or storage for sewage, refuse, recyclables, and other wastes and methods of drainage for surface water; the Planning Board had no concerns about these issues;
- 10.390 – The proposal ensures protection from flood hazards as stated in Section 3.228;
- 10.391 – N/A
- 10.392 – The proposal provides adequate landscaping, including screening of adjacent residential uses, provision of street trees and a landscape buffer along the street frontage;
- 10.393 – The proposal provides protection of adjacent properties by minimizing the intrusion of lighting; all exterior lighting is proposed to be dark-sky compliant and will not shine onto adjacent properties or streets;
- 10.394 – The proposal avoids to the extent feasible, impact on steep slopes, floodplains, scenic views, grade changes and wetlands;
- 10.395 – The proposal does not create disharmony with respect to the terrain and to the use, scale and architecture of existing buildings in the vicinity which have functional or visual relationship thereto;
- 10.396 – The proposal provides screening for storage areas, loading docks, dumpsters, rooftop equipment, and similar features; storage will be available for tenants in the basement under the building;
- 10.397 – The proposal provides adequate recreational facilities, open space and amenities for the proposed use;
- 10.398 – The proposal is in harmony with the general purpose and intent of this Bylaw and the goals of the Master Plan.

Mr. Carson MOVED to approve the Site Plan Review application, including the waivers of the Sign Plan, the Traffic Impact Statement and the parking requirements as requested. Ms. Kruger seconded and the vote was 8-0-1 (Stutsman abstained).

Ms. Ford MOVED to approve the Special Permit application for modification of the height requirement [up to 44'-6"] and front setback requirements. Mr. Roznoy seconded. The vote was 8-0-1 (Stutsman abstained).

Waivers

- Sign Plan
- Traffic Impact Statement
- Parking Requirements (under Section 7.9 of the Zoning Bylaw)

Conditions

1. All exterior lighting shall be dark sky compliant. Exterior lighting shall be downcast, shielded and shall not shine onto adjacent properties or streets.
2. Landscaping shall be installed in accordance with the Landscape Plan and, once installed, shall be continually maintained.
3. One copy of the final revised plans shall be submitted to the Planning Department.

IV. OLD BUSINESS

- A.** Amherst Hills Subdivision (SUB 89-13) – Review and discussion with Ted Parker, President of Tofino Associates, regarding proposed Three-party Agreement (“Performance Secured by Lender’s Agreement”) for release of lots and completion of subdivision roadways

Mr. Stutsman recused himself.

Mr. Webber read the agenda item and introduced Mr. Parker. He explained that Mr. Parker was seeking approval from the Planning Board for an alternative method of completion of the subdivision.

Mr. Parker stated that Tofino Associates had spoken to the Board several months ago and had offered to complete most of the subdivision and to replace most of the existing covenant by a Three-party Agreement to secure the completion of the rest of the subdivision. The infrastructure work has been completed for the subdivision roadway that forms a loop with Linden Ridge Road and Concord Way. The base course paving has been done, the sidewalks and curbing are in and the lawns have been planted. Mr. Parker had submitted a draft Three-party Agreement for review and it is now being reviewed by the attorneys for the Town, the Greenfield Savings Bank and Tofino Associates. That review process has not been completed.

Normally once 50% of the lots in a subdivision have been released, the Planning Board does not release more lots until the applicant either completes the infrastructure or submits an amount of money to be held in escrow pending completion of the infrastructure. In this case, since the Three-party Agreement has been submitted in good faith, but is still being reviewed, Mr. Parker requested that the Planning Board release 6 more lots, including 4 lots in the “old” section where the infrastructure is complete and 2 lots in the “new” section.

Mr. Webber noted that the applicant was involved in a “good faith” negotiation with the Town with regard to the Three-party Agreement.

Ms. Kruger MOVED that the Planning Board accept the request from Tofino Associates to release Lots 39, 43, 45, 52, 58 and 59. Mr. Carson seconded and the vote was 8-0-1 (Stutsman recused).

- B.** SPR2010-00004 and SPR2011-00005– Archipelago Investments LLC – 43-51 North Pleasant Street (Boltwood Place) – Condition(s) #3 – Sign Plan review

Dave Williams and Kyle Wilson presented the Sign Plan and plans for site lighting. Mr. Williams stated that Scandihoovians would occupy the retail space on the ground floor of the Boltwood Place building. The Sign Plan includes signs for Scandihoovians, for the Boltwood Place building and for Judie’s Restaurant. He described the proposed signs:

- Stainless steel signs for Boltwood Place, the address of the building and Scandihoovians;
- Banners and banner signs for Judie’s Restaurant.

There will also be three new light posts with light fixtures that were removed from the rear of Judie’s Restaurant when Boltwood Place was being constructed. The lights are “down-lights”. They will make the alleyway leading to Judie’s back entrance more inviting. The lights will be compact fluorescent or LED and they will be mounted 9’ off the ground. The fixtures are the same as those at the front of Judie’s.

Ms. Ford reported that the Design Review Board had reviewed the proposed signs and lighting fixtures and had questions regarding the number and size of signs. These questions have since been resolved. The DRB expressed overall support for the proposed sign and lighting plan.

Mr. Wilson noted that the number of proposed signs had been reduced since the DRB review.

Mr. Crouner MOVED to approve the applicant’s signs and lighting. Mr. Carson seconded and the vote was 9-0.

- C.** Housing Market Study – Discussion regarding draft report and presentation by RKG Associates at Joint Public Meeting with Housing & Sheltering Committee on June 18th

Mr. Stutsman reported that the Housing & Sheltering Committee (HSC) would hold one more public forum when the Housing Market Study (HMS) is complete. The next meeting about the HMS will be a joint meeting of the Planning Board and the HSC without the consultants.

- D.** Topics not reasonably anticipated 48 hours prior to the meeting – none

V. NEW BUSINESS

- A.** Chapter 61 Removal – Henry Street and Market Hill Road (Map 6A-91, Map 6A-84 and Map 6A-96) – W.D. Cowls, Inc.

Mr. Webber explained the scope of the Planning Board’s review and stated that the Select Board had requested that the Planning Board make a recommendation with regard to the town’s right of first refusal on this project. He summarized a memo dated July 10, 2013, prepared by the Planning Department. He explained that the Town has a “right of first refusal” to purchase property that is proposed to be withdrawn from Chapter 61 provided that there has been a “bona fide” contract to purchase the property. There has been a bona fide offer made to purchase the property for \$6.5 million. Kopelman & Paige, the town’s attorneys, have reviewed the documents and found them to be in order. The Select Board has asked for the

advice of the Planning Board and the Conservation Commission to decide if the town should purchase the property for \$6.5 million which is the price quoted in the contract.

Dave Ziomek, Director of Conservation and Development, stated that the Conservation Commission would be taking up this issue on July 24th.

Ms. Kruger asked if the Planning Board should evaluate this question in the light of what is being proposed for the property.

Mr. Webber stated that the Planning Board can take into account land use patterns and the future uses proposed for the property and the money proposed to be spent by the Town to purchase the property.

Mr. Tucker stated that the principle purpose for the Planning Board's consideration is the advice that it wishes to give to the Select Board. He noted that there has been no Village Center planning yet done for the Cushman area. The land in question was shown in an "equivocal" fashion on the Master Plan Land Use Map and the Open Space and Recreation Plan (OSRP), having been shown as both potentially developable and potentially suitable for preservation. He recommended that the Planning Board focus on larger community objectives and on a commitment to the wise use of public funds.

Mr. Roznoy asked if this parcel was "on the town's radar screen" as suitable or desirable for open space acquisition.

Mr. Ziomek stated that Amherst has been protecting open space for over 45 years. He doesn't believe that this parcel is a high priority for the town to acquire. In considering land for acquisition the town considers trail access and trail uses. In the OSRP the natural resources of this parcel are not considered as remarkable as other parcels on the Mount Holyoke Range or in the Lawrence Swamp that have more biodiversity or higher ecological value. This property doesn't rise to that level, he said. In considering property for acquisition for open space the town considers the following criteria:

- Priority – whether the property is listed as a priority for acquisition;
- Opportunity – the context, the timing and whether there is a willing seller;
- Value – the cost per acre, the cost to conserve certain resources;
- Comparison costs – compare the parcel to other areas with natural resources.

Mr. Ziomek stated that this parcel is a "hard sell" based on those criteria. He noted that the Notice of Intent to Sell and the Purchase and Sale Agreement had been received by the town on April 23. These documents have been deemed to be a bona fide offer. The period of 120 days in which the town may exercise its right of first refusal runs out on August 21st.

Several members of the public spoke:

Jack Hirsch of Flat Hills Road, Sharon Weizenbaum of Henry Street, Ellen Pile of Bridge Street, Ken Hargreaves of Henry Street, Ira Addes of Shutesbury Road, Carlos Ortiz of Market Hill Road, Ira Brick of Strong Street, and Vince O'Connor of Summer Street spoke in support of the town purchasing the property.

They made comments as follows:

- The project proposed for the site will cost the town a lot in services in the future; these costs should be weighed against the cost to purchase the property; sewer, police, fire and ambulance services to serve the development will cost the town money;
- The roads surrounding the site are narrow and historic, with houses close to the road; the intersections are at odd angles; it's hard to see and there are no streetlights;
- There is no commercial zoning in Cushman to support the proposed development;
- The town has not taken the time to do its due diligence with regard to evaluating the property;
- The Mount Grace booklet should be followed with regard to "best practices" for taking land out of Chapter 61;
- The 120 days which the town has to make its decision has been "eaten up by legal hassles";
- The proposal for the property will be destructive to the quality of life in North Amherst;
- The process has been confusing;
- Amherst should contact other towns that have similar projects and learn from their experience;
- Real estate taxes for this development should cover the regular costs of the property and buildings plus the cost of services generated by this project;
- The abutters to this land did not receive any notice that the property was being withdrawn from Chapter 61;
- The Town should give a limited waiver and reserve the right to reconsider if anything changes;
- Bird watchers and active outdoors people use the site;
- The property is close to Atkins Reservoir which might be endangered by development and more people living in the area;
- The main entrance to the development is proposed to be off Market Hill Road which is in poor condition;
- The 2010 Census states that only 28.5% of North Amherst dwellings are owner-occupied; how will Amherst change when more of the dwellings become non-owner occupied?
- What is the highest and best use of the land?
- The Town has a choice between buying the property for \$6.5 million or not buying it and seeing it developed as proposed;
- Real Estate Forum publication states that properties developed for student housing that are far from campuses are at risk;
- BU aims to house all of its students on-campus;
- The Town should spend \$6.5 million to save the neighborhood;
- Town Counsel's opinion should have been available by May 23rd;
- Town Counsel's opinion should have been in writing;
- The Town could exercise its right of first refusal by putting down a \$50,000 deposit; the Town would then have two years to figure out what to do with the property;
- A good faith deposit on this property should be 10% of the purchase price [or \$650,000];
- Planning for this parcel of land has not been discussed;

- The Town can purchase the land now and later plan how to use it; the Town can preserve 70% of the land and use 30%;
- People in North Amherst would support some development on the land, including the possibility of a co-housing project.

Mr. Ziomek reiterated that the Purchase & Sale Agreement received on April 23 had not changed. Town Counsel had reviewed it and had deemed it to be a bona fide offer as of last week.

Mr. Webber noted that the first Notice of Intent to Sell and Purchase & Sale Agreement [submitted in February] had been rejected and deemed not to be a bona fide offer. He further noted that the Select Board would consider whether to exercise the right of first refusal on July 29th.

Cinda Jones of W. D. Cows, owner of the property in question, stated that she had received a letter within 30 days of April 23 stating that the Town Counsel did not think that the offer was bona fide. It took until a few days ago to convince Town Counsel that the Town had received a bona fide Notice and P & S, she said.

Mr. Ziomek clarified that the Notice and the P & S had been reviewed by Joel Bard and Shirin Everett of Kopelman & Paige. They had both concluded that the offer was bona fide. The Mount Grace document is not a legally binding document. The Town's process is being followed accurately and consistently. The Planning Board should focus on its recommendation to the Select Board.

Ms. Kruger stated that the Board should identify the planning issues involved in making this recommendation.

Mr. Webber stated that the issues to be balanced were: 1) factors in favor of the Town exercising its right of first refusal including whether student housing should be discouraged, the salamander habitat, police and fire issues, traffic issues and the issues around Atkins Reservoir; 2) factors against the Town purchasing the property including that it was expensive, currently the land is not being used, a development would provide taxes for the Town and the development would provide a place for students to live.

Mr. Roznoy noted that there are many issues to be considered with regard to the development, but the application for the development is not before the Board now. He recommended that the Board focus on its recommendation to the Select Board about whether to purchase the land. He noted that Town Meeting failed to support a much smaller amount to purchase rights to the property. The Select Board will make the decision. Planning issues are not before the Board at this time.

Mr. Schreiber noted that some planning has happened. The zoning map has been created for this area. This type of development has always been allowed by zoning. Most of the testimony has been about what people are against. The Board has not heard much about the value of the land as it is.

Ms. Kruger noted that the Town has a dramatic need for additional student housing. A cost-benefit analysis with regard to the proposed development would be hard to do, expensive and people would still question it. The ambulance services are fee-based so they should not be considered. School costs would not be an issue because most of the students would not have children in the schools. There are not many opportunities for housing developments in town. Ms. Kruger questioned whether the density that is possible on this piece of land would carry the costs of the project.

Mr. Tucker stated that when a community makes decisions about spending money it needs to balance its choices against the resources available for other needs.

Mr. Webber stated that, based on the evidence, the price was too high to justify recommending to the Select Board that the Town exercise its right of first refusal. He noted that, if the price changes, the Town can revisit the issue.

Ms. Anderson stated that she had lived on Flat Hills Road. She was undecided about whether the Town should purchase the property. She supports the owner's right to develop the land, but she thinks this is the wrong place to put student housing. Although the price of \$6.5 million is inconceivable there are many reasons why this project is in the wrong place.

Mr. Ziomek stated that if the purchase price changes, then there will be a new Notice and Purchase and Sale Agreement submitted to the Board.

Mr. Roznoy MOVED to recommend to the Select Board that the Town not exercise its right of first refusal on this Purchase & Sale Agreement at a price of \$6.5 million. Mr. Carson seconded and the vote was 8-1 (Anderson opposed).

B. Amherst College – Grounds Department Building in ED zoning district – Submittal of plans in accordance with Section 3.211 of the Zoning Bylaw

Lewis Schiller of Amherst College presented the plans to build a Grounds Department Building in the ED zoning district. It will be built on the eastern side of the campus, near the tennis courts. It will be a 6,000 square foot building, 1 ½ stories tall with a 1,500 square foot storage shed nearby. It is within 50 feet of a non-ED zoning district, and it will comply with all dimensional requirements of the adjacent zoning district. None of the proposed structures will be less than 15 feet from the property line.

Ms. Brestrup explained that Amherst College was required to submit plans for these structures proposed for the ED zoning district under Section 3.211 of the Zoning Bylaw. However, the presentation of these plans was for information purposes only and the Planning Board did not have any role in permitting the buildings.

Mr. Schiller explained that the Grounds Building will be used to house heavy equipment, lawn mowers and a dump truck. It will be a big garage with storage capacity. Currently this equipment is stored in the powerhouse building which is being redeveloped into a student center.

Ms. Kruger stated that the location next to the nature reserve seems like a good location for this building, especially since there is already a staging area there. She noted that the storage piles will get relocated to make room for the building.

Mr. Schiller stated that there will be no exterior lighting on the building except for emergency lights at the exit doors. Vehicles will use their own lights to navigate. He asked if the Board would waive the 60 period referred to in Section 3.228.

Ms. Kruger MOVED to recommend to the Building Commissioner to waive the 60 day notice period referred to in Section 3.211 of the Zoning Bylaw. Mr. Carson seconded and the vote was 9-0.

C. Town-Gown Study Steering Committee – Planning Board representation

Mr. Webber stated that Mr. Musante had asked that the Planning Board nominate two representatives to the Town-Gown Study Steering Committee. Several members of

the Board indicated that they were interested in attending the Committee meetings. Mr. Webber and Mr. Stutsman were nominated as the Planning Board representatives.

Mr. Roznoy MOVED that Mr. Webber and Mr. Stutsman be the Planning Board representatives to the Town-Gown Study Steering Committee. Mr. Crowner seconded and the vote was 9-0.

D. Zoning Forum and Issues for Fall Town Meeting

Mr. Crowner reported on the ZSC meeting that was held this evening. He noted that the ZSC recommended that the zoning amendments for Fall Special Town Meeting focus on inclusionary zoning, affordable housing and diversifying housing stock. The ZSC would like to establish a new overlay zone for existing apartment complexes to allow for their redevelopment. There are also technical fixes needed for the Zoning Bylaw that have been recommended by town staff and there is also a need for a zoning amendment dealing with medical marijuana. Longer term, the ZSC would like to deal with mixed-use center zoning and possibly use Master Plan funds to hire a facilitator to help reach common ground on the rezoning issues related to mixed-use centers. This could happen in late fall. Also in late fall the ZSC would like to study permit criteria.

E. Planning Board summer schedule, including scheduling Election of Officers – no discussion

F. Topics not reasonably anticipated 48 hours prior to the meeting – none

VI. FORM A (ANR) SUBDIVISION APPLICATIONS – none

VII. UPCOMING ZBA APPLICATIONS – none

VIII. UPCOMING SPP/SPR/SUB APPLICATIONS – none

IX. PLANNING BOARD COMMITTEE & LIAISON REPORTS – no reports

Pioneer Valley Planning Commission – Stephen Schreiber
Community Preservation Act Committee – Sandra Anderson
Agricultural Commission – David Webber
Transportation Plan Task Force – Richard Roznoy and Rob Crowner
Amherst Redevelopment Authority – Constance Kruger
Design Review Board – Kathleen Ford
Housing and Sheltering Committee – Constance Kruger
Safe and Healthy Neighborhoods Working Group – Sandra Anderson

X. REPORT OF THE CHAIR – none

XI. REPORT OF STAFF – none

XII. ADJOURNMENT

The meeting was adjourned at 10:50 PM.

Respectfully submitted:

Approved:

Christine M. Brestrup
Senior Planner

_____ DATE: _____
David Webber, Chair