

TOWN OF AMHERST
Zoning Board of Adjustment

June 16, 2026

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In attendance: Danielle Pray (Chair), Andrew Pataky, Joseph Fucci, Tracy McInnis, Chris Goodrich (alternate)
Staff present: Kristy Jobin, Community Development Director; Gloria Norcross, Town Planner

Danielle Pray called the meeting to order at 7:00 pm. She introduced the new Board members.

Chris Goodrich sat as a voting member.

REHEARING:

1. PZ20000-111025 – VARIANCE

Steven P Braff & Martha L Braff, Trustees of the Braff Family Revocable Trust (Owners & Applicants); 2 Trask Way, PIN #: 005-059-015 – Request for relief from Article IV, Section 4.3, Paragraph C, to resubdivide current Lot 5-59-16 into Lot 5-59-15 and Lot 5-59-16 as shown on HCRD Plan 36718, effectively reversing the merger of these two lots completed by the prior owners of the two lots in 2019. *Zoned Residential Rural. Continued from May 19, 2026*

Andrew Pataky read and opened the case.

Attorney Laura Gandia, Devine, Millimet & Branch, P.A., addressed the Board. She explained that this is based on a rehearing request granted by this Board for a variance to allow a lot that is 1.145 acres in size. This is the result of a two lot subdivision that will go before the Planning Board for approval. It is the applicant's position that a variance is not needed. These lots were approved as part of an Open Space subdivision which allows for smaller lot sizes in exchange for dedicated open space. The 45 lot sizes were agreed to be 40,000 s.f. in return for a significant amount of open space. That plan was fully approved, recorded, and vested. The Town's position is that these lots are now nonconforming. If the logic is that the original subdivision plan is now void despite its vesting status, then this would be there are 45 properties on which work could not be done without a variance. This may be the Town's logic because its open space subdivision provision was deleted. However, the Town also has a planned residential development section of the ordinance which does essentially the same thing in allowing for dedicated open space in exchange for smaller lot size requirements. The spirit of these lots was never for them to be two acres. The spirit of these lots was for them to be smaller at 40,000 s.f. in exchange for open space. She asked that the Board consider if a variance is not needed in this first instance.

The applicant addressed the five variance criteria.

1. How will granting the variance not be contrary to the public interest?

Attorney Gandia stated that the public health, safety, and general welfare will not be impacted by the proposal. The neighborhood consists of small lots as part of the open space subdivision, as shown on Exhibit 1. Each lot basically has a vantage point to all its neighbors. There were originally two lots in the subdivision that were merged into one. There were two existing lots of record, each around 40,000 s.f. that were merged by previous owners. Her client now seeks to

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unmerge them. The character of the neighborhood is smaller lots and so this merged lot is almost out of character with the neighborhood as it is larger than the rest and does not fit in. The proposal will not alter the character of the neighborhood. In fact, the lots will blend in more with the character of the neighborhood if the variance is approved and Planning Board approval is received. For variance to be contrary to the public interest, it must unduly and to a marked degree violate the basic zoning objectives of the zoning ordinance. There was one abutter who appeared at the last hearing hearings who had concerns regarding privacy despite that person's own actions in clearing all of the trees through the property line and potentially over the property onto her client's property. The Board improperly considered this in its analysis of Criteria 1 and 2. These concerns, although not relevant to the variance criteria, were self-inflicted. Also, she searched the zoning ordinance for the word "privacy" and determined that the document does not speak about privacy.

2. How will the granting of the variance ensure that the spirit of the ordinance will be observed?

The second criterion is that the spirit of the ordinance is observed. This also notes that for the variance to be contrary it must unduly and to a marked degree conflict with the ordinance in a way that violates the ordinance's basic objectives. She asked the Board to consider what spirit is being discussed. The Town believes that the two acre requirement must be complied with in considering this lot split. This is illogical because the spirit of all the other lots in this subdivision is 40,000 s.f. The Board should consider the spirit of the ordinance at the time the lots were created, which was to allow for smaller reduced sized lots in exchange for dedicated open space. Per Section 4.17 of the ordinance regarding planned residential developments, there is a similar mechanism to the open space regulations which allows for greater densities with a purpose of promoting open space. Thus, the spirit of allowing smaller lot sizes in exchange for the preservation of open space still exists in the Town.

3. How will substantial justice be done?

As part of this criterion, the Board must consider if the loss to the individual is not outweighed by a gain to the general public. This determines if there is an injustice. The proposal looks to utilize the lots in a way that is consistent with the open space subdivision by reverting back to what was originally there. Not allowing this variance would lead to a loss for her clients in terms of their right to use their property in a manner that is consistent with those of all of the neighbors. There is no gain to the public by keeping the lot merged, because the character of the neighborhood is already defined by smaller lots. Denying the variance under this criterion causes a severe individual loss to her clients by depriving them of using their property at the same density and for the same residential purposes enjoyed by the surrounding properties. This subdivision is characterized by smaller lots, and strict enforcement of the two acre requirement of the Town provides no measurable public benefit.

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

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The Board previously receives a letter from a real estate agent, James M Spellman of Berkshire Hathaway Realty, dated December 8th, which speaks favorably towards this criterion for the applicant. Subsequent to that, the Board received an additional letter dated March 2nd with no letterhead from someone by the name of Rudolph Baldarelli. As the Board weighs the professional opinions given, it should be noted that the professional status of Mr. Baldarelli is in question. The Baldarelli letter states that it is for general informational purposes only and that no appraisal assignment has been performed regarding any specific property associated with this matter and that this letter does not constitute an appraisal report. This letter does not give the Board any opinion of market value for any particular piece of property. This disqualifying and limiting language, including vague, generalized nonconclusive statements about properties, perhaps without ever visiting the property in question, should be considered. This letter did not address any of the statutory criteria or whether it would be unlawful and unreasonable for this Board to get give any weight whatsoever to the opinion.

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

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

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

and

(ii) The proposed use is a reasonable one:

(B) Explain how, if the criteria in subparagraph A above are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it:

Attorney Gandia noted that there was a zoning workshop on May 9th dedicated to ZBA Rules and Regulations. As part of that, it was discussed how to make the fifth criterion more easily understandable. Part of that included advice to ignore the word "hardship" and consider the special conditions of the property that distinguish it from other properties in the area. This includes size, shape, slope, and wetlands. In light of those differences, the Board can then make a determination regarding if there is no significant relationship between the public purpose of the ordinance and the application of the ordinance to this proposal. The design of the lot was intended as two lots and provided the necessary buildable envelope at the time of its creation. The mere size of the lot is enough for the Board to determine whether the property is unique and has special characteristics that distinguish it from others in the area, which it absolutely does. The Board then needs to determine if there is a fair and substantial relationship between the general public purpose of the ordinance and the specific application of it on the lot in question. The answer is there is no substantial relationship. The lot is part of an open space subdivision

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which created smaller lots in exchange for dedicated open space. Requiring this to remain as a larger lot in the midst of smaller lots in an open space subdivision is not fair, and it goes against the public purpose of the ordinance. The proposed use is a reasonable one. The subdivided lot will be utilized for a single-family residence.

Attorney Gandia noted that there is an Exhibit which shows that the abutter's lot abuts a single family home with a double lot. Due diligence would make it clear that this double lot exists, and the abutter could have consider what would happen on it. She also included information from a recent case regarding merging a lot in a nonconforming setting, which is the opposite of the proposal.

Chris Goodrich asked when the lot was originally merged and for what purpose. Attorney Gandia stated that she cannot speak to this as it was done by a prior owner.

Tracy McInnis asked about the smallest lot in the neighborhood. Steven Braff, owner/applicant, stated that it is way under an acre and currently being built on. Tracy McInnis asked if the applicant knew the lot was merged when it was purchased. Steven Braff stated that it was advertised as two lots and buildable.

Danielle Pray asked how many properties the owner has purchased in the last 20 years. Steven Braff stated that he is a doctor and has lived in seven states, with houses purchased in each.

Joseph Fucci asked if there is a valuation analysis to show that the values of surrounding properties will not be diminished. Attorney Gandia stated that the applicant has an opinion letter from a real estate agent.

Danielle Pray asked about the hardship in this case. The applicant purchased a lot that had a house on it to be used in a residential way that conforms with the zoning ordinance. The house likely has a garage, and the lot could contain a shed or an accessory dwelling unit (ADU). She asked about other hardships, such as a financial one. The applicant can currently use the merged lots as they are. The open space lot from before was extinguished and the lot is now being considered under the existing ordinance. All of the new regulations and ordinances came into place after the lots were merged. Attorney Gandia stated that what the applicant knew at the time of purchase is not one of the criteria for a hardship. The analysis is from the statute that owes to the special conditions of the premises that distinguish it from other properties in the area. This is a corner lot and there are wetlands on the lot. Thus, denial would result in an unnecessary hardship. Hardship simply means that the applicant cannot use the land in the way he wants to. Everyone else in the neighborhood can use their land by having lots that are 40,000 s.f. and the applicant is being denied his property rights to utilize the land in a manner that is consistent with other properties. This may be contrary to how others picture hardship, but the hardship is the land rights and ability to use them as everyone can.

Steven Braff stated that this was the only house that he could find to purchase at the time. The intention was to build next door and sell the larger home. This was listed as being with a

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buildable lot. It is unclear who would check this language out more thoroughly. He would now like to build something smaller and cannot without a variance. He would like to be able to stay in the neighborhood. Danielle Pray stated that the lot was purchased as a merged lot and so this is similar to a self-created hardship. The merged lot extinguished any open space lots years before.

Attorney Gandia stated that the legal analysis for hardship should be used. If the Board is going to consider this a self-created hardship, then any applicant who has purchased a lot that is too close to the property line should not be able to obtain a variance. This Board exists to allow a variance from the terms of the ordinance. Danielle Pray stated that there is a difference between making one lot into two smaller ones and a garage to be built within a setback. This is a unique case.

Danielle Pray asked how the size of the lot is a special condition. There are other lots in the neighborhood that are over two acres. This could lead to others in the area wanting to divide up their lots in order to build additional houses. There is case law on cumulative effect. She is considered about taking this into consideration. Attorney Gandia stated that in this open space subdivision a specific number of lots were allowed in exchange for the open space. The request is for the lots to go back to the original sizes. Another applicant from the area with a larger lot would also have to present on the five criteria in order to be granted a variance. The Board could review the open space subdivision plan and note that it allowed for 45 lots and creating 46 lots through an additional subdivision would be in violation of the density requirement granted at the time of the initial subdivision. Danielle Pray asked what this has to do with the special conditions of the land. Attorney Gandia stated that the immediate lots around the one in question are under two acres. The lot in question is two acres and there are no other lots of that size in the area. There is also a cul-de-sac which abuts Lot 15 and Lot 16 is a corner lot, with wetlands bisecting between the two lots. There is a limited access from Lot 15 to Lot 16. There may be additional easements on Lot 16 as well. Danielle Pray asked how the wetlands bolster the case to subdivide the lot. She believes it would make this a worse situation as these areas would not be included in the buildable area. Attorney Gandia stated that the lot line may have been drawn to minimize the impact of the wetlands on Lot 15 and Lot 16, creating a larger section of wetland on one lot. The subdivision would allow for a separate driveway for Lot 16 and different access points to get to the buildable envelope.

Danielle Pray asked for public comment.

Attorney Rob Parodi, representing David and Lori Rampello of 1 Gatchel Way, stated that the property in question is in the Rural Residential Zone which requires a minimum of two acre zoning and 200' of frontage. The open space plan ordinance was adopted in 2004. The Founder's Way subdivision was approved in 2009. The applicant's predecessor purchased Lot 15 and subsequently separately purchased Lot 16 and then built a house in 2015. The house was built in a way to maximize the utilization of both combined lots. The open space plan ordinance was deleted in 2015 and replaced by the Integrated Innovative Housing Ordinance (IIHO). On October 7, 2016, the applicant's predecessor merged the two lots. The lot merger was done after the Open Space plan was deleted. In 2020 the IIHO and part of the reasoning given was that

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advocating for high density cluster developments would not preserve and enhance the unique and rural small town character, especially in a residential rural zone. Mr. and Mrs. Rampello purchased their lot in 2021 and built their home. They were told that the extra lot, Lot 16, was not buildable and that it was recorded at the Registry as a merger lot in 2015. The merger states that, "henceforth, the above two lots of land shall for all purposes be considered a single lot, and shall not be sold separately, nor shall any other divided interest be conveyed, except with the prior approval of the Planning Board in accordance with the duly adopted subdivision regulations. This property shall be reported as Map 5-59-15." From April 1, 2017, to date, no separate tax assessment has been issued for Lot 16. It was incorporated into Lot 15. The tax card shows that Lot 15 comprises 2.48 acres and is assessed at \$254,200. The Rampello lot is 1.3 acres and assessed at \$233,300. This means that there is approximately \$230,000 worth of value associated with Lot 16 that has never been taxed. In other words, if this subdivision of land goes through, there will be a slight decrease in the assessed value of Lot 15 and a substantial assessment for Lot 16. The tax rate is roughly \$24.00 per \$1,000 meaning that the applicant has had over \$5,300 a year in tax savings since 2017. When the owner merged these lots, it was an exchange by the lot owner to give up his building lot rights in order to get a significant reduction in taxes. The applicant's lot is a conforming lot in the Rural Residential Zone. It has more than two acres and more than 200' of frontage. The applicant is proposing to create two nonconforming lots in the Residential Rural Zone. Amherst Zoning Ordinance Article 3 General Zoning Provisions Section 3.2.F states that existing conforming lots shall not be made non-conforming and existing nonconforming lots shall not be made more non-conforming. The applicant is not asking to make one non-conforming lot, they are asking to make two nonconforming lots. It is not in the public's interest where substantial justice would be done to allow the applicant to save over \$50,000 in taxes to be absorbed by the general public in order to benefit the applicant. The spirit of the ordinance is not being observed in this way and substantial justice will not be done. Finally, to preserve the integrity of the zoning ordinance and to maintain the public's faith in the protection that it affords, this variance application must be denied. The applicant's attorney submitted a case which was the appeal of the Town of East Kingston from the NH Supreme Court, but this is not a decision for precedent purposes. This is a case order case pursuant to Supreme Court Rule 23-3, and it has no precedential value whatsoever. That particular case was to merge two undersized lots into a buildable lot with the merger reducing a nonconformity. That is not what is being requested in this case. This applicant is asking to make something more non-conforming. Finally, there was a letter to the board dated March 18th from one of the applicant's attorneys stating that if the abutters were so concerned with privacy, perhaps they should not have clear cut their own lot and trespassed onto the applicant's lot to destroy and clear trees that they did not own. He also heard that sentiment stated again this evening. The abutters, Mr. and Mrs. Rampello, did not trespass onto anyone's property and did not cut any of their trees. Those statements should be retracted because they are false and defamatory.

David Rampello, 1 Gatchel Way, stated that he and his family and the abutters most impacted by the request in front of the Board. In originally building their home, they contacted the developer and worked to learn what options were available. At the time, there were six lots in total on Gatchel Way being marketed. 1 Gatchel Way was described to them as a lot that would not have

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anyone living behind it. There were significant granite outcroppings in the area, and they were warned that blasting would be required and were given a \$30,000 credit towards blasting but told it could be more than that. They were also warned that the land had trouble perking for a septic system and that it may require a specialized design which would increase the cost of installation. There were many trees in the back of the lot which could not be preserved because they had shallow root systems. It was later determined that the size of the leach field would be significant in relationship to the size of the backyard, also requiring trees to be removed. Finally, they were told that the land behind the property could not have a home built on and therefore a residence would not be located there. They understood the land could be used for something like a barn, garden, or an accessory use. Before purchasing the property, he also met with Town officials at Town Hall to confirm that the land behind the lot was not available for development. It was not available then and it is not available today. He confirmed this information with his attorney based on those assurances from the Town. The site work for his house turned out to be significantly more expensive, with blasting ultimately costing an additional \$70,000 and a specialized septic system installed. Design decisions were made based on the understanding that there would be no residence behind the home. The rear of the home features many windows, including several floor-to-ceiling windows, chosen with the expectation of having a certain level of privacy in the backyard. Additionally, due to the location of the leach field, the home needed to be positioned further back with a very small backyard. They never would have purchased the lot on Gatchel Way and built the design of the home they chose if they knew the land behind it would support a home.

In terms of tree clearing, Mr. Rampello explained that 68% of the backyard is a leach field and trees cannot grow on top of a leach field. This is why there are no trees in the backyard. This variance would create a new development opportunity that did not exist at the time he purchased the property and built the home. The change would significantly affect their privacy and could diminish the value of the property. At the original hearing in December, everyone was asked to suspend common sense when a realtor for the applicant told everyone that buyers do not assign value to privacy. He respectfully disagrees with that assertion. The Board was provided with a letter from Rudolph Baldarelli, an appraiser licensed in the state of New Hampshire, regarding his opinion on the value of privacy. The Braffs purchased their home six years after the two lots had already been merged by a previous owner in 2016. It would have been clear that the lots were merged at the time of purchase as it is stated in their deed. Discussions about buffering, fencing, home placement, and other mitigation measures do not resolve the fundamental issue, that constructing a home and having someone living behind his property would have significant and permanent impacts on privacy and diminish the enjoyment and the value of his home. In terms of the trespassing claim that trees were removed from the applicant's property, Mr. Rampello explained that when they purchased their lot, there was a large gap cut through the woods onto the Braff's land. An opening in the backyard into their property can still be seen. This land was a depository for construction materials when the street was developed. Prior to the Braffs purchasing the home, Mr. Rampello stated that he was asked if construction debris left on the property could be removed. He thus allowed access through his property which included a 350 gallon diesel tank being dragged out through his backyard. The trespassing claim is ridiculous. On May 7th of this year, Mrs. Braff was in his backyard without his knowledge or

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permission. His family relied in good faith on information provided by the Town along with information presented during the purchase of the lot that the abutting land was not available for a residential home.

Christine DeVries, 3 Gatchel Way, explained that her property is adjacent to the one in question. She and her husband purchased the land and began building their home in March 2022, prior to the Braffs purchasing their home. At the time, there were many lots to choose from, and they deliberately selected one of the smaller lots due to its privacy. When building their home, they had to make sure that they strictly adhered to the Town's zoning requirements including the placement of the home on the lot. This is one of the smallest homes on the street, but they loved the neighborhood and made a significant investment as a young family based on the belief that the subdivision layout and lot configuration had been thoughtfully designed, formally approved, and was being relied upon by the surrounding homeowners. Prior to the purchase, they were informed that the lot in question was not buildable. They also understood that previous owners had intentionally merged the lots and positioned the existing home in such a way that effectively prevented development of the second lot. That arrangement had existed for many years and has become part of the established character and expectations of the neighborhood. She respectfully asked the Board to consider the long term implications of reversing decisions that were intentionally made years ago, as well as the precedent that such a reversal could create for other properties within the community. She and her husband have become increasingly concerned, particularly after hearing a statement from Mr. Braff indicating that nothing would prevent him from clearing the lot even if the building approval was not granted. They found this to be threatening and vindictive to all bordering neighbors. This prompted them to revisit the proposal and fully assess its potential impact. It then became clear how significantly this could affect their lot, their investment, and most importantly, their home. It is important for the Board to understand the concern and uncertainty that such a statement has created for abutting homeowners who have been patient and cooperative throughout the process. They have two young children and have accommodated many surveyors and representatives assessing the surrounding areas of their property without any notice. Having children in the backyard and people approach the home without warning is very alarming. She would like to address the applicant's accusations regarding trespass by neighboring property owners. The applicants have raised concerns about stacked wood near the property line. For the record, multiple wood piles exist along the shared boundary that were there long before they or the Braffs purchased the properties. She did not place those wood piles there and does not want to be inaccurately associated with them now. In fact, hearing the accusations made them not want to get involved in this process, as they would have accusations put against them. Similarly, there are existing encroachments onto their property from the neighboring lot in question, including fencing and irrigation lines that were installed by prior homeowners. While the current owners added a privacy fence extension to screen the view of the home, the original fencing and irrigation infrastructure that extended onto her property were never removed. A fence juts onto the property that is fairly substantial. She has chosen not to raise these issues and recognize that the items were installed by previous owners. She respectfully asked the Board to stick to the rules that everyone purchased their properties under and to consider the original intent of the lot merger, the expectations of homeowners who purchased and invested in the neighborhood based

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on that long standing arrangement, and the broader precedent that approving this request could establish.

Sam Foisie, 10 Lyndeborough Road and Vice President of Meridian Land Services, stated that he became interested in this item because it seemed like it would be a straightforward variance request, as this was an open space subdivision and the request is to redraw a lot line as it was before. Also, his father, Mike Foisie of Michachunk Development, developed Founders Village and built the Braffs' house. This was built with the intention of selling the lot to the previous owner. He also sold the adjacent lot to the previous owner for privacy purposes. In reviewing the previous meeting, it was disheartening to hear the word "nonconforming" in referring to the Founders Village lots. These lots were approved and subdivided via the open space subdivision rules. That subdivision was vested and it allowed lots to have smaller sizes below the two acre minimum. There is 51 acres of open space in this subdivision where, by regulation, it was only required to have 33.75 acres. All of the lots went through the appropriate engineering, including test pits driveway analyses to make sure that they comply with all the regulations. The lots were designed to be on potable water, allowing them to be smaller than typically allowed. The lot that would be created by this variance went through the same engineering and analysis and enjoys the same considerations of the open space regulations. The Board should consider what can be done on the lot today by-right. This is not a threat but factual in nature. By-right, the Braffs have the ability to build an ADU anywhere on the second lot and the same perceived reduction in privacy would occur. Additionally, a shed, tennis court, or basketball court could be built on the second lot, further developing it. It is incorrect for the Town to say that no development could occur on that lot. In terms of hardship, the Chair described this is a "unique" circumstance in terms of establishing a hardship. The word "unique" is the definition of the hardship. The character of this lot as an open space development creates the hardship. In terms of fitting into the neighborhood, this subdivision was originally approved with the second lot as being separate and able to have a structure built on it. In discussing this with the Braffs, this is an attempt at downsizing which would likely lead to the living quarters being on the first floor instead of the second floor like their current home. This is not a direct hardship, but a reason why the Braffs want to build on the adjacent lot. In terms of what would stop other lots in the area from subdividing, there is only one large lot, approximately nine acres, that has the land to do so. As the applicant's attorney represented, the density was established for the open space subdivision originally and to go beyond that would be a violation of the open space subdivision. Finally, variances do not establish precedent. This is a common sense, real world scenario in that nothing substantially changes by denying the variance because of what could be built there today by-right. Nothing changes from the previous open space subdivision because the line will be exactly where it was before. All the engineering remains the same, all the test pit data remains the same, and all the sight distance analyses remain the same.

There was no additional public comment at this time.

Tracy McInnis stated that privacy seems to be a large issue. She asked what the applicant would do to help this if the variance was approved. Attorney Gandia stated that there is a 30' setback from the property line to the building envelope. The abutters have the same setback. Mr. Braff

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stated that he has written two emails to the Rampellos asking how to make this more palatable. The intention would be to install trees to give the abutters comfort about their privacy. He does not want to see the abutter's backyard any more so than the abutter wants to see his. He would rather handle this between neighbors than with attorneys.

Danielle Pray asked about the item mentioned regarding lost taxes to the Town. Attorney Gandia stated that most of the public comment given was emotionally charged. The Board needs to focus on the five criteria and the abutter's attorney did not do so. His main position was taxes. If the Board followed his reasoning, every piece of property that is subdivided is a detriment to the Town because there was a benefit of having a lower tax rate when it was a larger lot. This is nonsensical. This means that every subdivision created would encounter the same kind of tax analysis. This is not relevant to the five criteria. If this is the case, every time the Town approves a subdivision, it should ask the owner to pay back taxes based on the number of lots it could have had. In terms of this not being a developable lot, that is not true. Per the Town's regulations, the owner could build a 1,100 s.f. ADU in the developable envelope for Lot 16 by-right. Also, the legislature is working vehemently to allow for larger ADUs. The abutter's attorney did not address any of the five criteria sufficiently through the legal and statutory framework. There were ten letters of support submitted by other abutters, including one from Christine DeVries who spoke earlier. It appears there is mostly emotionally charged arguments being made this evening.

Attorney Parodi explained that he brought up taxes because the plan prior to the merger is much different than subdividing a large piece of land. Someone had a vested right that they gave up in exchange for tax relief. Allowing that to occur is not substantial justice and not within the public interest. In terms of the ADU, the applicant can do that by-right and that is not an objection of the abutters. Attorney Gandia asked why there is not a privacy concern with a 1,100 s.f. ADU but there is for a single-family dwelling. This does not make sense. In terms of substantial justice, the analysis is regarding the loss to the applicant and she already reviewed this.

Tracy McInnis asked the average size home in the area if the existing home is 8,000 s.f. Mr. Braff stated that some are larger than this and many are smaller. Sam Foisie stated that there was a development restriction for a minimum home size of 2,500 s.f. A majority of the homes are larger.

Danielle Pray asked how many of the lots in the subdivision are over two acres. She noted that the lot in question is not the only one. Attorney Gandia stated that some are larger, but she does not know. Danielle Pray stated that there are some over two acres, some over three acres, and one is nine acres. If the lot in question was split, it would be the smallest lot on the cul-de-sac. Attorney Gandia stated that Lot 15 is 1.330 acres and Lot 16 under the original subdivision was 1.145 acres. The Rampello lot is 1.309. The one above that is 1.129. The Board needs to consider the uniqueness of the lot in question.

Andrew Pataky moved to close the public hearing and enter deliberations. Tracy McInnis seconded.

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

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Steven P Braff & Martha L Braff, Trustees of the Braff Family Revocable Trust (Owners & Applicants); 2 Trask Way, PIN #: 005-059-015

Andrew Pataky stated that, if the applicant were to build a 1,100 s.f. ADU on the second lot, he would condition that a 10' nice privacy fence must be erected along the entire property line. This will appease the abutters and give privacy to everyone.

Danielle Pray stated that changing this back into two non-conforming lots could lead to cumulative impacts in the area. There are some properties in the area on the cusp of two acres who may seek the same variance to create non-conforming lots. There is case law on this. She expressed concern regarding the unnecessary hardship in this case. The current zoning regulations must be complied with as the open space subdivision rights were extinguished when the two lots were originally merged. This is currently a conforming lot that was part of a previous subdivision, and this would create two non-conforming lots. She is unclear of any case law which states that size can be considered as a special condition of the property. This could create a domino effect in the neighborhood based on the cumulative effect. The applicant could build an ADU in the area of the second lot by-right. If the two lots are split, the applicant could build another residence with an ADU and another ADU on the first lot. This would double the impact on the Town and would lead to overcrowding of the land and impacts on municipal services.

Tracy McInnis asked if the applicant would be considering an 1,100 s.f. residence if that is what could be built by-right for an ADU. A house this size in a neighborhood with 8,000 s.f. and 5,000 s.f. homes would certainly diminish the values. Danielle Pray stated that, if the variance is approved, this could be done on both lots. Tracy McInnis stated that people in Amherst do not want to be able to stick their hand out the window and shake hands with the person next door.

Danielle Pray stated that the abutters brought up good points for substantial justice. They stated that they purchased their lots knowing that Lot 16 was not developable. The owner of the lot should have known this as well. She asked if it is fair to those who purchased under this knowledge, which is a balancing act for the Board to consider.

Joe Fucci stated that the open space ordinance was deleted in 2015 and the IIHO was repealed in 2020 per the Town. In terms of observing the spirit of the ordinance, the Board has to consider the will of the Town.

Tracy McInnis moved no regional impact. Andrew Pataky seconded.

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

The Board reviewed the variance criteria tests:

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

- A. Pataky – not true. The abutters have public interest and believe they have a legitimate reason to be here. They were told the property was not buildable.
- T. McInnis – not true. Public interest is for the abutters with a home being able to be constructed smaller in size.
- C. Goodrich – not true.
- J. Fucci – not true. This is based on the ordinance being repealed by the Town in 2015 and 2020.
- D. Pray – not true. The ordinance was repealed due to density, character, and overcrowding of the land. Abutters mentioned that approval would change the character of the neighborhood, as this is currently an open space lot.

0 True, 5 Not True

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

- T. McInnis – not true. The spirit of the ordinance would not be observed as the current ordinance calls for a two acre minimum and this would create two non-conforming lots.
- C. Goodrich – not true.
- J. Fucci – not true.
- A. Pataky – not true.
- D. Pray – not true, for the same reasons as the first criterion.

0 True, 5 Not True

3. Substantial justice is done.

- J. Fucci – not true. Substantial justice would not be done by granting the variance based on discussion by the abutters and the current zoning ordinance requirements for lot size.
- A. Pataky – not true.
- T. McInnis – not true. The benefit to the applicant would outweigh any benefit to the general public.
- C. Goodrich – not true. A condition to not build a larger home to not reduce values would help in one aspect but hurt in the other by further damaging privacy rights of the neighbors.
- D. Pray – not true. This is a balancing test. The Board heard concerns from abutters regarding changes to the neighborhood from a residence and other structures that could be built on the separated lot. This weighs in the favor of other people in the area and the neighborhood. The applicant benefiting from the merged lot in terms of taxes and using the previous open space ordinance as a reason to divide the lots are two contrary things.

0 True, 5 Not True

4. The values of the surrounding properties will not be diminished.

- T. McInnis – not true. As stated, building an 1,100 s.f. residence in a neighborhood of 5,000 s.f.+ houses would reduce the values of those properties.

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- C. Goodrich – not true, as previously stated.
 - J. Fucci – not true.
 - A. Pataky – not true.
 - D. Pray – true. The applicant presented evidence that values would not be diminished and the abutter's letter did not present contrary evidence.
- 1 True, 4 Not True**

5a. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship

- T. McInnis – not true. She could not find a hardship in the case.
- C. Goodrich – not true. The prior owners sought to merge the two lots and the Town agreed to that via a vote. A special condition of the lot different from others in the area is what needs to be assessed against today. The rest of the Town does not have the ability to split their lots and create two non-conforming lots. Danielle Pray noted that this item should discuss the general area of the neighborhood and not the whole Town. Chris Goodrich agreed and stated that this would not change his answer.
- J. Fucci – not true.
- A. Pataky – not true. He does not find any special conditions of the property. This will affect the whole Town and the subdivision itself.
- D. Pray – not true. There are no special conditions of the lot, and the lot size alone is not enough as all of the lots in the neighborhood are varying sizes. This is not the only lot over two acres in the neighborhood. She is concerned with a cumulative impact granting the variance would have. There would likely then be other applications to create non-conforming lots.

0 True, 5 Not True

5b. An unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

- D. Pray – not true. The Board established that there are no special conditions of the property. Also, even if it had, the property could be used reasonably in strict conformance with the ordinance. It is currently being used in strict conformance and can continue to be. The applicant could place other structures or uses on the lot as it currently exists while complying with the ordinance without a variance.
- C. Goodrich – not true.
- J. Fucci – not true.
- A. Pataky – not true.
- T. McInnis – not true.

0 True, 5 Not True

**Tracy McInnis moved to deny the variance request. Chris Goodrich seconded.
Voting: 5-0-0; motion carried unanimously.**

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PUBLIC HEARINGS:

2. PZ20014-021826 – VARIANCE

TANA Properties Limited Partnership (Owner), Hudson Sand And Gravel (Applicant), 27 Bon Terrain Drive, PIN #: 002-026-000 & 002-012-002 – Request for relief from Article III, Section 8, Paragraphs A and D. 1 to remove earth and stockpiled loam, install permanent rock stabilized outfalls, discharge pipes, swales, desedimentation, water polishing treatment, detention ponds, BMPs within 100 foot vegetated buffer associated with a gravel pit operation. *Zoned Industrial. Continued from May 19, 2026*

Andrew Pataky read and opened the case.

Andrew Pataky recused himself from this case.

John O'Neill, representing the applicant, made a presentation to the Board. This is Phase IV of the Bon Terrain project. You're getting nothing. The parcel is approximately 160 acres. There is a water tower that services the greater Milford and Amherst areas, and the property is along the Route 101A corridor. This parcel was left in an unvegetated state and contains stockpiles of loam which were pushed at the time of termination of the gravel operation. At that time, the owner was pursuing industrial development, which never went forward. As this parcel is located in the Wetland and Watershed Conservation District (WWCD), the proposed work requires a zoning variance. This is not a typical commercial removal of material as is typically seen in a 155E, which regulates gravel removal, but instead is for grading out and reclaiming of areas that were already disturbed, including installation of best management practices (BMPs). In terms of water quality, placing swales and conveying water across sandy soils and discharging into the existing Witches Brook and Pennichuck Brook watershed areas is considered. This parcel is also in the Town's Aquifer Conservation District. He noted that the well system is no longer used by Pennichuck to service water to the greater area and subsequently the owner has retaken the well back from Pennichuck. The owner would like to continue to remove material off this property mostly to be used for highway projects and other developments that may need the material. In terms of the variance for the WWCD, the applicant proposes an intrusion into the buffer in order to reestablish a stable vegetative buffer in direct correlation with the explicit purpose of the ordinance. The spirit of the ordinance and sole purpose of the proposed activity is to protect the wetlands. Amherst routinely goes into the WWCD to install rip rap at the end of their culverts, deploy sedimentation areas, and dig out existing infiltration areas, and the applicant is proposing to do the exact same thing that Amherst does in order to protect the water quality in accordance with the Clean Water Act. The applicant submitted a Point Source Discharge document showing that this is in the public interest. There are 8-10 different locations along Witches Brook and the watershed area discharge areas which were reviewed by the Town under the construction federal permit. A lot of the areas are regularly defined pond areas called point source discharges. The applicant repaired anything that was in conformance with the federal government and the Town. Granting of this variance will not be contrary to the public interest and will provide substantial justice by allowing stockpiled earth loam that was used in an allowed gravel pit currently in the WWCD four road fill and reclaiming. This will revegetate the area using the soils. The extent of the excavation is 25,000 yards of excess material within the district. The excess material is loam

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and 15,000-17,500 yards of it will be used in direct reclamation. The rest will be used in creating sedimentation basins. Treatment swales are above ground management areas where vegetation can be seen growing and water flows through. These areas will take a certain amount of sediment that runs off the property and collect it. There are four of these in existence today. Three of them were in existence prior to the BMPs extended through the Town in 2009. One of them is totally filled up and was created in 1978. One of the pits was stripped and operated by the Manchester Sand and Gravel company and purchased by his client in Phase IV of the Bon Terrain development to make industrial buildings and bring industrial growth to the Town. The surrounding properties will not be diminished in value and the environmental qualities associated with those properties will be preserved, enhanced, and protected. He explained that he is reviewing the analysis only under the WWCD and not on the public interest in terms of privacy or other elements of the ordinance. The water quality benefits will serve to maintain property values and maintain the visual integrity of the pond. Currently there are very sandy soils and a roadway with a 12" water main that was constructed in 1978 to serve the greater Amherst area. The area has been lowered by two miles of roadway constructed along Bon Terrain Dr. and Northern Blvd. leading to relatively sandy soil. All the other outlying land is elevated. The unnecessary hardship is that this land is within the buffer and generally the underlying soil is sandy and erosive. There are often steep soil conditions found on the site. There is a 12' barrier of earth on Bon Terrain Dr. constructed in 1996. and excavated at the property line 12' in order to access the property. That WWCD area has slopes that are 25% and need to be stabilized in order to install BMPs, which will leave the buffer entirely revegetated, attenuating water, enhancing wildlife, and with the eight elements of the WWCD requirements. The inherent nature of the gravel removal on the larger remaining site requires depressing the existing grade during the removal process and often requires lower outfall elevations to return the stormwater to the existing adjacent wetlands and Peacock Brook. The proposed use is reasonable because in order to remove earth outside of the WWCD, a stable and clean water discharge must occur at a lower elevation. State and federal BMPs currently require quality finishing detention, non-erosive velocities, discharges, and vegetated buffer and stabilization prior to discharge to the wetlands. This can prevent having to install a dam which is anything over 3/4 of 1,000,000 gallons. In addition, there cannot be more than a 6' drop in elevation which would require a 25' drop in elevation in the worst case and 10' in the best case. The applicant would be in violation of the Clean Water Act by not completing the finishing elements. The intention is to remove dirt in the non-WWCD area. This area was stripped out in conformance with the regulations at the time it was done. This was not executed because other development occurred that was reliant on this. Strict conformance to the ordinance would be more detrimental to the intention of the ordinance. The inclusion of the site features is intended to overcome challenges to the water quality while enhancing the aesthetic values associated with the WWCD.

A second element is that there be no excavation within 50' of the property line, right of way, or zoning district boundary line. However, the proposed aesthetic would be in the public interest. The proposed removal of gravel, predominantly 8-10', gives the ability to depress the land, meaning that any development would be lower compared to the abutters. There is an area on site reserved for a 6'-8' berm, in addition to depressing the property 6'-8' resulting in up to 14' of a diminished view from the abutting neighbors. The vegetation and reestablishment of vegetation

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in this area would enhance property values in general. He does not want to speak much about the public interest as much as the WWCD itself. In terms of there being no excavation to occur within 50' of a property line, right of way, or zoning district boundary, the applicant is not going to excavate in the road right of way. Although the applicant will grade adjacent to the roadway area to access the property. The idea is to reclaim the site and install desedimentation ponds or water quality ponds in order for the site to eventually be developed. Granting the variance will be in the public interest because the proposed excavation within 50' of the property line and right of ways will allow for the establishment of a stable vegetated buffer in direct correlation with the purpose of the ordinance. There is a 4,000 yard pile of sand which was removed from Bon Terrain that has been unvegetated and unable to be removed for 15 years. This is sitting beside the right of way as a stockpile area. The intention is to remove the stockpile. He knows that children sometimes snowboard on this area. The request is to grade, loam, and seed next to the roadway wherever the contours require it to be done. He provided engineering plans showing 2' contours and will not be going overboard to dig where it is not economically feasible. The proposed variance is to provide a vegetated buffer where the entirety of the land is currently steep erosive slopes with non-vegetated 50' areas and areas of ledge. The BMPs serve a dual purpose of reclamation of historically disturbed areas and 50' vegetated areas. The access from the roadway and removal of elevated earth adjacent to the roads will help create drainage BMPs to prevent pollution on the roadways, as part of the spirit of the ordinance under the Clean Water Act. Granting the variance will not be contrary to public interest and will provide substantial justice by allowing a stockpile of earth and loam and sand removal, and the reuse of the loam to create durable vegetation establishment. It will also allow for water quality and respreading the loam in the historically disturbed area. The surrounding properties will not be diminished in environmental quality as the proposal looks to preserve, enhance and protect the buffer. The applicant looks to revegetate the portion of the buffer that has been disturbed including a drainage pathway to allow for larger berms for development of the site in the future which will be up to the Planning Board. All disturbances in the 50' zone will be revegetated. The variance will be used to prevent the scour of water quality, to better maintain property values, and to maintain a visual integrity of the buffer. The higher grades adjacent to existing lower roadways will be reduced, thereby reducing the elevated nature of the site, making it more readily accessible. The necessary hardship regarding the 50' zone is that the land generally has underlying sandy, erosive, steep soils. There are also areas of ledge and historical vegetation and loam removal. This former gravel pit was used as a stockpile area in the WWCD and for the adjacent Bon Terrain Dr. The roadways have been subdivided out and have the frontage necessary for excavation. The inherent nature of the gravel removal on the larger site requires depressing the higher grade during the removal process. This is sitting on a plateau, and the buffer is part of the higher elevation. The applicant will use higher areas of the buffer to create more of a berm. This is similar to a project that occurred on Howe Drive. That site was 20'-25' high and was reduced low enough to install finishing ponds. The applicant at that time obtained a variance from the Board as necessary to develop the site. This enhanced the WWCD and the site received a decent development.

John O'Neill read a report from Gary Flaherty, soil/wetland scientist.

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Danielle Pray asked the applicant to explain the impacts to the buffer. John O'Neill explained that there are maybe 3-4 acres of disturbance. There is a vernal pond on the property. The applicant looks to grade steep slopes, dig out a previous desedimentation pond, create a 6'-8' berm and other berms outside the buffer. There are reserved areas for septic systems. 66% of the loam will remain in the buffer but will be replaced where it belongs, on top of the ponds and the steep sandy slopes.

Danielle Pray asked why the applicant believes the buffer needs to be impacted at all, based on the size of the lot. John O'Neill stated that this is due to the Clean Water Act and non-hazard past discharge of water. Without intrusion into the buffer, he would put 20 million gallons of water on top of the steep slopes that are eroding. All water pushes through sandy soil at that elevation, and this will create a Clean Water Act cleanup. The intention is to lower the table 10'. In order to do that, 12'-25' of hazard class dam must have 20 million gallons of water transmitted into a wetland. The Town does this routinely without a variance as they are immune from the WWCD requirements. The Town can stabilize any buffer and provide desedimentation and infiltration. The 120 acres of dirt on the site cannot be developed properly without removing the dirt to make the site lower. He will not be able to increase the buffers to neighboring properties without this work. The drainage and conveyances to the lower areas will provide for further non-disturbance of the buffer. This is a clear hardship. He cannot excavate 750,000 yards of dirt on a high plateau without non-erosive clean water finishing and treatment at a low elevation discharging into the wetlands. He does not consider this excavation; he considers it grading. This is his retirement project.

Danielle Pray asked about the process that would go before the Planning Board. John O'Neill stated that he would need a Conditional Use Permit (CUP) to execute gravel removal. He plans to go through the site plan process with the Planning Board. The regulations do not allow for grading within a right of way, which needs a variance. He also needs a variance for work within the WWCD. He will go to the Board of Selectmen regarding approval for the first state project but that is outside the WWCD. Kristy Jobin stated that a CUP would be needed for the stormwater impacts to the buffer. John O'Neill stated that he would pursue a site plan through the Planning Board after obtaining the variances.

Danielle Pray asked for public comment.

Jared Hardner, Vice Chair of the Amherst Conservation Commission (ACC), read a letter from the ACC. The ACC advises the Board not to grant a variance to the applicant. In the ACC's view, the criteria for the variance are not met. The ACC recommends that the applicant pursue the normal required pathway, seeking a CUP from the Planning Board, as described in Section 8 of the Zoning Ordinance. The Planning Board should evaluate the proposal with professional technical assistance and determine whether to allow the applicant to conduct the proposed project. The purpose of this comment is to provide input to the ZBA concerning the proposed project. The ACC was made aware of this project by the Office of Community Development on November 14, 2025. John O'Neill, representing the applicant, invited the ACC for a site walk on November 19, 2025. The site walk was beneficial in terms of acquainting the ACC with the

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property but raised several significant uncertainties. The ACC invited Mr. O'Neill to an ACC meeting on December 10, 2025, to address those questions. Following are the key takeaways from the site visit and the ACC meeting at Town Hall. First, Mr. O'Neill explained his desire to develop stormwater management features within protected wetland buffers and remove loam from the buffers to be used elsewhere on the property. When asked why stormwater management features had to be constructed in the protected buffers, he responded that he wanted to increase the area of the property to be developed. ACC members attempted to explain the restrictions on both aspects of this proposed work and the process and criteria for gaining approval under Section A, 4.11, of the Zoning Ordinance. The ACC also explained that it has no authority in the permitting process but acts merely as an adviser to the Planning Board for CUPs. Mr. O'Neill asserted at both meetings that he did not need the Town's permission to undertake the proposed work because his client has a right under the federal/state law (that statement seemed to vary over time) to proceed without local approval. He requested several times that the ACC provide a written comment and that he did not care if it was favorable or unfavorable. Uncertain as to the legal purpose of the requested comment, the ACC did not fulfill the request and reported this to Community Development. The technical specifics of the project's impacts and mitigation have not been fully presented or assessed. However, the ACC is wary of a project to remove protected wetland buffers at scale as proposed. This is especially important for aquifer protection, flood control, and the ecological sensitivity of the site due to its proximity to the only cold water habitat for trout in the area. Regarding the variance criteria of the ZBA under RSA 674:33, the ACC has the following observations. With regard to Criterion 1, that the variance will not be contrary to the public interest, it is not possible to say whether, with the available information, this project poses a public health or safety concern. This could include aquifer contamination or flooding caused by removal of wetland buffers. However, this area is within the Aquifer Conservation and Wellhead Protection District, sits above a highly transmissive aquifer supporting the Pennichuck Water supply, and is adjacent to wetlands and sensitive cold water stream habitat. A variance for this project requires professional technical assessment of the impacts and mitigation to ensure it is not contrary to the public interest. It also requires review by the Pennichuck Water Company. In terms of Criterion 2, that the spirit of the ordinance is observed, the WWCD is protected by Section A, 4.11 of the Zoning Ordinance because it supports important functions and values, including retention of floodwaters, filtration of water that enters the aquifer, and essential wildlife habitat. The applicant has not provided technical studies to rebut the presumption that the WWCD buffers are supporting those important functions and values and/or that the impacts will be mitigated to the degree that there is a net gain in those functions and values. It is critical that any assertions are supported with complete information on impacts and mitigation should be evaluated, preferably with the assistance of a professional technical specialist. This process, as envisioned in the Zoning Ordinance, is being preempted by a request for a variance. In the ACC's view, a request for a variance does not respect the spirit of the Ordinance. For Criterion 3, that substantial justice is done, enforcing the WWCD, Section A, 4.11 of the Zoning Ordinance protects the public as it supports the important functions and values, including retention of floodwaters, filtration of water that enters the aquifer, and essential wildlife habitat. Losing these functions and values can incur of cost to the public. It is also important to consider the cumulative impacts of wetland buffer impacts in this part of Amherst. Analyzing impacts in isolation loses sight of the fact that multiple small impacts

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add up to significant impacts. When that impact includes affecting functions such as floodwater storage or provision of clean water, it will incur great expense to the residents of Amherst to remedy these problems if the Town is asked to replace the environmental services performed by the wetlands with built infrastructure that is expensive to construct and must be maintained. The project proponent explained to the ACC that the purpose of the project is to maximize the usable area of the property by placing stormwater management features within the WWCD. This is not a valid approach to estimating lost private benefit. If it were, every developer could request a variance to undertake projects in the Town's wetland buffers on the simple basis of increasing private profitability. For Criterion 4, that the values of surrounding properties will not be diminished, it is admittedly outside of the ACC's mandate to comment on this criterion, other than to note that abutters recently demonstrated strong opposition to the construction of a large warehouse on this property. It is possible they would have a view worth considering regarding the impacts on their properties of removing the vegetation that currently sits between their residential properties and this property. Finally, for Criterion 5, that literal enforcement of the provisions of the ordinance would result in an unnecessary hardship, the applicant suggests that because the previous owner stripped the property's topsoil decades ago, a hardship now exists that justifies the removal of protected wetland buffers to "restore the site." However, under New Hampshire law, a hardship must be inherent in the land's physical characteristics, not a result of previous land management, i.e. a self-created hardship or a desire to minimize restoration costs. The need for loam on the upland portion of the site is a circumstance of the owner rather than a condition of the property that prevents its reasonable use. Therefore, this does not meet the high bar for unnecessary hardship under RSA 674:33. The ACC's observations during the site walk are that this site could be developed for gravel removal and/or construction of industrial facilities without removing the existing wetland buffers around the perimeter. This is the ACC's informal observation, not done by qualified technical analysis or a proposed economic use. The ACC's recommendations are that the ZBA not grant a variance to the applicant. In the ACC's view, the criteria for the variances are not met. The ACC recommends that the applicant pursue the normal required pathway of seeking a CUP from the Planning Board as described in Section A of the Zoning Ordinance. The Planning Board should evaluate the proposal with professional technical assistance to determine whether to allow the applicant to conduct a proposed project.

Mr. Dalton, 14 Summerfield Way, stated that TANA Properties seems to have little regard for abutters or the Town's responsibilities to enforce the zoning ordinance, which was designed to protect the greater good. Neighbors experienced the same pattern in 2022 with the ill-fated warehouse project. The landowner failed to provide objective data that the values of surrounding properties would not be diminished, nor that there would be environmental harm. At this time, the applicant's justification is that the Zoning Board approved a similar request for 2 Howe Drive in 2012. That property is 16 acres with no direct residential abutters, while this project spans over 160 acres with multiple residential homes that are clustered along the buffer zone where the applicant proposes to remove loam for use elsewhere on the property. This is an inappropriate comparison. The benefit to the applicant is clearly not outweighed by the harm to the public in this case. The applicant is equally lacking in credibility and objective data, leading to no claim of hardship. The request is to remove loam and fill that was pushed into the buffer zones, though it is unclear who did that in violation of the ordinance. This is clearly a case of a self-imposed

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hardship. The variance request to invade these buffers should be denied. He asked TANA Properties to be a good neighbor and stay out of the buffer zones. TANA Properties' past actions have not earned the neighbors' trust. In 2023, TANA Properties filed multiple requests against warrant articles that were put forward by the Planning Board and Amherst citizens designed to protect residents from the inappropriate vagaries of industrial property owners trying to strengthen the buffers. There is not a mutual benefit to tear apart those areas and endanger critical environmental resources. He asked the Board to leave the zoning requirements in place to protect taxing abutters and deny this variance request.

Barbara Staffiere, 9 Crystal Lane, asked the Board to consider that there is abutter public interest in this proposal. In terms of infringing on the buffer, she has heard the applicant's representative states that this will grow back thicker and stronger, but it will not be there for a period of time during which there will be runoff and potential flooding. There will be aesthetics that are diminished due to this infringement. In terms of being contrary to public interest, the project sits on top of the Town's aquifer. This is not the main supply to Pennichuck, but it does support it. She has not seen a review of this proposal from Pennichuck. In terms of the values of surrounding properties not being diminished, several letters were submitted regarding this item. She asked why a berm is needed, per the applicant, in order to create a greater vegetated visual buffer, if there will be no impact to abutting residences. She believes property values will be diminished by this. The buffer between a residential and industrial property is important. In terms of a hardship in this case, it appears this may be self-imposed. The applicant knew what had been brought onto the property when they purchased it.

Dewitt Taylor, 5 Crystal Lane, stated that this should go before the Planning Board. TANA knew what they were purchasing in this lot and so this is a self-imposed hardship. The applicant should determine what the use of the land will be prior to building and moving earth on the site.

Steve Nelson, 9 Beacon Lane, stated that TANA has not been a great neighbor. They installed drainage and storm drains for his neighborhood. TANA was required to abide by the 100' No Disturb buffer and this was done without touching the area. In 2017, TANA decided to log the area, and this came down toward Peacock Brook, including removal of trees right along the brook. The Zoning Enforcement Officer visited the site, and it was clear that a tree was removed and debris was pushed into the brook. He never heard anything back from the Town. He eventually tracked down the Zoning Enforcement Officer who stated that he decided not to do anything about it. He suggested that Mr. Nelson complain to the State. Mr. Nelson asked how the Town can be sure that TANA will abide by any of the buffer zones at this point. He suggested that the Board keep the buffer in place and deny the variance.

Deb Keough, 16 Summerfield Way, stated that any disruption that could cause flooding would impact her and other neighbors. The applicant has stated that he wants to stabilize the area, but the material on the site has already been there for decades and is very stable. The owner has a right to develop that property, but the Town decided to place this industrial area next to a residential area and she believes the Town should take the residents' side and protect the property and make sure the buffer remains.

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Michael McLaughlin, 6 Elmwood Way, stated that there will be hardship for abutters in the applicant's request to remove loam. He asked how long this will take and how much noise will be associated.

There was no additional public comment at this time.

Jim O'Neill addressed the ACC comments. He stated that loam to be moved from the buffer is in stockpiles. A substantial portion of that remains in the buffer to be reclaimed. 75% of the loam will be staying in the buffer. It is the 25,000 yards of stockpile that needs to be reallocated over the sandy soil. He stated that Jared Hardner mentioned that the ACC asked him why the stormwater management features had to be constructed in a protected buffer and that he supposedly gave a response of wanting to increase the area of the property to be developed. Mr. O'Neill stated that this is so twisted it is disgusting. He wants to meet the criteria of the Clean Water Act. There was erosion into the wetland near Peacock Brook in the past and the land was sold to be developed. That was zoned in four phases. The Town knew what it was doing to put industrial uses in this area. He will install buffers. He will be reclaiming the areas that have eroded into the brook which is in the WWCD. He is not talking about aesthetics. He is addressing a hardship in the WWCD. He stated that the ACC explained the regulatory process for Section 4.11 A of the zoning and that the ACC is actually an advisory board regarding CUPs. TANA Properties sought the ACC to provide their environmental opinion on the elements of the buffer proposal. Instead, the applicant received an evaluation of zoning from the ACC that was off base. These elements, as explained by TANA, were to remove the stockpile of loam to reclaim and serve as dirt, including using it for buffer reclamation and enhanced environmental BMP's, and to construct stable outflows at lower elevations used for excavation. Also to provide desedimentation to yield the finishing and integration of clean water support to satisfy the Clean Water Act. He cannot discharge through an erosive soil that has no loam and no stabilization in the buffer when all the loam that stabilizes it is on site. The closest abutter is 350' away, across the center line of the brook. He will be creating a large visual buffer by decreasing the plateau and increasing the elevation of the burn. The ACC states that the site will be losing stormwater retention, but there is no stormwater retention in the buffer as it is a steep slope. The proposal will divert water, moving some of it into lower areas to discharge it. There is no stormwater storage in these areas currently. The ACC walked on the site, but it was not an evaluation. The intention is to provide a thick layer of loam for water filtration where none currently exists to help infiltrate pollutants and airborne contaminants such as PFAS from entering the aquifer. There is 2mm of loam on the site. He stated that he spoke to Pennichuck and is aware that the site is on top of the aquifer. The intention is to protect the aquifer through the proposal. He has hit every single element in the WWCD's purpose and has a proposal for each element, including enhancing the wildlife on site. The proposal is for removal of gravel discharge and infiltration under the Clean Water Act pursuant to 155E. He would like the ACC to comment on the environmental enhancements that are proposed. It is not possible to say whether this project poses a public health or safety concern, but he already expressed that this would protect the aquifer by protecting the surface drainage and flooding caused by removal of wetland buffers. There is currently no flooding attenuation for the buffer. This site sits above a highly

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transmissive aquifer supporting the Pennichuck water supply. But the applicant purchased the wells back from Pennichuck when they were finished with them. In terms of the adjacent wetlands and sensitive cold water stream habitat, the applicant looks to create a wildlife pond with a vernal habitat, as suggested by both New Hampshire Fish & Game and the Wetlands Board. This is common sense. In terms of the second criterion, the zoning ordinance supports important functions and values of the site, including retention of floodwaters, filtration of water that enters the aquifer, and essential habitat wildlife habitat. None of these features currently exist in the stripped buffer area. He is proposing a habitat to be enhanced and the completion of reclamation. In terms of substantial justice being done, the applicant is proposing to incur the expenses to remedy environmental problems on the site. He noted that excavating the high flat areas will reduce the developable land on the site. Lowering it will cause more steep slopes in the excavation area. He is trying to develop the property in a prudent and environmentally sensitive manner. He stated that he has listened to abutter comments and upon approval of the gravel removal, the site will be revegetated. The non-buffer portion of the site may be lowered and capable of providing 6'-8' berms. If the buffer BMP discharges are not approved, they would be viable but discharges of greater depths than 10' of elevation are a lot and the state wants to see less than 6'. He stated that neglecting the common sense of using stockpiles of loam that were placed in the buffer would lead to an inherent hardship. The proposed use is reasonable because, in order to remove earth outside of the district, stable and clean water discharge must occur to the lower elevation inside of the WWCD. State and federal BMPs require water quality finishing, detention, non-erosive velocity discharges, and buffer vegetation/stabilization prior to discharge through the wetlands or WWCD. In other areas of town, such site conditions may not exist. Conforming to the ordinance strictly would be more detrimental than the intention of the ordinance if the challenging site features were ignored. In terms of Criterion 5, when there is a plateau of land that is going to be dug down, creating a bowl in the ground there is a need to discharge clean water back to the environment to keep the streams healthy. The gravel removal would result in marginally smaller future development and lower visibility at elevations of abutting property owners. The berms added and future berm capabilities for aesthetics toward neighboring lands some 350'-750' away would become viable options due to the installed BMPs at lower elevations. He stated that he is following the Community Development Office's directions exactly in going through the ZBA to get permission to change the grades.

Mr. O'Neill addressed the abutter concerns. In terms of this being a self-imposed hardship, the previous uses of the site were allowed. This is a proposal to fix the problems made. He stated that he received a state permit to cut trees on the site. There were also beavers on the site that were gnawing at trees. There were invasives species on the site that have been managed. This is an opportunity to reclaim the site and enhance its aesthetics. There is no water supply to Pennichuck. The owner of the site owns the supply to Pennichuck. The intention is to find a way to cap the site and move forward. He believes there will be an enhancement to property values. Any hours of construction for the site will be set by the Planning Board. The site will have a better development on it with this gravel excavation. He listened to the Warrant Article which mainly came from proponents in the Peacock Brook and Summerfield areas. Although it failed, he did listen to it, leading to the current proposal.

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Tracy McInnis asked if the loam will be repurposed on the property. Mr. O'Neill stated that loam will not leave the site. Against the road, there is a sand pile, which he would like removed. The variance from the 50' work near the right of way is needed to access these areas of the site.

Joe Fucci asked the flow rates into the brook. Mr. O'Neill stated that there will be zero discharge into the brook during construction. He will not discharge any contaminated water from the site. An interception swale will feed the water.

Danielle Pray suggested that the Board not close the public hearing this evening but instead hire an expert to review the materials and plans.

Danielle Pray moved to hire an expert for an opinion on this case. Tracy McInnis seconded.

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

Danielle Pray moved to table this case to July 21, 2026, at 7pm at Town Hall. Tracy McInnis seconded.

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

The Board took a brief recess.

3. PZ20025-032626 – VARIANCE

Jeffrey and Jo Ann Zall (Owners), Sarah Zall (Applicant), 27 Christian Hill Road, PIN #: 005-145-003 – Request for relief from Article III, Section 3.9, Paragraph C, to subdivide a 7.65-acre parcel into two lots, resulting in one 2-acre lot with the existing dwelling and one reduced frontage lot for the purpose of constructing a single-family home. *Zoned Residential Rural. Continued from May 19, 2026*

Andrew Pataky read and opened the case.

Sarah Zall, applicant, explained that the proposal is to subdivide the property owned by her parents at 27 Christian Hill Rd. in order to build a single-family home. There are three variance applications in total, and the intention is that these requests be considered as one as they all arise from the same unique configuration and natural characteristics of the property. The 7.65 acre lot is an irregular triangle shape with limited frontage that expands outward along the rear of the property line to roughly four times the frontage width. The lot has significant excess acreage located to the rear of the property. At nearly eight acres, the lot has more than enough acreage to support one additional home. However, its unique shape is a physical constraint that makes traditional subdivision impossible and makes a reduced frontage lot the only viable option for subdivision. The proposal represents a reasonable and low impact use of the property. This is consistent with the character of the neighborhood and the purpose of the Residential Rural zoning district where the property is located. The goal is not an attempt to increase development beyond what the ordinance permits. The intention is to maintain the character and beauty of Christian Hill Rd. as it is important to the applicants and the Town. Her parents built the existing

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house in 1983, and it was her childhood home. She has since returned to Amherst with her own family and would like to live near her parents as a mutually beneficial arrangement. The goal is a modest subdivision to keep the multi-generational family close together on land that has been owned by the family for 33 years. She explained that the application refers to a modified plan that was recorded in 1993. The intention is to obtain variances prior to spending money on engineering plans. She has modified the recorded plan with data acquired from several GIS mapping programs and annotated it with calculations showing the available gross and net tracked area for the proposed reduced frontage lot. She understands that a formal survey will be needed before moving on to the Planning Board, and she has met with a local engineering firm who is ready to begin work should the variance requests be granted. She stated that there is about half acre buffer included in her calculations and she hopes that this will suffice in order to conserve funds.

The applicant addressed the five variance criteria.

1. How will granting the variance not be contrary to the public interest?

Granting the requested variance will not be contrary to the public interest and does not conflict with the explicit or implicit purpose of the ordinance, which is to preserve the rural character of the Residential Rural district and avoid overcrowding through low density residential development while protecting public health, safety, and welfare. This proposal will only create one additional single-family home on a 7.65 acre parcel and in a zoning district where two acre lots are permitted and lots under two acres are the norm. The resulting lot sizes would be approximately two acres for the existing dwelling and a reduced frontage lot of 5.65 acres, which is consistent with the surrounding development patterns and meets or exceeds the lot requirements in the district. The frontage lot will be fully conforming at two acres with no wetlands, and the reduced frontage lot will exceed the five acre gross area with approximately 2.5 acres net tracked area, which is still larger than a majority of the lots nearby. This is a modest rural subdivision, and the proposed use of a single family home on two acres and 5.65 acres is no more intense than what currently exists in both the surrounding area and the Residential Rural district as a whole. Additionally, granting the variance would not threaten public health, safety, or welfare. The reduced frontage lot will use the existing driveway to access Christian Hill Rd. as to avoid additional curb cuts and minimize traffic and roadway impacts while also maintaining pedestrian safety and preserving the scenic character of Christian Hill Rd.

2. How will the granting of the variance ensure that the spirit of the ordinance will be observed?

The spirit of the ordinance is to preserve the rural character, and this proposal satisfies the functional land use objectives underlying the reduced frontage provisions. The ten acre parent lot requirement ensures that reduced frontage lots maintain sufficient land area to avoid overdevelopment and preserve rural space. This proposal remains consistent with that goal as it would result in a two acre conforming lot and a rear lot that exceeds the five acre gross area requirements, with a net tracked area well above the two acre minimum. At nearly eight acres,

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the parent parcel is functionally capable of supporting two single family homes without overcrowding the land or causing significant visual impacts. The lots' triangular configuration, which narrows to 219' along the frontage and spans out over 800' in the rear, prevents a traditional subdivision into two conforming lots, even though the lot itself contains nearly four times the minimum lot size. However, the proposed layout respects the ordinance's density, spacing, and setback requirements while accommodating the property's geometric constraints. When applied to this uniquely shaped property, strict enforcement of the ten acre threshold does not further preserve the rural character beyond what the variance request already proposes. Therefore, granting the variance would observe the spirit and intent. She noted that the Amherst Zoning Ordinance states that its purpose is to implement the goals of orderly development and growth of the Town as set forth in the Master Plan. In 2022, the Town conducted a build out analysis to contemplate the most ideal locations for growth and development while still protecting the Town's natural resources and these results are included in Exhibit A of the application materials. Even the most constrained build out scenario presented in Map 5, which was created to show limited growth through the highest possible restrictions on the placement of new development, shows that this lot remains an open and viable lot for further development. Another map 20 years later still shows it as an option for development. This shows that the addition of one single family home on the lot would align with the goals of the master plan regarding where to place development in the next 20 years, to keep new growth away from high value conservation land and natural resources.

3. *How will substantial justice be done?*

Substantial justice would be done to the applicant because the benefit to the applicant and property owner outweighs any potential harm to the general public. The public will experience no measurable harm if the variance is granted. Denial of the variance would prevent the reasonable subdivision of a nearly eight acre parcel which is physically capable of supporting two single family homes. There will be no change in density beyond what currently exists in the two acre Residential Rural zone, as both lots meet the density requirements and conform to the existing character of the neighborhood. Additionally, the proposed single family uses for both lots will maintain the same intensity of land as what currently exists in the area, and by using the existing driveway, there will not be any additional traffic burden or impact on the road.

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

Exhibit B was created to show the lots around this parcel between the Jacobson Farm development and Eaton Road. Considering the surrounding neighborhood, there are 46 lots excluding two town owned lots, between the Jacobson farmland and the beginning of Eaton Road. Of those 46 lots, 38 are undersized and below the two acre minimum required in the zone and 43 are under three acres, making the 7.65 acre original parent parcel an outlier in the neighborhood. Both proposed lots would remain consistent with the surrounding area and the reduced frontage lot would remain significantly larger, maintaining the rural character of the area. Additionally, the new single family home will be of modest size and adhere to the required reduced frontage lot 300' setback while also sharing the existing driveway for access which will

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not create visual congestion. Given the consistent lot sizes and adherence with the Town subdivision regulations and site design, there is no basis to conclude that one additional single family home on what was once 7.65 acres would diminish surrounding property values. She included a realtor letter in the application.

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

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

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

and

(ii) The proposed use is a reasonable one:

(B) Explain how, if the criteria in subparagraph A above are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it:

In terms of literal enforcement of the provision of the ordinance, the ten acre threshold for a reduced frontage lot subdivision would result in an unnecessary hardship because the lot is nearly four times the minimum of the lot size required in the zone. Its unique shape prevents the possibility of a conventional subdivision and thus the ability to reasonably use the land in the same manner and at the same intensity as other lots in the same neighborhood. With 219’ of frontage along Christian Hill Rd., the lot is shaped like a trapezoid and expands outward in both directions to approximately 830’ in the rear. The lot contains significant excess acreage which is more than enough to support another single family home. If the lot were more rectangular, there would be enough frontage to subdivide into two conforming lots. This unique shape can only accommodate a subdivision through a reduced frontage lot design. The ten acre parent parcel requirement is intended to limit the proliferation of back lots and prevent overcrowding. However, when applied to this property, strict enforcement does not meaningfully advance those objectives because it does not create additional overcrowding and the resulting density is the same. The reduced frontage lot will use the existing driveways. There will not be any new curb cuts, and it does not provide any additional or necessary protection for abutters because the property is bounded by non-buildable conservation land in the rear. The newly constructed home will be screened by vegetation from the nearest abutter. The ordinance as applied in this specific case does not bear a fair and substantial relationship to the ordinance’s general public purposes. The proposed use is reasonable because it is a single family residence which is permitted in this zone and the property has enough acreage to support two homes. Reasonable residential use of a 7.65 acre lot in a two acre zoning district reasonably includes the ability to divide into two lots consistent with the surrounding density, particularly where most of the surrounding properties

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are undersized and the proposed new lots exceed the minimum standard. Preventing a subdivision because the parent parcel is 7.65 acres rather than ten acres creates a threshold that does not reflect the actual capacity of the land, particularly when the resulting two lot subdivision, which is intended to hold a maximum of two single family homes, achieves the same rural focus development goals as the ten acre ordinance.

Sarah Zall addressed the variance criteria for the second request. Granting the variance supports the Town's goal of promoting orderly development in line with the Master Plan, as it will provide an opportunity to reduce impervious surfaces and limit land disturbance while prioritizing the rural character of Christian Hill Rd. The purpose of the frontage requirement for reduced frontage lots is to ensure adequate and safe access to a public road and limit impacts to vehicular and pedestrian traffic. Although the proposed reduced frontage lot will have 19.22' of frontage, it will utilize the existing driveway located on the conforming lot to access Christian Hill Rd. through a shared driveway easement of approximately 50'-70'. The proposed reduced frontage lot will have functional access that meets or exceeds the intent of the 50' requirement without further disturbance to the surrounding land or impact to the roadway and the easement will accommodate safe access and utility placement. The ZBA has previously recognized that frontage width, when supplemented by an easement, provides equivalent access that can satisfy the safety objectives of the frontage requirement. In a recent decision from December 2024 concerning a three lot subdivision up the road from this with a reduced frontage lot, the Board approved the use of a reduced frontage lot with 35' of frontage and allowed the applicant to incorporate a 15' shared driveway easement to achieve the functional 50' access width. The Board reasoned that the proposed placement of the shared private way was the safest location for vehicle access and maintained adequate sight distance given the curvature of Christian Hill Rd. and the lots proximity to the intersection at Green Rd. In granting the variance, the Board stated that the public health, safety, and welfare were observed by having a single common driveway that was centered further away from neighboring properties rather than individual driveways that would decrease safety. The current proposal is consistent with the Board's reasoning in that case because the newly created reduced frontage lot will have safe access via a properly designed shared driveway that has been in existence since approximately 1993 and no new access points will be created near existing access points to neighboring properties. Granting the variance will not create traffic hazards, emergency access issues, or adversely affect public safety impacts, therefore, the public interest is protected.

The proposal observes the spirit of the ordinance by maintaining the underlying objectives of safe access and orderly development. The proposed shared driveway consolidates access points and eliminates the need for additional curb cuts along Christian Hill Rd. which will enhance safe vehicle and pedestrian use and avoid traffic impacts, rather than creating two driveways in close proximity. It will align with the planning principles and the Town's goal of orderly development. The functional access width will exceed 50' through the easement, and so the practical objectives of the ordinance are met, even if the literal frontage measurement is reduced, and the spirit of the ordinance will be observed. There is no identifiable public benefit in denying the variance, as a shared driveway will provide a safe and adequate access comparable to what would exist if the lot had the full 50' of physical frontage. Denial, however, would impose a significant and

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disproportionate burden on the applicant by preventing a reasonable subdivision design that otherwise meets functional objectives for the zoning requirements. A shared driveway access will reduce visual clutter and minimize additional curb cuts and the result of granting the variance is orderly development consistent with the zoning objectives.

The value of surrounding properties will not be diminished because the proposed subdivision will maintain the low density rural character of the surrounding area and provide a safe, coordinated access. The shared driveway approach is consistent with prior approvals in the Town and does not introduce additional intensity of use beyond what is permitted in the district.

In terms of a hardship, the unique triangular configuration of the original parcel results in the 0.22 frontage for the reduced frontage lot width. The general public purpose of the 50' frontage is met with the proposed shared driveway easement. Strictly applying the ordinance and requiring 50' of deeded frontage without regard to the functional access provided by the shared driveway easement does not advance the public safety in this instance and therefore lacks a fair and substantial relationship to the ordinance's objective. Additionally, the northwesterly property line that extends from Christian Hill Rd. runs along an intermittent seasonal stream which comes to a culvert in the road. Even if the applicant were to acquire an extra 30' from their neighbors or even if the lot had the full 50' of frontage, the extra land would be unusable because there would be no way to install a driveway on top of the stream bed. Any development in this area would cause significant disturbance to wildlife and major impacts to the area if this were extended any further north. The only option is to use the existing driveway. The Board has previously acknowledged in similar cases that frontage supplemented by an easement access can satisfy the ordinance's intent and denying the variance under these circumstances would not result in any distinct improvements to public safety or welfare. The proposed use of a single family residential house on a 5.65 acre parcel in a district that permits such use on two acres, or more is reasonable and consistent with the ordinance.

Sarah Zall addressed the variance criteria for the third request. The intent of the 750' separation between the reduced frontage lot driveways is generally to prevent unsafe clustering of access points. Granting the requested variance would not be contrary to the public interest or threaten the public health, safety, or welfare because the proposal does not conflict with these objectives. The reduced frontage lot in this proposed subdivision will result in only one additional single family dwelling. Traffic generation from a single residence is minimal and does not meaningfully affect road safety or capacity. Moreover, the proposed reduced frontage lot will use the existing driveway which has remained a safe access point for over 30 years. Based on the conceptual layout plans for the Jacobson Farm development, it appears that the conditionally approved plan for a reduced frontage lot in the TransFarmation subdivision is also for a single family dwelling. This lot may also utilize a shared driveway with an adjacent frontage lot. The section of Christian Hill Rd. serving both these lots is straight and clear, with unobstructed sight distance in both directions. An additional conceptual layout plan shows only one new driveway constructed within 750' of the proposed reduced frontage lot. This would result in a total of three access points on the same side of Christian Hill Rd. within a 600' stretch of roadway - 27 Christian Hill Rd., 25 Christian Hill Rd., and the new shared driveway to be built for the

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Jacobson lot. Under these circumstances, the total number of access points will not exceed the total amount permitted within the Residential Rural zone, where one driveway would accommodate 200' of frontage or three driveways allowed within approximately 600'.

Granting the requested variance will not be contrary to the public interest or conflict with the purpose of the ordinance, as the resulting number of driveways between both reduced frontage lots on the same side of the road will not exceed the total amount permitted by the ordinance. The spirit of the ordinance will be observed because the underlying objective is a 750' separation requirement, namely, for safe access and orderly development. Granting a consolidated access point that minimizes curb cuts promotes orderly development as the design aligns with smart planning practices while reducing potential traffic impacts and preserving the rural character of Christian Hill Rd. Therefore, granting the requested variance will allow the property to be reasonably developed while still preserving the underlying intent of the access requirements contained in the zoning ordinance.

There is no measurable public benefit to strictly enforcing the 750' separation because the proposed reduced frontage lot uses the existing driveway that has serviced an existing lot since 1993. It will not introduce any new access points that can negatively impact public safety. While the Jacobson reduced frontage lot does introduce a new driveway, the total number of driveways in the 600' between both lots will not exceed the amount permitted and the amount deemed safe within the zone, assuming one driveway per 200' of frontage. If the variance was denied, the existing driveway that would have been used for the proposed reduced frontage lot would remain in existence and will continue to be used by the same number of people who will occupy the subdivided lots as they all currently live on the same 7.65 acre parcel. The general purpose of the 750' separation is to prevent an unsafe concentration of driveways along rural roads, and, in this case, the applicant is proposing to use the same driveway that has existed for over 30 years, and the subdivision will not result in any new driveways. Impacts to traffic will be minimal as the proposed subdivision only adds one single family home resulting in two single family homes on nearly eight acres, which significantly exceeds the two acre minimum in the zone. Prior to conditional approval of TransFormations, the proposal did not conflict with this, and it did not have an issue meeting the requirement for the 750' between the lots. Now with the conditional approval, a proposed reduced frontage lot may be within 750', simply because of how the TransFormations Planned Residential Subdivision (PRD) subdivision is laid out. PRDs are subject to an entirely different set of land use controls which are intended to benefit the developer when the developer supports the goals of the Town. One of those benefits is the ability to use reduced frontage lots without following the requirements of Article 3, Section 3.9 of the ordinance, so long as the dwellings in the lots are clustered in a way that maximizes open space. In this PRD, the majority of lots are clustered much further away from the lot in question, offering more than 750' of separation. However, the development leaves two lots far outside the cluster and the nature of their location as outliers in their own development may trigger the need for a variance request, creating a hardship for the applicant and owner to reasonably develop the proposed subdivision and using a reduced frontage lot design.

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As applied to this property, strict enforcement of the requirement does not materially advance the public safety objectives. This is a reasonable use of the single family residence, and the unnecessary hardship is due to the property's configuration and the location of the conditionally approved Jacobson lot. The strict application of the 750' separation requirement would prevent the property from being reasonably subdivided and otherwise complying with the zoning district requirements. Without the requested variance, the property would be unable to utilize the reduced frontage lot provisions of the ordinance even though the proposed access is safe, functional, and consistent with the purpose of the zoning regulations. The variance is therefore necessary to enable a reasonable and residential use of the property.

Andrew Pataky asked the proposal for the driveway. Jeffrey Zall, owner, explained that the proposal is not to widen the existing driveway, but extend it to the rear of the lot where the new residence is proposed. If a wider driveway is required per code, it will be widened. Sarah Zoll noted that it will also need to be repaved.

Joe Fucci asked about a turnaround for emergency vehicles. Danielle Pray suggested that the Board include a condition that the Fire Department review the proposed driveway for compliance. Sarah Zall explained that the intention is to create one conforming lot with 200' of frontage which has the existing driveway on it, and a back lot with 19' of frontage and use of the shared driveway easement. The easement will allow for more than 50' of frontage functionally.

Chris Goodrich asked about concerns regarding wetlands for buildable area. Sarah Zall stated that she calculated the wetlands using various resources and then used GIS software to include them on the map with a 100' buffer around all of them. The buildable area is shown on the map which still meets the other zoning requirements and is outside of the buffers, as she understands them. A formal wetlands survey will be completed.

Danielle Pray asked for public comment. There were no comments at this time.

Andrew Pataky moved to close the public hearing and enter deliberations. Chris Goodrich seconded.

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

PZ20025-032626 – VARIANCE

Jeffrey and Jo Ann Zall (Owners), Sarah Zall (Applicant), 27 Christian Hill Road, PIN #: 005-145-003

Andrew Pataky moved no regional impact. Joe Fucci seconded.

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

The Board reviewed the variance criteria tests for all of the three requests:

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

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- 1319 • T. McInnis – true. The applicant has combined the driveway to allow for 600’ of
- 1320 frontage along Christian Hill Road with good sight lines.
- 1321 • C. Goodrich – true. The shape of the lot is the ultimate driver.
- 1322 • J. Fucci – true. There are other lots in this area that are within the two acre size and
- 1323 have strange configurations. This is not contrary to the public interest.
- 1324 • A. Pataky – true, due to the frontage and the way the lot is configured.
- 1325 • D. Pray – true, none of these variances will alter the essential character of the
- 1326 neighborhood nor threaten the public health, safety, or welfare. In terms of the 19.22’
- 1327 of frontage where 50’ is required, there will be a condition that a driveway easement
- 1328 will make up the difference.

1329 **5 True**

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1331 **2. The Variance will ensure that the spirit of the ordinance will be observed.**

- 1332 • C. Goodrich – true. The shape of the property is the ultimate driver. If the property
- 1333 was square, it would be in excess of ten acres and would not require the variance.
- 1334 • J. Fucci – true.
- 1335 • A. Pataky – true.
- 1336 • T. McInnis – true.
- 1337 • D. Pray – true, for the reasons previously stated. The presentation by the applicant
- 1338 provided good answers.

1339 **5 True**

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1341 **3. Substantial justice is done.**

- 1342 • J. Fucci – true. The diligence showed by the applicant was good.
- 1343 • A. Pataky – true. There was an excellent presentation by the applicant.
- 1344 • T. McInnis – true. The presentation was well written. The benefit to the applicant
- 1345 does not outweigh any harm to the general public. There will not be any harm to the
- 1346 public.
- 1347 • C. Goodrich – true.
- 1348 • D. Pray – true. This proposal is fair to the applicant in allowing them to subdivide
- 1349 into lots that will still be mostly conforming with plenty of acreage. The 50’ deficit
- 1350 will be made up using a driveway easement. The 750’ requirement is in question only
- 1351 due to a nearby development that has not yet been built but only approved. It would
- 1352 not be fair to the applicant to deny this variance based on the approval. The shared
- 1353 driveway will not create any congestion.

1354 **5 True**

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1356 **4. The values of the surrounding properties will not be diminished.**

- 1357 • A. Pataky – true. This will increase the value of the property.
- 1358 • T. McInnis – true. This will not affect the value of surrounding homes. This will be a
- 1359 better use of the property.
- 1360 • C. Goodrich – true.
- 1361 • J. Fucci – true. There will be no impact to privacy of the neighbors based on the
- 1362 location shown for the new house.

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- D. Pray – true. There was no evidence presented that values would be diminished.
- 5 True**

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship

- T. McInnis – true. Literal enforcement of the ordinance would result in unnecessary hardship for the applicant based on the shape of the property, the location of wetlands, and the existing house's layout.
- C. Goodrich – true. The shape of the property is the driver. Due diligence has been met.
- J. Fucci – true. The use of the property is reasonable.
- A. Pataky – true.
- D. Pray – true. This is a triangularly shaped property which restricts the frontage for the 50' requirement. The carved out piece, 5.65 acres, meets the requirement. The parent lot not having the required ten acres is based on the shape of the lot. There is not public interest in requiring the strict enforcement of the ten acre parent lot.

5 True

Tracy McInnis moved to grant the variance requests, with the conditions that the Fire Department reviews the plans in terms of the driveway. Andrew Pataky seconded.

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

4. PZ20039-051126 – VARIANCE

Lisa and Chris Fratini (Owners and Applicants), 2 Nathan Lord Road, PIN #: 003-047-025 – Request for relief from Article IV, Section 4.3, Paragraph D3, to install a shed within the lot setbacks. *Zoned Residential Rural*.

Andrew Pataky read and opened the case.

Lisa and Chris Fratini, owners and applicants, explained that The proposal is to install a 10'x 8' Reeds Ferry shed. The ordinance requires structures to have a 20' setback from the property line. Due to steep slopes and the diagonal nature of the property line, the back left corner of the shed will encroach on the 20' setback by about 10'. This is the only area of the property that is level enough for a shed pad. The shed complies with the 20' setback for the vast majority of the structure and only a small corner of the shed will encroach approximately 10'-12' due to the slope of the lot and the back property line. The variance preserves the intent of the ordinance and will not impact safety, drainage, access, or emergency services. It will observe the spirit of the ordinance. The shed substantially meets the setback requirements. The minor encroachment is caused by natural lot conditions. The placement maintains appropriate separation from property lines wherever feasible. To achieve substantial justice, the variance allows for reasonable use of the property despite its steep slope and diagonal boundary. The shed provides safe and appropriate storage. Neighboring properties located a considerable distance away will not be able to see the area that will contain the shed. There will be no measurable harm to the public or

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surrounding property owners. The proposal will not diminish surrounding property values. The shed will be professionally constructed and installed by Reeds Ferry and is planned to be constructed consistent with residential standards. The shed is intended to improve the property's appearance and adjacent properties will not be negatively impacted from the small encroachment involved in the project.

Joe Fucci noted that the structure should be 25' from the principal dwelling. Lisa Fratini gave the distance from the house to the shed location.

Andrew Pataky noted that the shed is only 9'3.5" tall. Lisa Fratini stated that this is a standard size. The pad will conform to Reeds Ferry standards and will be on concrete blocks.

Danielle Pray asked about other potential locations on the property for the shed. Lisa Fratini stated that the front of the property is wetlands. The leach field is up higher in the front yard, as is the septic system. The backyard houses the propane tank and generator. The property then slopes up a hill.

Danielle Pray asked about the amount of encroachment. Lisa Fratini stated that one corner will have approximately 13'-15' of encroachment.

Danielle Pray asked for public comment. There were no comments at this time.

Andrew Pataky moved to close the public hearing and enter deliberations. Tracy McInnis seconded.

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

PZ20039-051126 – VARIANCE

Lisa and Chris Fratini (Owners and Applicants), 2 Nathan Lord Road, PIN #: 003-047-025

Tracy McInnis moved no regional impact. Andrew Pataky seconded.

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

The Board reviewed the variance criteria tests:

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

- A. Pataky – true. The applicants have talked to their neighbors and no concern was expressed. This is not a large shed.
- T. McInnis – true. The shed cannot be seen from the road and is setback on the property.
- C. Goodrich – true.
- J. Fucci – true.
- D. Pray – true. The proposed variance does not change the character of the neighborhood or impact the public health, safety, and welfare.

5 True

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DRAFT

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

- T. McInnis – true. The shed is small is setback far into the property.
- C. Goodrich – true. The project is minimally invasive on the requirements, and the applicants are doing what they can to not impact the intent.
- J. Fucci – true.
- A. Pataky – true. The lot dictates where the shed can go.
- D. Pray – true, for the same reasons as the first criterion.

5 True

3. Substantial justice is done.

- C. Goodrich – true. This is a reasonable residential use on a steeply sloped parcel.
- J. Fucci – true. There will be no harm to the general public.
- A. Pataky – true.
- T. McInnis – true. The benefit to the applicant does not outweigh any harm to the general public.
- D. Pray – true. There is no public interest that outweighs the benefit to the applicant.

5 True

4. The values of the surrounding properties will not be diminished.

- A. Pataky – true.
- T. McInnis – true.
- C. Goodrich – true.
- J. Fucci – true.
- D. Pray – true. There was no evidence presented that they would be diminished.

5 True

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship

- J. Fucci – true. There are special conditions of the property that require the shed to be placed where it is proposed.
- A. Pataky – true.
- T. McInnis – true. Due to the general characteristics of the property, denial would cause a hardship as there are not many other locations for a shed.
- C. Goodrich – true.
- D. Pray – true. The special conditions of the property are that it is heavily wooded, and due to the location of the leach field and septic system. The shed is a reasonable use.

5 True

Tracy McInnis moved to grant the variance request, with the condition that the encroachment be 10' and 5' on the back line. Andrew Pataky seconded.

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

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5. PZ20040-052026 – VARIANCE

Steve and Jean Albano (Owners and Applicants), 69/71 Chestnut Hill Road, PIN #:011-011-000/011-011-003 – Request for relief from Article III, Section 3.11, Paragraph B, to install a pavilion 75 feet from the highway right-of-way where 100 feet is required. *Zoned Northern Rural.*

Andrew Pataky read and opened the case.

Jean Albano, owner/applicant, and Earl Sandford, Sandford Surveying & Engineering, addressed the Board. Earl Sandford stated that there are existing sports courts, old foundation walls, a large barn, a colonial house, and two outbuildings on the site. There is an existing patio on the site, and the applicant would like to install a pre-constructed pavilion on that area. This will be anchored on six posts and be open air. The 125 acres is currently being used for horses and other animals, leading to it being placed in the proposed area.

Jean Albano stated that the pavilion has changed to a reduced size of 16'x24' from the original submittal. It may also be relocated behind the courts. If it is relocated, no variance would be needed.

Danielle Pray suggested tabling this item to next month in order to obtain exact dimensions of the proposed pavilion and the distance needed for the variance.

Andrew Pataky moved to continue this hearing to July 21, 2026, at 7pm, at Town Hall. Tracy McInnis seconded.

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

6. PZ20041-052026 – VARIANCE

Turner Family Revocable Trust of 2016 (Owner), Renee and John Turner (Applicants), 11 Cricket Hill Drive, PIN #: 004-037-000 – Request for relief from Article III, Section 3.9, Paragraph B, to subdivide Lot 4-37 (11 Cricket Hill) to create a “Back Lot” that will be 4.65 acres rather than the standard 5.0 acres. *Zoned Residential Rural.*

Andrew Pataky moved to continue this hearing to July 21, 2026, at 7pm, at Town Hall. Chris Goodrich seconded.

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

OTHER BUSINESS:

1. Minutes: December 16, 2025; May 19, 2026

This was not addressed at this time.

2. Any other business that may come before the Board

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1539

1540 None at this time.

1541

1542 **Andrew Pataky moved to adjourn the meeting at 12:50am. Joe Fucci seconded.**

1543 **Voting: 5-0-0; motion carried unanimously.**

1544

1545 Respectfully submitted,

1546 Kristan Patenaude