



Town of Merrimack, New Hampshire

Community Development Department

603 424-3531

6 Baboosic Lake Road

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Town Hall - Lower level - East Wing

www.merrimacknh.gov

Planning - Zoning - Economic Development - Conservation

Memorandum

Date: July 22, 2015

To: Fran L'Heureux, Chair, & Members, Zoning Board of Adjustment

From: Timothy J. Thompson, AICP, Community Development Director

Subject: **Rob Lavoie (petitioner) and Gregg Kennedy (owner)** – Appeal of an Administrative Decision under Section 3.02 of the Zoning Ordinance, seeking to overturn the Community Development Department Staff determination that soils-based lot sizing does not apply to a parcel located within the R-1 (Residential) District by Zoning Map. The parcel is located at 8 Fuller Mill Road in the R-1 (Residential) District. Tax Map 4B, Lot 153. Case # 2015-24.

The following information is provided to aid in your consideration of the above referenced case. Additional background and application materials are included in your packet.

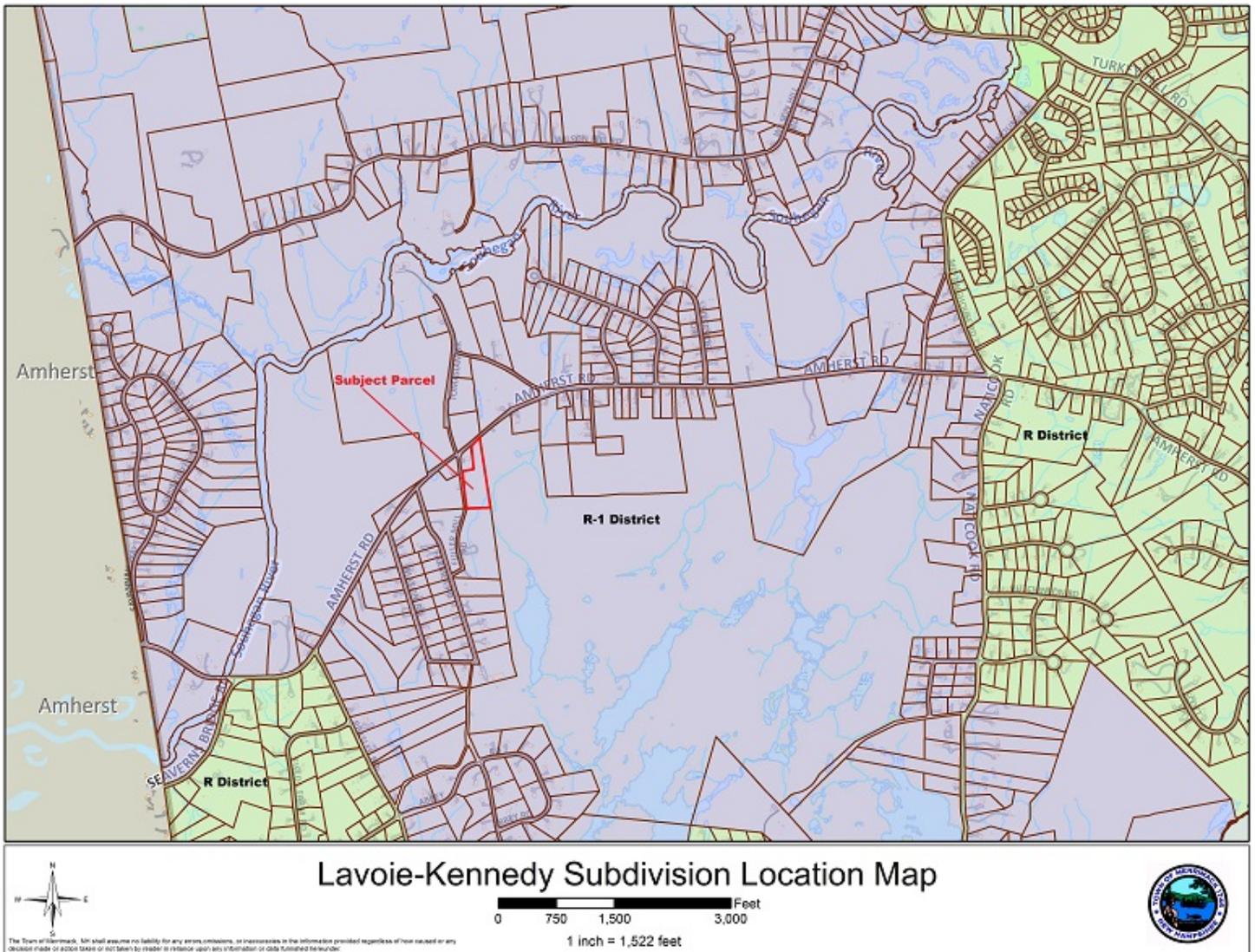
Background:

On May 26, 2015, the petitioner filed an application to subdivide the subject parcel into 2 lots with the Planning Board. Community Development Department staff reviewed the application, and prepared a memo for the June 16 Planning Board meeting, indicating that the proposed new lot did not comply with the requirements of the R-1 District (the parcel, Tax Map 4B, Lot 153, is in the R-1 District by Map, see map, next page).

In correspondence between staff and the petitioner's design firm, Meridian Land Services, discussion on the requirements for the lot were discussed. In particular, on June 22, Meridian stated that the plan had been revised to meet the standards of the R-3 District, and staff responded that because the lot is in the R-1 District by map, the soils based lot sizing did not apply to the parcel. On June 23, Meridian again stated the rationale they used to utilize the R-3 District requirements for the lot (including that the R-3 standards were used in 1997 for another subdivision of the lot, staff will address this in the next section of this memo). Staff again responded that the soils based lot sizing does not apply to lots zoned R-1 by map. On June 30, Meridian requested further continuance of the application to August, and that the petitioner was considering his options.

The Planning Board has continued the application twice at the applicant's request (once on June 16 and again on July 7. The application is next scheduled for the Planning Board's August 4 meeting).

On July 14, 2015, the petitioner, through his attorney, filed the appeal of administrative decision, asking the Zoning Board to overturn the staff's decision that the lot is subject to the R-1 District requirements.



Staff Determination of Lot Size Requirements:

The determination that the lot is subject to the R-1 District requirements is quite simple. The Town of Merrimack Zoning Map indicates 2 types of Residential Zoning Districts. The most prevalent is the “R” District, under which the requirements of Section 3.02 has lot size, frontage, and lot depth requirements based on the on-site soil characteristics of the property. In the “R” District, a lot can be classified as needing to meet requirements for R-1, R-2, R-3, or R-4 requirements, depending on the soils and/or the presence of municipal water and sewer. The second residential district indicated on the Zoning Map is R-1, which (as will be explained below) is subject to the R-1 requirements of Section 3.02 regardless of soils or the presence of municipal water and sewer.

The lot in question that is subject to this appeal is Tax Map 4B, Lot 153, located at 8 Fuller Mill Road. This lot is clearly located within the heart of the R-1 District as indicated on the Town’s

Zoning Map. As such, staff determined that the R-1 standards of Section 3.02 apply to the subdivision of the parcel.

The reason staff has interpreted the Ordinance and requirements in this manner are simple. The “legislative intent” of the Town was very clearly stated in the development of the amendment to the Zoning Map and Zoning Ordinance that took place in late 1999 and early 2000. Attached to this memo you will find the minutes of the Planning Board meetings/hearings when the ordinance/map amendments were discussed and voted upon, as well as a copy of the 2000 Town Warrant Article when the Town Meeting (this Zoning Amendment was prior to the current Charter form of Government, and Zoning changes were still voted upon by the residents at Town Meeting) voted to approve the Ordinance and Map amendments. As you can see, the Warrant Article clearly states that the purpose of the amendment was to require lots in the R-1 District by map to comply with the R-1 requirements of the ordinance (100,000 square foot minimum lot size, 250’ of frontage, etc.).

Additionally, after conducting some limited research, Staff has included copies of a handful of staff memos (also attached to this memo) to both the Planning Board and Zoning Board where it is clearly shown that the R-1 by map standards have been consistently applied to a variety of projects. Interestingly, on several of these previous staff memos, the petitioner’s attorney and design firm were copied and clearly knew what the requirements were for these projects.

For all of the reasons stated above, Community Development Department Staff determined that it was both appropriate and consistent with decisions made previously to require the lot to comply with the requirements of the R-1 District.

The petitioner’s design firm points out in correspondence that this lot was previously subdivided in 1997 and was permitted under the R-3 District standards (utilizing soils based lot size requirements). This is correct (the subdivision complied with the ordinance requirements in place in 1997). However, as was explained above, the Town amended the Zoning Map and Zoning Ordinance in 2000 to establish the R-1 District by map, which now includes the subject parcel, such that it no longer is permitted to use soils based lot sizing.

Standard of Review:

Pursuant to RSA 676:5, appeals may be taken by any person aggrieved by any decision of an administrative officer involving construction, interpretation or application of the terms of the ordinance.

Under RSA 674:33 (I)(a), the Zoning Board of Adjustment has the power to, among other things, hear and decide appeals if it is alleged that there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of any zoning ordinance adopted pursuant to RSA 674:16.

- Should the Board vote to grant the Administrative Appeal (and overturn the Community Development Staff’s determination), the petitioner would be able to proceed with the subdivision as proposed, utilizing soil-based lot requirements. ***If this is the decision made, the Zoning Board would essentially render the “R-1 by Map” requirements moot for ALL LOTS located in the R-1 District on the Zoning Map, and reverse 15 years of implementation of the R-1 lot requirements for those lots located in the R-1 District on the Zoning Map (as was adopted by the 2000 Town Meeting).***

- Should the Board vote to deny the Administrative Appeal (and uphold the Community Development Staff's determination), the petitioner would be subject to the R-1 lot requirements, and would need to either revise the proposed subdivision to comply with those requirements, or seek a variance to allow the subdivision to proceed as currently proposed.

cc: Correspondence & Zoning Board File

ec: Robert Lavoie, Applicant
Gregg R. Kennedy, Owner
Attorney Greg Michael, Bernstein-Shur
Kenneth C. Clinton, Land Surveyor
Carol Miner and Fred Kelley, Building Department
Planning Board

Attachments

November and December 1999 Planning Board Meeting Minutes Excerpts
2000 Town Warrant Excerpt
2000 Town Meeting Voting Results Excerpt
Various Staff Memos dealing with lots in the R-1 District by Map

Discussion/Workshop of possible zoning amendments (cont.):

of November 16, 1999 when these amendments would be discussed again.

Town Center Overlay – Jay Minkarah noted that the aim in this amendment is to create a mixed use district in the town center area. The amendment would also encourage the adaptive use of historic buildings. The amendment was taken directly from the Town Center Plan as created by the Planning Board in 1999. This amendment allows residential development anywhere in the Town Center Overlay district. Several uses would be permitted by Special Exception, rather than by variance. Certain uses would be permitted only by Special Exception even if the use were permitted in the underlying district. This amendment is an attempt to set up minimum lot size and frontage requirements. Mr. Minkarah noted that few buildings within the Town Center Overlay district could meet the proposed regulations for lot size, frontage, and setbacks.

The Board suggested that a separate amendment to enlarge the PRD to Baboosic Brook and the Souhegan River be drafted. The expansion of this PRD might create the economic incentive for a developer to build a road between the Daniel Webster Highway and the Merrimack River. Mr. Minkarah noted that something would be drafted.

Lot & Yard Regulations – Jay Minkarah noted this amendment is an attempt to zone a section of town R-1 even though there is no municipal sewer in this area. The Board discussed some changes to the zone line to be proposed. Mr. Minkarah noted the tax maps would be brought to the next meeting at which this issue will be discussed.

Wetlands Ordinance Amendments – Jay Minkarah noted a letter from the Merrimack Conservation Commission in which the commission requests changes to the zoning ordinance. Mr. Minkarah stated that the Conservation Commission feels they would like the Merrimack Zoning Ordinance to be consistent with the state and federal laws regarding wetlands. The primary concern of the Conservation Commission is new development. Mr. Minkarah noted that the difficulty is how to craft something that affects new development but does not affect current homeowners. Mr. Minkarah noted that staff would try to draft up something that is workable. He suggested that the concern of the Conservation Commission as expressed in item #5 (Provide for the involvement of a certified soil/wetland scientist who would identify wetlands possessing a functional value that would merit the application of a buffer) might be best met with a change in the site plan regulations rather than a zoning ordinance amendment.

Proposed Zoning Amendments (cont.):

A member of the public questioned why the town couldn't simply not allow this type of business in town. Mr. Minkarah noted that since this type of business is considered a form of speech the town cannot ban it due to its content. Mr. D'Andrea noted there are currently no protections in the ordinance from this type of business taking place in any part of town. The Board expressed concern regarding any challenge to the proposed ordinance in a court. Mr. Dardzinski noted that the court could strike down the entire ordinance, if it is not carefully worded.

A motion was made by Arthur Gagnon and seconded by Walter Talbert to accept this amendment for Public Hearing with the change of the buffer to 1,000 feet and the review by Town Counsel of the proposed change to add an item regarding a buffer from a main thoroughfare. The motion passed 5-0-0.

Section 2.02.11.D, Prohibit gasoline and automotive in Wellhead Protection area

Jay Minkarah noted that this proposed amendment most affects the large commercial strip in the north end of town. There was concern expressed by the Board that the wording of the proposal does not cover all of the businesses intended.

A motion was made by Arthur Gagnon and seconded by Walter Talbert to accept this amendment for Public Hearing with the addition of the words "auto body repair" in item "m" and the addition of the words "lease, rental" and "and other motorized vehicles" to item "n". The motion passed 5-0-0.

Section 3.08, Exclusion of Public Utility easements for cluster density calculations

A motion was made by Larry Dardzinski and seconded by Arthur Gagnon to accept this amendment for Public Hearing. The motion passed 5-0-0.

Section 3, Creation of R-1 Residential Zone

Jay Minkarah noted a line could be added in Section 3.04 regarding this new district. Nelson Disco noted this is the intent of the Planning Board.

A motion was made by Arthur Gagnon and seconded by Larry Dardzinski to accept this amendment for Public Hearing using the map entitled "Option B". The motion passed 5-0-0.

Proposed Zoning Amendments (cont.):

Members revisited this section after discussion of the PRD Overlay Zone. A motion was made to amend note #4 of Section 3.02 to exclude the area zoned R-1 on the zoning map. The motion passed 5-0-0.

Section 2, Town Center Overlay District Creation

Jay Minkarah noted that clarification needs to be made to the language in paragraph d regarding Special Exceptions. He noted the intent is to allow by Special Exception those uses that would be permitted by right in the underlying zone.

A motion was made by Larry Dardzinski and seconded by Ken Sheppard to accept this amendment for Public Hearing with the amendments to be written by Jay Minkarah regarding clarification of the language. The motion passed 5-0-0.

Section 3.02, Density Requirements for multi-family dwellings

Nelson Disco noted this change makes the ordinance consistent.

A motion was made by Arthur Gagnon and seconded by Larry Dardzinski to accept this amendment for Public Hearing. The motion passed 5-0-0.

Amendment of the official Zoning Map to increase the PRD overlay zone

This will be a change to the map only.

A motion was made by Arthur Gagnon and seconded by Larry Dardzinski to accept this amendment for Public Hearing. The motion passed 5-0-0.

Revisiting Section 3

Board Members revisited Section 3, R-1 zoning amendment. Mr. Minkarah noted that Note #4 of Section 3.02 conflicts with the proposed R-1 zoning district and suggested that it be amended to exclude the R-1 as designated on the zoning map.

6. Possible vote on zoning items to send to first public hearing on December 21, 1999.

This was done during item #5.

MERRIMACK PLANNING BOARD

Minutes

Tuesday, December 21, 1999

APPROVED

Present: Nelson Disco, Arthur Gagnon, Larry Dardzinski, Robert Boisvert, Walter Talbert, Ken Sheppard, Community Development Director Jay Minkarah, Planning and Zoning Administrator William D'Andrea, Planning Assistant Louise Donington, and Recording Clerk Rita Carlton.

1. **Call to order.**

Chairman Disco called the meeting to order at 7:32 PM.

2. **First Public Hearing on Proposed Zoning Ordinance Amendments (See Attached Legal Notice).**

Nelson Disco noted there are 12 proposed amendments to the town's zoning ordinance. The draft of these proposed amendments is being reviewed at this first public hearing. The Planning Board will take into account all public comments. These proposed amendments may be revised. On January 18, 2000 there will be a second public hearing on these proposed amendments. At that hearing a vote will be taken to send each item to the Town Meeting. There will be no further language changes after the second public hearing. The voting portion of the Town Meeting will be held on March 14, 2000.

ITEM 1 – Amend Section 3 – Lot and Yard Regulations, to protect the low-density rural/residential character of certain portions of the western and northwestern Residential District by including these areas exclusively in the R-1 Residential District.

Community Development Director Jay Minkarah noted that the areas in question are the most rural portions of Merrimack. The area in question is west of Wire Road and Bedford Road to the Bedford town line and Naticook Road to the west to Amherst and north of Naticook Lake. This area consists typically of severe soils. There are some severe slopes in this area.

Nelson Disco noted that soil types currently control development of this area. The area could be developed with sewer or slight soils on one acre lots. This change would require that the lots be 100,000 square feet regardless of the presence of sewer or the soil types.

Merrimack 2000 Town Warrant

The State of New Hampshire

To the inhabitants of the Town of Merrimack in the County of Hillsborough in said state, qualified to vote in town affairs:

You are hereby notified that the first session of the annual meeting of the Town of Merrimack will be held at the Masticola Middle School All-Purpose Room on Baboosic Lake Road in said Merrimack on Wednesday, February 9, 2000, at 7:00 o'clock in the evening for explanation, discussion, and debate of each warrant article. Warrant Articles may be amended at this session per RSA 40:13, IV., except for Warrant Articles 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 whose wording is prescribed by law and cannot be amended per RSA 40:13, (IV)(a).

You are hereby notified that the second session of the annual meeting of the Town of Merrimack will be held at the Masticola Middle School All-Purpose Room on Baboosic Lake Road in said Merrimack on Tuesday, March 14, 2000, at 7:00 o'clock in the forenoon for the choice of town officers elected by official ballot, to vote on questions required by law to be inserted on the official ballot, and to vote on all warrant articles from the first session on official ballot per RSA 40:13, VII. The polls for the election of town officers and other action required to be inserted on said ballot will open on said date at 7:00 o'clock in the forenoon and will not close earlier than 8:00 o'clock in the evening.

Article 1. To choose all necessary town officers for the ensuing year.

Article 2. Are you in favor of the adoption of Amendment No. 1 as proposed by the Planning Board for the Town Zoning Ordinance as follows:

Amend Section 3.02, Table of Lot & Yard Regulations, and Section 3.08.2, Cluster Development, and the Zoning Map to protect the low density rural/residential character of certain portions of the western and northwestern Residential District by including these areas in the R-1 Residential District that requires minimum lot sizes of 100,000 square feet and a minimum frontage requirement of 250 feet, and excluding two family, multi-family and cluster development uses. The two areas affected by this zoning change generally are: (1) bounded on the west by the Town of Amherst; on the north by Beebe Lane, Parker Drive, Linden Way and Marty Drive; on the east by McQuestion, Meetinghouse and Naticook Roads, and on the south by Peaslee Road, and, (2) bounded on the north by the Town of Bedford; on the east by Bedford and Wire Roads; on the south by Bean Road, and on the west by Baboosic Lake Road?

_____ Yes _____ No

Library Trustee (3 Years) – 2 positions

Robert N. "Bob" Kelley	3489 votes
Duncan Morrill	3121 votes

Robert N. "Bob" Kelley and Duncan Morrill were elected to the position of Library Trustee and were so declared.

Trustee of Trust Funds (3 Years) – 1 position

John E. Lyons	3871 votes
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John E. Lyons was elected to the position of Trustee of Trust Funds and was so declared.

Treasurer (3 Years) – 1 position

Jean G. Weston	3673 votes
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Jean G. Weston was elected to the position of Treasurer and was so declared.

Supervisor of the Checklist (6 Years) – 1 position

Margaret A. Petrovic	3831 votes
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Margaret A. Petrovic was elected to the position of Supervisor of the Checklist and was so declared.

Article 2. Are you in favor of the adoption of Amendment No. 1 as proposed by the Planning Board for the Town Zoning Ordinance as follows:

Amend Section 3.02, Table of Lot & Yard Regulations, and Section 3.08.2, Cluster Development, and the Zoning Map to protect the low density rural/residential character of certain portions of the western and northwestern Residential District by requiring minimum lot sizes of 100,000 square feet, and excluding two family, multi-family and cluster development uses. The two areas affected by this zoning change are: (1) bounded on the west by the Town of Amherst, on the north by Beebe Road, on the east by Turkey Hill and Meetinghouse Road and on the south of Peaslee Road, and, (2) bounded on the north by the Town of Bedford, on the east by Bedford Road, on the south by Joppa Road, and on the west by Baboosic Lake Road?

3720 Yes

883 No

MEMORANDUM

Date: August 16, 2011

To: Tony Pellegrino, Acting Chairman, & Members, Zoning Board of Adjustment

From: Nancy Larson, Planning & Zoning Administrator

Subject: **Petition of Old Blood Properties, LLC** – for a Variance under Section 3.08(2) of the Zoning Ordinance to amend a previously granted Variance (Case # 2009-16) which permitted a Cluster Residential Development in the **R-1, Residential District, as shown on the Zoning Map**. Developer currently seeks the addition of 6 more cluster lots than would otherwise be permitted in a conventional subdivision **applying minimum R-1 zoning requirements**. Subject parcels lie within the **R-1, Residential District**, located at Old Blood Road, Merrimack, NH. Tax Map 5B, Lots 2, 3, 3-1, 5, 6, 7, 8, 9 and 231. Case # 2011-26.

The following information is provided to aid in your consideration of the above referenced case. Additional background, and application materials, is included in your packet.

Background

Old Blood Road Properties, LLC seeks a Variance under Section 3.08(2) of the Zoning Ordinance to amend a previously granted Variance (Case # 2009-16) which permitted a Cluster Residential Development in the **R-1, Residential District, as shown on the Zoning Map**. The developer currently seeks the addition of 6 more cluster lots than would otherwise be permitted in a conventional subdivision **applying minimum R-1 zoning requirements**. The subject property consists of nine parcels (approximately 196 acres) proposed to be consolidated and re-subdivided into 71 single-family residential cluster lots as well as open space lots, along Old Blood Road.

The petitioner proposes to provide all cluster lots with sewer and water, a zoning requirement for all cluster subdivisions.

At their meeting on August 27, 2009, the Zoning Board granted the petitioner a Use Variance (Case #2009-16) subject to the following condition:

- That the maximum number of lots does not exceed that number that would **be allowed based upon the R-1 District conventional subdivision requirements (100,000 square foot lot size and 250 feet of frontage)**.

The petitioner then appeared before the Planning Board on June 29, 2010 for a pre-submission hearing to discuss a 64-lot Yield Plan based upon a conventional grid layout. It should be noted that the Planning Board did not settle on a total number of lots for that Yield Plan.

Staff has been supportive of a cluster design provided the calculated density does not exceed the number of lots allowed in a conventional subdivision by right in the R-1 District conventional subdivision requirements (100,000 sq. ft. lot size/250 ft. of frontage).

While Staff has not fully reviewed the current layout as it relates to the overall density proposed, those discussions should be reserved for the Planning Board. The Zoning Board's focus should be on the five variance criteria and how each criterion may or may not support the petitioner's request to exceed the total number of conventional building lots that would otherwise be permitted in the R-1 Residential Zone.

Standard of Review

It is the burden of the petitioner to demonstrate that the five requirements for the granting of a variance from Section 3.08(2) of the Zoning Ordinance have been met to permit 6 more cluster lots than would otherwise be permitted in a conventional subdivision applying minimum R-1 zoning requirements.

Because the petitioner's original use variance was granted by the Board of Adjustment on August 27, 2009 and ZBA approvals are valid for two years unless certain actions sufficient to vest the approval are taken, the currently proposed variance, if granted would effectively replace/renew the 2009 variance approval.

Should the Board vote to grant the use variance, Staff recommends that it be granted with the following condition:

- That the maximum number of lots does not exceed by six lots that number that would be allowed based upon the R-1 District conventional subdivision requirements (100,000 sq. ft. lot size/250 ft. of frontage).

Cc: File

Ec: Attorney Greg Michael, Bernstein-Shur
Erik Swanson, Cuoco & Cormier
Carol Miner, Secretary, Building Department
Fred Kelley, Building Official, Building Department



Town of Merrimack, New Hampshire

Community Development Department

603 424-3531

6 Baboosic Lake Road

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Planning - Zoning - Economic Development - Conservation

MEMORANDUM

Date: September 8, 2011

To: Robert Best, Chairman, & Members, Planning Board

From: Jeffrey Morrissette, Assistant Planner

Subject: Roger W. Lawrence Revocable Trust – Review for acceptance, and possible Final Approval of a minor subdivision application for a proposed 2-lot subdivision; such lots are identified as proposed parcel 7B/9-1 and proposed parcel 7B/9-4 located at 67 Lawrence Road, Merrimack, NH. The property lies within the **R-1, Residential**, and the Aquifer Conservation Zoning Districts. Tax Map 7B, Lot 9-1.

The applicant requests Acceptance and consideration for possible Final Approval of an application proposing a Subdivision of one single-family residential lot into a total of two single-family residential lots with frontage along Lawrence Road.

Subdivision:

The subject property (#67 Lawrence Road) is identified as Assessor Map 7B, Lot 009-1 and contains approximately 18.376 acres in area and in excess of 646 feet of frontage along Lawrence Road. The lot contains an existing single-family residential dwelling that is serviced by a private well and an onsite septic system. The applicant proposes to subdivide the existing residential lot into a total of two residential lots. The existing dwelling and appurtenances will remain within a revised Map 7B, Lot 009-1. This project qualifies as a Minor Subdivision (Please see Plan Note #9 on Sheet 1 of 2). As portions of the project lie within the Aquifer Conservation District, Conservation Commission review is required.

For newly created lots in the R-1 Residential Zone, the Zoning Ordinance currently requires 250 feet of frontage and 100,000 SF minimum area. (Lot 009-1 would contain 367.39' of frontage and 431,621 SF area. Lot 009-4 would contain 278.76' of frontage and 368,841 SF area.) Both proposed lots comply with the minimum dimensional criteria as required by the Ordinance.

With respect to proposed Lot 009-1, Staff suggests that the applicant clarify the intent behind the 25' wide pedestrian easement. Is it the intention that passersby will travel solely by foot? Is there any kind of trail proposed? Does the applicant intend to remove any portion of the existing stone wall along Lawrence Road so as to define the entrance to the easement area? Is there any related signage proposed? Is there any anticipated demand for parking? Are there any expectations that vehicles (emergency or otherwise) will be required to travel through this easement? Will this easement be the only means of access to the lot (Map 40, Lot 6) in Bedford? As this lot (Map 7B, Lot 009-1) is essentially already "developed", staff offers no other comments regarding this portion of the project.

Regarding proposed Lot 009-4, staff observes that the applicant is situating the proposed driveway so as to minimize potential impacts to wetland resource areas. Staff suggests that the applicant provide additional information regarding the proposed driveway:

- Proposed grading, if any, associated with the proposed driveway;
- The width of the proposed driveway scales to approximately ten feet. Due to the potential length of the proposed drive, the Fire Department may require minimum driveway widths of 16 feet with appropriate turn-arounds to allow for safe access for emergency vehicles;
- Material of proposed driveway construction, e.g. gravel, pavement;
- The plan should indicate the setbacks from the wetlands to the nearest driveway construction and grading activities.

Due to the proximity of the proposed driveway with respect to the wetlands, and where the proposed Limit of Work falls within 25 feet of wetlands, Staff strongly recommends that the Limit of Work and centerline of the proposed driveway be staked in the field by a Licensed Land Surveyor prior to the issuance of any Building Permit for proposed Lot 009-4. Staff also recommends that orange construction fencing and erosion control measures be installed at said Limit of Work prior to the issuance of any Building Permits for proposed Lot 009-4.

Staff maintains that the applicant should also provide a typical detail and cross section for the proposed common drive, as well as details for any proposed erosion control measures as may be required by the Board.

The Applicant should specify whether or not they intend to seek a waiver from Section 4.06.1 (r) of the Subdivision Regulations:

All residential subdivision plans shall provide for a sidewalk

The planning staff recommends that the Planning Board vote to **accept** the application, as it is substantially complete and contains sufficient information to invoke the Board's jurisdiction and to allow the Board to make an informed decision.

The planning staff recommends that the Planning Board then vote with respect to any requested **waivers**.

The planning staff recommends that the Board grant final approval to the application with the following conditions to be fulfilled within 6 months and prior to plan signing, unless otherwise specified:

1. Final plans and mylars to be signed by all property owners. The Licensed Land Surveyor and Professional Engineer (as appropriate) shall also sign and seal final plans and mylars;
2. The applicant to submit draft a draft copy of the access easement. The final executed easement deed to be submitted for recording at the Hillsborough County Registry of Deeds;

3. The applicant is responsible for all fees (including \$25.00 LCHIP fee, check made payable to the Hillsborough County Treasurer) associated with recording the plan and access easement at the Hillsborough County Registry of Deeds;
4. Any waivers granted shall be listed and described on the recordable sheet of the Final Plan set;
5. Satisfactory review by the Conservation Commission;
6. The applicant shall satisfactorily address any forthcoming comments from the Merrimack Fire Department;
7. The applicant shall satisfactorily address any forthcoming comments from the Department of Public Works;
8. Where the proposed Limit of Work falls within 25 feet of wetlands, said Limit of Work and centerline of proposed driveway be staked in the field by a Licensed Land Surveyor prior to the issuance of Building Permits for proposed Lot 009-4. Orange construction fencing and erosion control measures shall be installed at the Limit of Work prior to the issuance of any Building Permits for proposed Lots 009-4;
9. Address planning staff technical comments. (Attached)

Planning Staff Technical Comments

1. Written confirmation to be provided by a Licensed Land Surveyor to the Community Development Department certifying that monumentation has been set in accordance with approved plan;
2. Staff recommends that the 40' Building Setback to wetlands and associated 25' No-Disturb Buffer be added to Note 3 on Sheet 1;
3. Details for any proposed erosion controls to be added to the plan set;
4. The Applicant to confirm that plan text (size and overlaps) complies with registry requirements.

cc: Correspondence
Planning Board File
Roger W. Lawrence Revocable Trust, Property Owner

ec: Carol Miner, Fred Kelley, Building Department
Captain Manuele, Merrimack Fire Department
Kyle Fox, Deputy Director of Public Works
Dick Plantier, Applicant
Earl Sandford, LLS
Andrew Powell, Merrimack Conservation Commission
Rick Sawyer, Planning Director, Town of Bedford

MEMORANDUM

Date: January 13, 2012
To: Robert Best, Chairman, & Members, Planning Board
From: Nancy Larson, Planning and Zoning Administrator
Subject: Old Blood Road Properties, LLC – Phase II – Old Blood Road
Tax Map 5B, Lots 2, 3, 3-1, 5, 6, 7, 8, 9 & 231

The applicant appeared before the Planning Board on August 18, 2009 and again on June 29, 2010 with a Pre-Submission Hearing to discuss a conceptual Yield Plan for the eventual development of a cluster Residential Development located in the R-1 Residential District. The applicant had also submitted a conceptual Conventional Subdivision Plan (Yield Plan) in January 2010. Staff reviewed the plan and offered comments to the design engineer with respect to proposed lot zoning deficiencies and possible conflicts with the subdivision regulations. The revised Conventional Subdivision Plan (Yield Plan) is what appeared before the Board at their June 29, 2010 meeting.

The subject property consists of nine parcels (approximately 196 acres) proposed to be consolidated and re-subdivided into 66 single-family residential cluster lots as well as open space lots, along Old Blood Road. All cluster lots would be provided with sewer and water, a zoning requirement for cluster subdivisions.

The applicant appeared before the Zoning Board on August 27, 2009 and was granted approval for a Use Variance (Case #2009-16) subject to the following condition as outlined in the decision letter dated August 28, 2009:

That the maximum number of lots does not exceed that number that would be allowed based upon the R-1 District conventional subdivision requirements (100,000 sq. ft. contiguous upland area and 250 ft. of frontage).

At their hearing of August 25, 2011, the Zoning Board of Adjustment granted a Variance under Section 3.08(2) of the Zoning Ordinance to amend the previously granted Variance (Case # 2009-16) which permitted a Cluster Residential Development in the R-1, Residential District, as shown on the Zoning Map. The variance allows the addition of 6 more cluster lots than would otherwise be permitted in a conventional subdivision applying minimum R-1 zoning requirements.

The applicant is now before the Planning Board with a revised Yield Plan. The Yield Plan is based upon design requirements for a conventional subdivision which, in the R-1 zoning district, requires the following: 100,000 sq. ft. contiguous upland area, 250 ft. of frontage, and 300 ft. lot depth. When a conventional layout plan is used to determine the number of lots, units or development density for an alternative (in this case cluster) layout, the conventional plan is oftentimes called a Yield Plan because it sets or determines the number of lots or units that may be developed.

The Planning Board has the authority to review the proposed conventional subdivision layout (Yield Plan) with respect to suitability of the existing access way, adequacy of the proposed ways, safety, drainage and other matters ordinarily examined by the Board.

Issues discussed by the Board during their June 29, 2010 review of the previously submitted Yield Plan included the following:

- ◆ Access: Whether to complete Old Blood Road to Madeline Bennett Way or to make that portion of Old Blood Road (currently a Class VI Highway) north of the proposed subdivision, a gated emergency access. Please refer to your packets for the conceptual traffic study conducted by the applicant's engineer (TEPP, LLC) and CLD's review of the TEPP traffic study. CLD notes in their January 6, 2012 review letter that "...*having a single access point for these many housing units is not in the best long-term interest of the Town for accessibility, connectivity and circulation considerations.*" (please see p. 1, 3rd paragraph of letter.) Please see full text for additional comments regarding access.

The Fire Department, Public Works Department, and the Community Development Department reiterated the requirement for connecting to Madeline Bennett Way in a meeting with the applicant's engineer on January 13, 2012.

The Board acknowledged at the June 29, 2010 meeting that School District input would be necessary to connect to Madeline Bennett Way since the roadway is currently controlled by the School District.

- ◆ Old Blood Road: There was disagreement amongst Board members that wanted Old Blood Road to be brought up to town standards, from Wilson Hill Road to Madeline Bennett Way. Others voiced concern with the additional traffic that would result on Madeline Bennett Way if Old Blood were connected to that street.

The Public Works Department and the Fire Department strongly recommended upgrades to Old Blood Road in a meeting with the applicant's engineer on January 13, 2012.

- ◆ Lot Feasibility: In the staff's opinion, many of the concerns raised with the previous Yield Plan with regards to buildable areas, etc. have been adequately addressed.

At this time, the applicant is asking the Board to review the Conventional Subdivision Plan and approve a Yield Plan value of 66 lots. Staff offers the following comments with respect to the current Yield Plan dated 11/29/2011:

1. Staff recommends that the applicant's engineer provide the Board with conceptual sketches demonstrating buildability for the following lots:
 - ◆ Lot 16 – for configuration and size of building envelope and potential impact to the 25 ft. no-disturb wetland buffer due to lot grading (a

Special Exception from the ZBA would be required to grade within the buffer);

- ◆ Lot 22 – potential impact to 25 ft. no-disturb wetland buffer due to lot grading;
 - ◆ Lot 23 – for configuration and size of building envelope;
 - ◆ Lot 24 – it appears that either a dredge and fill permit to access the building envelope to the rear of the lot or an access easement to construct the driveway on a portion of abutting Lot 23 would be necessary;
 - ◆ Lot 25 – previous discussions with Russ Maille of PSNH confirmed that a septic system is an unacceptable encroachment within their easement. The proposed 4K leachfield area would need to be shifted out of the PSNH easement;
 - ◆ Lot 36 – for configuration and size of building envelope;
 - ◆ Lot 37 – for configuration of building envelope;
 - ◆ Lot 48 – for configuration and size of building envelope.
2. The setbacks for corner lots should be adjusted to comply with zoning requirements (it appears that the revised setbacks will not impact the buildability of these lots);
 3. Setbacks for the proposed 4K leachfield areas for the following lots need to be shifted to comply with Merrimack's 20 ft. setback requirement from all lot lines (Lots 15, 19, 23, 31, 32, 40, 41, and 45). These revisions should not impact the buildability of these lots;
 4. Staff recommends that the Board evaluate the issue of access, specifically connecting to Madeline Bennett Way with a roadway built to town standards;
 5. The current proposal provides no drainage/stormwater management considerations for the conventional subdivision layout. Staff contends that this approach is unreasonable, especially given the fact that many abutters to this project (and several are located down-gradient from the project) already experience existing drainage issues. At a minimum, staff recommends that the design engineer should designate reasonable drainage/stormwater management areas that are rough-sized based upon the anticipated impervious contributory area, seasonal high ground water table determinations, and the character of the receiving soils. Due to the large project size and significant range of topography, it is possible that multiple areas may be required to provide the necessary drainage/stormwater management mitigation areas. Particular scrutiny should be applied to the lower areas/proposed lots nearest Old Blood Road

as these may have the greatest potential to either positively or negatively affect abutters.

cc: Erik Swanson, Viking Engineering Services, LLC
Old Blood Properties, LLC
Attorney Greg Michael, Wiggin & Nourie

MEMORANDUM

Date: March 15, 2013
To: Robert Best, Chairman, & Members, Planning Board
From: Nancy Larson, Planning & Zoning Administrator
Subject: **Northview Homes and Development, Inc. (applicant) & Carl A. Quimby Revocable Trust (owner)** – Pre-Submission Hearing to discuss a proposal to consolidate three lots and subdivide the subsequent lot into thirteen residential lots, located at 164 Amherst Road, 8 Pollard Road, and an unnumbered parcel in the **R-1 (Residential) by zone**, and Aquifer Conservation District. Tax Map 4B, Lot 146, Tax Map 4B, Lot 146-1 and Tax Map 4B, Lot 152-1.

The applicant requests a Pre-Submission Hearing to discuss a proposal to consolidate three lots and subdivide the subsequent lot into thirteen residential lots, located at 164 Amherst Road, 8 Pollard Road, and an unnumbered parcel. The parcels are bounded by Amherst Road to the north, residential properties to the east and west and Horse Hill Nature Preserve (HHNP) owned by the Town of Merrimack to the south. Public access to HHNP is located just west of #180 Amherst Rd. (4B/164-2), approximately ¼ mile west of Pollard Rd. The preliminary topography indicates that the land slopes toward Amherst Rd. (approximately 140 vertical ft.) from the southerly portion of the site. The majority of the site appears to consist of non-wetland/upland soils.

The parcels are part of the preliminary plan for Wildwood Acres Subdivision originally recorded at the Hillsborough County Registry of Deeds on August 20, 1949 as Plan #258 and subsequently revised on March 11, 1950 and September 20, 1950. The original 1949 recorded plan consisted of 29 lots, including one for a picnic area. When comparing the “existing conditions plan” and current tax maps with the 1949 plan, it appears that approximately 17 of the original lots in the subdivision have been conveyed (in whole or in part). The most recent plan we have on file in the Community Development Department is a plan entitled “Boundary Plan of Land Belonging to Carl A. Quimby” dated August 2, 1988 (HCRD Plan #22463). The 1988 Boundary Plan reflects a consolidation and/or re-configuring of many of the lots and appears to be consistent with current assessing records. One of the two proposed roads within the subdivision, Wildwood Road, was never constructed. Birch Hill Road (now known as Pollard Road – a private road) was constructed as a paved surface, approximately 10 ft. wide for approximately 670 ft. to provide access to Lot “K” (4B/145) and Lot “O” (4B/147). While it appears that the right-of-way for Pollard Road complies with current day requirements of 50 ft. in width, the roadway itself is not constructed to today’s standards.

The conceptual subdivision plan proposes to consolidate and re-subdivide the three parcels to create 13 single-family residential lots, using a conventional layout. Two cul-de-sac roads are proposed in order to provide access to the 13 lots. Staff recommends that the applicant ensures that the final road design of the main cul-de-sac extending from Amherst Rd. does not exceed 1,200 ft in length (unless a waiver is contemplated) in accordance with Section 4.12(c) of the Subdivision Regulations. Access to proposed Lot 4, as currently drawn, cannot be achieved without either, dredging and filling the majority of the wetland area located at the front of this lot, or by way of an access easement over an adjacent lot. Staff recommends that the applicant re-design the layout to avoid possible impact to the wetland. **Proposed Lot #'s 4, 5, 6, 10 & 11 provide less than the 250 ft of road frontage required for the R-1 Residential District (by zone, as opposed to by soil type).** The applicant

has submitted a petition to the Zoning Board of Adjustment for relief from the frontage requirement for the five lots.

Public water from Merrimack Village District (MVD) is available along Amherst Road, however, extending water up Pollard Road into the subdivision may require a pump system due to the rise in elevation from Amherst Road. Staff suggests that the applicant have a conversation early on in the process with MVD. Municipal sewer is not available in this area so proposed lots will be served by on-site septic. All final map/lot numbers for the proposed lots will need to be approved by the Assessing Department.

Section 4.17(c) of Subdivision Regulations states that “Double frontage and reverse frontage lots shall be prohibited except where essential to provide separation of residential development from major traffic arteries or to overcome specific disadvantages to topography and orientation, additionally, the plan shall show the location of proposed driveways or access to the lot.” Staff notes that proposed Lot 1 satisfies its minimum frontage requirement along the proposed subdivision cul-de-sac, however, approximately 70 ft. of frontage attributed to Lot 1 is also shown along Amherst Road. The 70 ft. of frontage along Amherst Rd. is partially the result of a 50 ft. right-of-way originally proposed on the 1949 subdivision plan (HCRD Plan #258). It appears that, subsequent to the 1949 plan, the easterly side lot line for present day Map 4B, Lot 145 adjacent to the “flag” portion of Lot 1 was shifted slightly in a westerly direction, resulting in the 70 ft. width seen today. Staff recommends that, unless the applicant intends to use this area as access to a stormwater treatment basin, the “flag” portion of proposed Lot 1 be consolidated with Map 4B, Lot(s) 145 and/or 144-1 to avoid a conflict with the Subdivision Regulations or the possible need for a waiver (based upon the town’s tax maps, the labeling for Map 4B, Lots 144 & 144-1 are reversed on the proposed subdivision plan and will need to be corrected on all future plans). Staff notes that a similar scenario exists for proposed Lot 3 where the “flag” portion of that lot is a result of a 50 ft. right-of-way platted on the 1949 subdivision plan as “Wildwood Road”. Unlike proposed Lots 1 & 3, the flag portion of proposed Lot 2 is not the result of platted right-of-way. It is unclear how this “flag” portion of proposed Lot 2 was created, however, Staff recommends that the flag portion along Amherst Rd. be consolidated with adjacent lot(s) (Map 4B, Lots 144-2 and/or 143).

In accordance with Section 4.20(2) of the Subdivision Regulations, a “paved pedestrian facility” shall be required along all proposed streets within the subdivision.

cc: Carl A. Quimby, Property Owner
Correspondence
Planning Board File
Building Department

ec: Meridian Land Services
John Tenhave, Northview Homes
Newton Coryell, Chairman, Horse Hill Nature Preserve (newtsc1954@comcast.net)

MEMORANDUM

Date: March 22, 2013
To: Phil Straight, Chairman, & Members, Zoning Board of Adjustment
From: Nancy Larson, Planning & Zoning Administrator
Subject: **North View Homes and Development Inc. (applicant) and Carl A. Quimby Revocable Trust (owner)** – Variances under Section 3.02 of the Zoning Ordinance to permit five lots in a proposed 13-lot subdivision to have less than the required 250 feet of frontage. The parcels are located at 164 Amherst Road, 8 Pollard Road and an unnumbered parcel in the **R-1 (Residential) District**. Tax Map 4B, Lots 146, 146-1 & 152-1. Case # 2013-05.

The following information is provided to aid in your consideration of the above referenced case. Additional background, and application materials, is included in your packet.

Background:

The subject property is located in the **R-1 Residential District (by zone)**, at the west end of Amherst Rd., across from Piedmont Ave. and east of Lester Road. **The Petitioner seeks to permit five lots in a proposed 13-lot subdivision to have less than the required 250 feet of frontage. Therefore, a variance from the requirements of Section 3.02 of the Zoning Ordinance is sought.** The Petitioner has simultaneously submitted an application to the Planning Board for a Pre-Submission Hearing to discuss a proposal to consolidate three lots and subdivide the subsequent lot into thirteen residential lots, located at 164 Amherst Road, 8 Pollard Road, and an unnumbered parcel. That application will be heard by the Planning Board on March 26, 2013 (a make-up date due to weather).

The parcels are bounded by Amherst Road to the north, residential properties to the east and west and Horse Hill Nature Preserve (HHNP) owned by the Town of Merrimack to the south. Public access to HHNP is located just west of #180 Amherst Rd. (4B/164-2), approximately ¼ mile west of Pollard Rd. The majority of the site appears to consist of non-wetland/upland soils.

The parcels are part of the preliminary plan for Wildwood Acres Subdivision originally recorded at the Hillsborough County Registry of Deeds on August 20, 1949 as Plan #258 and subsequently revised on March 11, 1950 and September 20, 1950. The original 1949 recorded plan consisted of 29 lots, including one for a picnic area. When comparing the “existing conditions plan” and current tax maps with the 1949 plan, it appears that approximately 17 of the original lots in the subdivision have been conveyed (in whole or in part). Assessing records indicate a consolidation of many of the lots, resulting in a total of three separate lots of record (Map 4B, Lots 146, 146-1 & 152-1). Legal Counsel for the town has been unable to determine any possible source of this merger without performing an exhaustive research of the Hillsborough County Registry of Deeds. Staff has requested assistance from the offices of the Assessing Department and Town Clerk and Tax Collector to possibly determine the source of the merger. It is quite possible that the lots were involuntarily merged by the town, however, this may be a moot point because the Petitioner plans to submit a re-subdivision of the land.

One of the two proposed roads shown on the 1949 subdivision, Wildwood Road, was never constructed. Birch Hill Road (now known as Pollard Road – a private road) was constructed as a paved surface, approximately 10 ft. wide for approximately 670 ft. to provide access to Lot “K” (4B/145) and Lot “O” (4B/147) as shown on the 1949 plan as well as on the

Existing Conditions Plan in your packet. While it appears that the right-of-way for Pollard Road complies with current day requirements of 50 ft. in width, the roadway itself is not constructed to current standards. Despite the fact that no physical improvements (e.g. construction of roadways) within the subdivision were made, because the 1949 recorded plan predates establishment of zoning in Merrimack (June 1953), the lots that were in place at the time of adoption “may continue without reservation”, according to the town’s legal counsel. In other words, the lots as they are in their current configuration are considered grandfathered and thus protected from the dimensional requirements established by zoning (except for the 40 ft. wetland setback). Any re-configuring of the road and/or lot layout, however, loses the grandfathering status and must comply with current requirements set forth in the Zoning Ordinance & Building Code and the Subdivision Regulations.

The Petitioner’s conceptual subdivision plan proposes to consolidate and re-subdivide the three parcels (as shown on current tax maps) to create 13 single-family residential lots, using a conventional layout. Two cul-de-sac roads are proposed in order to provide access to the 13 lots. Proposed Lot #'s 4, 5, 6, 10 & 11 provide less than the 250 ft of road frontage required for the R-1 Residential District (by zone, as opposed to by soil type).

The Petitioner requests variances for 5 lots in the proposed conceptual subdivision. The Existing Conditions Plan in your packet indicates that the following lots (presumed to be existing lots of record) are deficient in lot frontage: Lot H/G (47.79’), Lot N (215.27’), Lot P (219.75’), Lot R (land locked) and Lot W (195.55’). Three to four of the lots shown on the Existing Conditions Plan (excluding the un-numbered picnic area parcel adjacent [south] to Lot P) that have not been conveyed, appear to comply with current lot area requirements of 100,000 sq. ft. of contiguous non-wetland soil (Lot X is questionable due to an isolated wetland pocket at the front of the parcel). Staff believes that Lot 1 and Lot W may be the result of a misreading of a dimension line shown on the 1949 subdivision and when Lot 1 and Lot W were eventually conveyed, the front of the lot was thought to have been the dimension line. It appears that Lot 1 and Lot W are possibly the result of that misunderstanding and conveyance. As such, Staff and Legal Counsel question whether or not Lot 1 and Lot W even exist as separate, legal lots of record and should not be factored into the Petitioner’s justification for a variance.

Standard of Review:

It is the burden of the Petitioner to demonstrate whether or not the five requirements for the granting of a variance from Section 3.02 of the Zoning Ordinance to permit five lots in a proposed 13-lot subdivision to have less than the required 250 feet of frontage is required.

cc: Carl A. Quimby, Property Owner
Correspondence
Planning Board File
Building Department

ec: Meridian Land Services
John Tenhave, Northview Homes
Newton Coryell, Chairman, Horse Hill Nature Preserve (newtsc1954@comcast.net)

MEMORANDUM

Date: March 29, 2013
To: Robert Best, Chairman, & Members, Planning Board
From: Nancy Larson, Planning & Zoning Administrator
Subject: **Old Blood Properties, LLC. (applicant/owner)** – Review for Acceptance and consideration of Final Approval of an application proposing a re-subdivision of land resulting in the creation of one additional lot, located at Old Blood Road, in the **R-1 (Residential) District**. Tax Map 5B, Lots 003 & 003-1.

The application requests acceptance and consideration for final approval of an application proposing a re-subdivision of land resulting in the creation of one additional lot, located at Old Blood Road, in the **R-1 (Residential) District**. The subdivision is actually a partial consolidation of two lots (5B, Lots 003 & 003-1) and then the creation of a single residential lot. The subject property is bounded by residential properties to the east, other land of Old Blood Properties, LLC to the south and west and a vacant, privately held residential parcel to the north.

A private well and private onsite septic system will service the proposed lot. The land is part of the 66-lot yield plan reviewed by the Board in 2012. It is the applicant's desire to remove one lot from the total 66-lot yield plan and develop it separately. All proposed roadway information is taken from the 3-lot subdivision approved by the Planning Board for Richard Prince and recorded at the Hillsborough County Registry of Deeds as Plan #36613.

Minimum Contiguous Upland Area:	100,000 SF
Minimum Lot Frontage:	250 feet
Minimum Lot Depth:	300 feet
Minimum Front Yard Setback:	50 feet
Minimum Side Yard Setback:	30 feet
Minimum Rear Yard Setback:	60 feet

Completeness: **Staff recommends that the Board vote to accept the application**, as it is substantially complete and contains sufficient information to invoke the Board's jurisdiction and to allow the Board to make an informed decision.

Waivers: Staff has reviewed the application with respect to Section 4 of the Subdivision Regulations – Plan Requirements – and has determined that, unless the plan is modified to address these items, the following waivers are required:

- Section 4.04 (B): Soil types;
- Section 4.05 (b): Boundaries and area of the entire parcel;
- Section 4.05 (f): Provide existing and proposed street widths and location and width of proposed sidewalks or pedestrian ways;
- Section 4.06.1 (e): North arrow indicating True North;
- Section 4.06.1 (i): Provide locations of all monuments to be set at front property boundaries and lot corners;
- Section 4.06.3: Provide existing and proposed contours at 2-foot intervals with at least two benchmarks

- Section 4.18 (c): 24 foot wide paved roadway with required base material, etc.
- Section 4.20.2 – Pedestrian Ways and Sidewalks: A paved pedestrian way or sidewalk shall be constructed along all existing or proposed collector or arterial streets or streets constructed as part of a subdivision.

Recommendation: Staff recommends that the Board vote with respect to any requested waivers utilizing the criteria from RSA 674:36:

- Strict conformity would pose an unnecessary hardship to the applicant and waiver would not be contrary to the spirit and intent of the regulations; **or**
- Specific circumstances relative to the subdivision, or conditions of the land in such subdivision, indicate that the waiver will properly carry out the spirit and intent of the regulations.

The planning staff recommends that the Board grant conditional final approval to the application with the following conditions to be fulfilled within 6 months and prior to plan signing, unless otherwise specified:

1. Final plans and mylars to be signed by all property owners. The Licensed Land Surveyor and Certified Wetland Scientist shall also sign and seal final plans and mylars;
2. The applicant is responsible for recording the plan (including recording fee and the \$25.00 LCHIP fee, check made payable to the Hillsborough County Treasurer) and any related documents at the Hillsborough County Registry of Deeds. The applicant is also responsible for providing proof of said recording(s) to the Community Development Department;
3. Applicant to confirm that alignment (including limits of the hammerhead) shown on proposed plan corresponds with alignment shown on previously approved subdivision plan for Prince/Old Blood (HCRD Plan #36613);
4. A draft copy of the deed language (if additional right-of-way dedication is proposed) to be submitted to the Community Development Department for review and approval by the town's legal counsel (legal review shall be performed at the applicant's expense). Said document shall be recorded at the Hillsborough County Registry of Deeds at the expense of the applicant;
5. Satisfactorily address any forthcoming comments to be received from the Fire, Public Works, Building and Fire Departments;
6. Unless the applicant secures a waiver from Section 4.04 (B) of the Subdivision Regulations, the applicant shall revise the plan so as to satisfy the provisions of Section 4.04 and delineate and name soil types as explained in the Hillsborough County Soil Handbook;
7. Unless the applicant secures a waiver from Section 4.05 (b) of the Subdivision Regulations, the applicant shall revise the plan so as to satisfy the provisions of Section 4.05 and provide boundaries and area of the entire parcel (5B/003 & 5B/003-1);

8. Unless the applicant secures a waiver from Section 4.05 (f) of the Subdivision Regulations, the applicant shall revise the plan so as to satisfy the provisions of Section 4.05 and provide existing and proposed street widths and location and width of proposed sidewalks or pedestrian ways;
9. Unless the applicant secures a waiver from Section 4.06.1 (i) of the Subdivision Regulations, the applicant shall revise the plan so as to satisfy the provisions of Section 4.06.1 and provide locations of all monuments to be set at front property boundaries and lot corners (including angle points);
10. Unless the applicant secures a waiver from Section 4.20.2 of the Subdivision Regulations, the applicant shall revise the plan so as to satisfy the provisions of Section 4.20 and provide for a pedestrian way or sidewalk;
11. Unless the applicant secures a waiver from Section 4.06.3 of the Subdivision Regulations, the applicant shall revise the plan so as to provide existing and proposed contours at 2-foot intervals with at least two benchmarks provided by the developer and shown on the plan;
12. Unless the applicant secures a waiver from Section 4.06.1 (e) of the Subdivision Regulations, the applicant shall revise the plan so as to satisfy the provisions of Section 4.06.1 and provide a True North Arrow;
13. Unless the applicant secures a waiver from Section 4.18 (c) of the Subdivision Regulations, the applicant shall revise the plan so as to satisfy the provisions of Section 4.18 and provide for a 24 foot wide paved roadway with required base material, etc. Presently, the plan does not indicate that the roughed in gravel way along the frontage of proposed Lot 1 will be improved to satisfy this requirement (as well as the Merrimack Department of Public Works Road Construction Standards). Prior to issuance of a Certificate of Occupancy for Lot 1, a bituminous concrete binder course and street bounds in accordance with Section 4.18 (a) on the roadway providing legal road frontage for the lot (250 ft. along Old Blood Road) must be completed;
14. Address planning staff technical comments (see below).

Planning Staff Technical Comments

1. The applicant shall provide a recordable sheet of the subdivision plan meeting the requirements of the Hillsborough County Registry of Deeds;
2. Book and Page number for all existing easements to be added to the recordable plan sheet;
3. Recordable plan sheet to include proposed lot area with zoning requirements;
4. A legend to be added to the plan which shall include, but not necessarily limited to the following: EP, granite bound to be set, granite bound found, iron pin to be set,

iron pin found, wetland symbol, 40 ft. wetland setback, 25 ft. no disturb wetland buffer, wetland flagging number, building setback line, and test pit;

5. Plan to be revised to include owner(s) signature block;
6. Plan to be revised to include a Planning Board signature block for the Chairman (with a date line) and Secretary (with a date line);
7. Plan to be revised to include the language “contiguous upland area” after 100,000 S.F. in the Zoning Classification note;
8. Plan to be revised to clearly show the limits of the discontinuance of a portion of Old Blood Road by a vote of the Town Council on June 29, 2007;
9. Plan to be revised to include a Stop Bar with the proposed Stop Sign where the existing Old Blood Road intersects with the proposed stub of Old Blood Road;
10. Metes and Bounds legal description from Plan Reference #2 (Prince/Old Blood Road HCRD Plan #36613) for Old Blood Road to be added to the recordable plan sheet;
11. Staff recommends that the plan be revised to also dimension and label a 50 ft. front yard setback along the northwesterly property boundary to reflect the future extension of Old Blood Rd. as shown on the 66-lot yield plan reviewed by the Planning Board at their meeting on February 7, 2012. A note clearly explaining the trigger point for the 50 ft. front yard setback requirement to be added to the plan. This should replace Note 2 referencing the hatched area; hatched area is to be removed from the plan. Staff also recommends that proposed monumentation along this northwesterly property boundary (future roadway frontage) be set as stone bounds, rather than iron pins;
12. Applicant to receive, in writing (e-mail is sufficient) from the Assessing Department, a Map and Lot number to assign to proposed Lot 1 and the plan shall be revised accordingly;
13. Note 1 referencing roadway and infrastructure improvements to be revised to include HCRD Plan numbers and any other descriptive information as to location of said drawings for retrieval purposes;
14. Proposed 75 ft. well radius to be shifted slightly to remove the overlap with the wetland soils;
15. The applicant shall modify the plan to include a note regarding the requirement to obtain a Right-of-Way (R.O.W.) Permit from the Public Works Department prior to conducting any work within the public R.O.W. of Old Blood Road;
16. Should the Board not grant the waiver of the existing and proposed two-foot contour intervals and benchmarks, said information (including contour labels) to be provided on a separate plan sheet;
17. After consultation with the Fire Department, please provide final street numbering for Lot 1 on the final plan;

18. Written confirmation to be provided by a Licensed Land Surveyor to the Community Development Department certifying that all monumentation has been set in accordance with the approved plan. Revising the final plan to indicate monuments as “set” would satisfy this requirement;
19. The plan shall be revised (if applicable) to list and fully describe any waivers granted by the Planning Board.

cc: File
Correspondence

ec: Old Blood Properties, LLC, c/o John Deangelis, Property Owner
Atty. Gregory Michael, Bernstein-Shur
Erik Swanson, Viking Engineering Services
Captain John Manuele, Fire Department
Carol Miner and Fred Kelley, Building Department
Kyle Fox, Deputy Director of Public Works/Town Engineer



Town of Merrimack, New Hampshire

Community Development Department

603 424-3531

6 Baboosic Lake Road

Fax 603 424-1408

Town Hall - Lower level - East Wing

www.merrimacknh.gov

Planning - Zoning - Economic Development - Conservation

MEMORANDUM

Date: September 17, 2013
To: Fran L'Heureux, Chairwoman, & Members, Zoning Board of Adjustment
From: Nancy Larson, Planning & Zoning Administrator
Subject: **The Lynda Tomasian Revocable Trust, Lynda Tomasian, Trustee & The Stephanie Tomasian Revocable Trust, Lynda & Warren Tomasian, Trustees (petitioners/owners)** – Variance under Section 3.02 of the Zoning Ordinance to permit a lot with 76,325 square feet of contiguous non-wetland uplands where 100,000 square feet is required and with approximately 235 feet of lot depth where 300 feet is required. The parcel is located at 1 Tomasian Drive in the **R-1 (Residential)** & Aquifer Conservation Districts. Tax Map 4B, Lot 012. Case # 2013-29.

The following information is provided to aid in your consideration of the above referenced case. Additional background, and application materials, is included in your packet.

Please note that this case may not be heard, depending on result of the Request for a Re-Hearing of the Appeal of the Administrative Decision (Case # 2013-28).

Background:

As the Board will recall, on July 31, 2013, the Board denied the Petitioners' Appeal of an Administrative Decision under Section 3.02 of the Zoning Ordinance that determined that lot area on one side of a prescriptive roadway cannot be used to satisfy the minimum contiguous area requirements.

On September 4, 2013, the Petitioners, through their attorney, filed a variance application, **to permit a lot with 76,325 square feet of contiguous non-wetland area whereas 100,000 square feet is required and with approximately 235 feet of lot depth whereas 300 feet is required.**

The subject property is a contemplated 1.75 acre parcel (not yet formally submitted to the Planning Board for subdivision approval) located at the southeast corner of Tomasian Drive and Lester Road. The entire parcel (without the contemplated subdivision) consists of approximately 8.19 acres, according to the assessing database. The property lies within the **R-1 (Residential)** & Aquifer Conservation Districts and would be serviced by a private septic system and possibly municipal water (an existing Merrimack Village District 12" water main exists on Amherst Road).

A proposed subdivision of the parent 8.19 acre parcel to create the 1.75 acre lot that is the subject of the Petitioners' variance request would be required to comply with current dimensional requirements for lot area, depth, frontage, and setbacks.

Therefore, the 100,000 sq. ft. of contiguous upland area and 300 ft. of lot depth (in addition to remaining dimensional requirements for which no relief is sought) under Section 3.02 of the Zoning Ordinance apply.

Standard of Review:

It is the burden of the Petitioners to demonstrate that the five requirements for the granting of a variance, under Section 3.02 of the Zoning Ordinance to permit a lot with 76,325 square feet of contiguous non-wetland area whereas 100,000 square feet is required and with approximately 235 feet of lot depth whereas 300 feet is required, have been satisfied.

Staff recommends that the Board vote on each variance request (contiguous non-wetlands area and lot depth) separately as follows:

- Variance under Section 3.02 of the Zoning Ordinance to permit a lot with 76,325 square feet of contiguous non-wetland area whereas 100,000 square feet is required.
- Variance under Section 3.02 of the Zoning Ordinance to permit a lot with approximately 235 feet of lot depth whereas 300 feet is required.

Cc: File
The Lynda Tomasian Revocable Trust & The Stephanie Tomasian Rev. Trust,
c/o Lynda Tomasian & Warren Tomasian, Trustees, 35 Tomasian Dr.,
Merrimack, NH 03054

Ec: Christopher Aslin, Esq., Bernstein Shur
Carol Miner, Secretary, Building Department
Rick Jones, Building Inspector, Building Department
Fred Kelley, Building Official, Building Department

MEMORANDUM

Date: November 27, 2013
To: Robert Best, Chairman, & Members, Planning Board
From: Donna Pohli, Assistant Planner
Subject: **Old Blood Properties, LLC. (applicant and co-owner) and Joseph K. and Mary El Kareh (co-owners)** – Pre-submission hearing for an application proposing to consolidate and re-subdivide 10 lots into 72 cluster residential lots and 4 open space lots located at Old Blood Road in the **R-1 (Residential) District**. Tax Map 5B, Lots 001-01, 002, 003, 003-01, 005, 006, 007, 008, 009 and 231.

The applicant is seeking the Board's input on a pre-submission hearing for an application proposing to consolidate and re-subdivide 10 lots into 72 cluster residential lots and 4 open space lots. The parcels are accessed off of Old Blood Road in the R-1 (Residential) District, as shown on Zoning Map, located at Tax Map 5B, Lots 001-01, 002, 003, 003-01, 005, 006, 007, 008, 009 and 231. The cluster lots are proposed to be served by public water and sewer. The 10 lots collectively form approximately 222.5 acres.

Background/History:

Since the applicant has been before both the Planning Board and Zoning Board over the past few years, the following is a brief chronological history (Please find past applicable memo's and minutes in your packet.):

At the Zoning Board meeting on **August 27, 2009**, the Board granted a variance from Section 3.08.2 to permit a cluster Residential Development in the **R-1 (Residential) District with the lot density based on the conventional subdivision requirements of 100,000 square foot lot size with 250 feet of frontage** (Case # 2009-16).

At their meeting on **August 25, 2011**, the Zoning Board granted a variance under Section 3.08(2) to amend this previously granted Variance (Case # 2009-16) to allow for an additional 6 more cluster lots than would otherwise be permitted in a conventional subdivision applying minimum R-1 zoning requirements, by a 4-1-0 vote (Case # 2011-26). This variance is now null and void under Section 8.07—Variance – Special Exception Validity Period- which states, "If after a petition for a variance or special exception has been approved by the Board, such approval is not acted upon within a period of two (2) years from the date of approval, then such approval shall be null and void." **Therefore, the applicant must go before the Zoning Board again to seek a variance to permit a cluster subdivision in a R-1 (Residential) District as shown on the Zoning Map.**

At their meeting held on **February 7, 2012**, the Planning Board voted 6-0-0 to set the yield number (total number of lots allowed in the cluster subdivision) for the proposed cluster residential development at 66 lots. Because the August 25, 2011 variance permitted an additional 6 lots beyond the number of lots that would be allowed based on the R-1 conventional subdivision requirements, the current conceptual subdivision plan for the cluster which, proposes 72 building lots, complies with the variance granted. At the February 7, 2012, hearing it was made known that the applicant would pay the cost to fix the sewer line on Madeline Bennett Way according to state standards in return for being granted the six additional lots.

The plan before you now is a new concept design prepared by a different design firm for your review as a pre-submission meeting to gain your thoughts prior to submitting a complete application.

Vehicle/Pedestrian Traffic and Access:

The proposed subdivision would be accessed off of two new roads adjoining Old Blood Road just north of the bend of Old Blood Road, across from the previously approved 3-lot subdivision for Prince. A second road is proposed to be located south of Madeline Bennett Way. There is a cul-de-sac providing frontage for 7 or 8 lots which is part of the proposed subdivision on the west side of the loop road. Sight distance will need to be depicted on future plans to demonstrate the safety of cars going around the different curves and cars entering/exiting driveways. The Planning Board should review the proposed subdivision layout with respect to the suitability of the existing access way and the adequacy of the proposed streets. At a minimum, street geometry (curve lengths and radii, points of curvature and tangency, etc.) should be labeled in a general manner so as to facilitate review for compliance with the subdivision standards.

Drainage:

At the February 7, 2012, Planning Board meeting, drainage was a large portion of the discussion. Stormwater drainage is not depicted in great detail on the plan (as it is a pre-submission hearing), but the topography shows that there are slopes that would allow the water to flow in several different directions rather than all into one area. If the applicant submits a formal application, peer review will be performed by CLD.

Recommended Additional Topics:

The Planning Board shall also review the proposed subdivision layout with respect to the requirements outlined in Section 3.08(20) of the Zoning Ordinance including, but not limited to, the following:

- off-street parking;
- emergency vehicle access;
- stormwater drainage;
- recreational facilities;
- public water and sewer provisions;
- environmental factors;
- noise;
- protection of natural land features;
- landscaping.

Recommendation:

Staff offers the following comments with respect to the current Concept Plan dated October 3, 2013:

1. The Board may wish to evaluate the suitability of the access afforded by Old Blood Road;
2. Staff suggests the Board discuss whether it may be possible to shift the street and lot layout southerly to locate portions allow for portions of the open space closer to the Town owned conservation land northwest of the proposed development;
3. The two proposed access ways from Old Blood Road should be evaluated for compliance with the subdivision street design standards;
4. Considering that Old Blood Road contains portions of both Class V and Class VI roads, discussion should occur regarding reclassifying the roads. Any reclassification of the Class VI portion of Old Blood Road will require a vote of the Town Council;
5. The final subdivision plan, when submitted for approval in the future, will require at a minimum:
 - boundary monuments;
 - abutter/home owner information;
 - snow storage areas;
 - legend;
 - comply with all other regulations outlined in the Subdivision and Site Plan Regulations as well as Section 3.08 of the Zoning Ordinance;
6. The applicant should revise the plan so that McQuestion Rd. is properly labeled where Baboosic Lake Road is written currently;
7. The current proposal provides no drainage/stormwater management information for the cluster subdivision layout. This information would be necessary for the consideration of final approval. Particular scrutiny should be applied to the easterly areas/proposed lots as they may have the greatest potential to either positively or negatively affect abutters.

Cc: File, Correspondence

Ec: John DeAngelis, Old Blood Properties, LLC.
Joseph and Mary El Kareh, Co-owners
Ken Clinton and John Heavisides, Meridian Land Services
Attorney Greg Michael, Bernstein-Shur
John Tenhave, Northview Homes
Carol Miner, Secretary, Building Department
Fred Kelley, Building Official, Building Department

MEMORANDUM

Date: November 26, 2013
To: Robert Best, Chairman, & Members, Planning Board
From: Donna Pohli, Assistant Planner
Subject: **Northview Homes & Development (applicant) & Stephanie Tomasian Revocable Trust, Stephanie Tomasian, Trustee (owner)** – Review for acceptance and consideration of final approval of a minor subdivision of 1 lot into 3 residential lots located at 1 Tomasian Drive in the **R-1 (Residential) District**. Tax Map 4B, Lot 12.

Background/History:

The Applicant requests acceptance and consideration for conditional final approval for the minor subdivision of 1 lot into 3 residential lots located at 1 Tomasian Drive (Tax Map 4B, Lot 012). The subject property is bounded by Amherst Road to the south and residential properties to the south and east, Lester Road and other land of Tomasian family to the North and across Tomasian Drive to the West. The properties lie within the **R-1 (Residential) Zoning District** and each lot is proposed to be served by an onsite well and septic system.

The existing parcel contains 8.15 acres, of which 76,452 s.f. consists of wetland. **The R-1 Residential Zoning Criteria would apply to each of the proposed lots. Lots number 1 and 2 as indicated on the subdivision plan comply with the minimum area, frontage, and depth requirements of 100,000 s.f., 250 feet, and 300 feet, respectively. The smallest lot (proposed Lot 3) was granted 2 variances by the Zoning Board on September 25, 2013 (Case # 2013-29) to permit a lot with 76,325 s.f. of contiguous upland area whereas 100,000 s.f. is required and a lot depth of approximately 235 feet whereas 300 feet is required.**

At their meeting on July 31, 2013, the Zoning Board denied the appeal of the Administrative Decision which determined that land area on one side of a prescriptive roadway cannot be used to satisfy the minimum contiguous area requirement for land on the other.

The Department of Public Works reviewed the plans and noted that they do not have a current plan to pave either Tomasian Drive or Lester Road, but they did pave an apron of Tomasian in order to protect Amherst Road. Public Works will not require these 2 roads to be paved for this 3-lot subdivision, however, the Department would require the road to be fully upgraded should the parcel to the west (Tax Map 4B, Lot 009-1) be subdivided in the future. Public Works continues to support the subdivision approval as long as there is a condition regarding the “private” portion of Tomasian Drive (see Staff Technical Comment #5 below).

Completeness:

Staff recommends that the Board vote to accept the application, as it is substantially complete and contains sufficient information to invoke the Board’s jurisdiction and to allow the Board to make an informed decision.

Recommendation:

The planning staff recommends that the Board grant conditional final approval to the application with the following precedent conditions to be fulfilled within 6 months and prior to plan signing, unless otherwise specified:

1. Final plans and mylars to be signed by all property owners. The Licensed Land Surveyor, Soil Scientist, and Certified Wetland Scientist shall also sign and seal final plans and mylars;
2. The applicant is responsible for recording the plan (including \$25.00 LCHIP fee, check made payable to the Hillsborough County Treasurer) and any related documents at the Hillsborough County Registry of Deeds. The applicant is also responsible for providing proof of said recording(s) to the Community Development Department;
3. Satisfactorily address any forthcoming comments to be received from the Fire Department and the Department of Public Works (including the Highway Division);
4. Satisfactorily obtain NH DES Subdivision approval and any other applicable state permits, and note permit approval numbers on the plan;
5. Please remove all protective well radii from Amherst Road and Tomasian Drive or relocate such that radius is entirely within the lot. Also obtain well radius release for overlap into lot 1 from lot 2, or relocate such that radius is entirely within lot 2;
6. A 25' dedicated right-of-way from centerline of Tomasian shall be provided along the entire length of frontage for 4B/012. Plan to be revised accordingly. If a fee simple dedication is an issue with compliance with minimum dimensional requirements, then a widening easement may be offered as an alternative;
7. Town Council vote to accept additional right-of-way (applicant to file a form with General Government and present to the Council);
8. Address planning staff technical comments.

Planning Staff Technical Comments

1. The applicant shall revise the plan title to add "Minor Subdivision Plan";
2. Please add “.” to “L=47 74’ ” in the Southwest corner of Lot 1;
3. Please clarify note 7, sheet 3 and indicate the need of consultation with and approval from the Fire Department before providing final street numbering for all three lots on the final plan;
4. Address whether the Fire Department requires the road to be widened for emergency access vehicles;
5. Per the Public Works Department’s recommendation, the portion of Tomasian Drive north of Lester Road should be discontinued. Otherwise, the private overhead structure stating “Private Property Dead End” shall be removed, the paved portion of Tomasian north of Lester Road would need to be widened and additional right-of-way dedicated to include a town standard

turnaround (cul-de-sac or hammerhead). The new roadway shall be formally accepted by Town Council as a public road;

6. Verification from an engineer that the 12” culvert is sufficient to handle the additional stormwater runoff from the increase of impervious areas;
7. Please add a note indicating driveway locations to be approved by Department of Public Works, Highway Division;
8. Please add a note indicating that a right-of-way permit is to be obtained by Department of Public Works, Highway Division prior to any work in the right-of-way;
9. Add a note to the plan stating that, should the area of disturbance for the three lots combined be greater than 20,000 s.f, the provisions of the Town Stormwater Standards must be adhered to (Chapter 412 of the Town Code);
10. Please add the septic setback line under Section 4.05(g) to the plan;
11. Please add discussion of storm water handling or watershed computations;
12. Please add Tax Map/Lot numbers to each of the three lots;

Staff also recommends that the following general and subsequent condition be placed on the approval:

1. Written confirmation to be provided by a Licensed Land Surveyor to the Community Development Department certifying that all monumentation has been set in accordance with the approved plan. Revising the final plan to indicate monuments as “set” would satisfy this requirement.

cc: File
Correspondence
Stephanie Tomasian Revocable Trust, Owner

ec: John Tenhave/Northview Homes and Development, Inc., Applicant
Ken Clinton, Meridian Land Services
Captain John Manuele, Fire Department
Carol Miner and Fred Kelley, Building Department
Kyle Fox, Deputy Director of Public Works/Town Engineer
Ron Minor, MVD

MEMORANDUM

Date: June 14, 2013
To: Robert Best, Chairman, & Members, Planning Board
From: Timothy J. Thompson, AICP, Community Development Director
Subject: **Old Blood Properties, LLC. (applicant/owner)** – Review for acceptance and consideration of Final Approval of an application proposing a re-subdivision of land resulting in the creation of one additional lot, located at Old Blood Road, in the **R-1 (Residential) District**, Tax Map 5B, Lots 003 & 003-1. ***This item is continued from the May 21, 2013 meeting.***

Please refer to the memo dated March 29, 2013 from Planning & Zoning Administrator Nancy Larson for background information on this project. As the Board is aware, this item has been continued on several occasions, the most recent after the applicant chose to change their design firm to Meridian Land Services.

Of particular note with the revised plans is a change to the previously discontinued portion of Old Blood Road. The Board will need to consider these changes as part of their review of the project, and should be aware that the action taken on the application will serve as a recommendation to the Town Council for the proposed changes to the discontinuance.

Completeness: While the application has been continued several times, the Board has yet to take jurisdiction of the application. **Staff recommends that the Board vote to accept the application**, as it is substantially complete and contains sufficient information to invoke the Board's jurisdiction and to allow the Board to make an informed decision.

Waivers: Staff has reviewed the application with respect to Section 4 of the Subdivision Regulations – Plan Requirements – and has determined that, unless the plan is modified to address these items, the following waivers are required:

- **Section 4.18 (c):** 24 foot wide paved roadway with required base material, etc.

The Public Works Department offers the following comments regarding pavement width:

- *The proposed subdivision lot proposes frontage on a previously approved road that has yet to be fully constructed. The Town is holding a bond for that project. The previously approved subdivision (for the proposed road) was approved for use by 3 lots, all on the same side of the road. The previous approval allowed a substandard width of road to service the three lots, being 22' paved width.*
 - *Given that there will now be four houses on the section of road and driveways on both sides of the road, PWD recommends that the previously approved width of 22' be changed to a 24' normal section per town standards.*
- **Section 4.20.2 – Pedestrian Ways and Sidewalks:** A paved pedestrian way or sidewalk shall be constructed along all existing or proposed collector or arterial streets or streets constructed as part of a subdivision. Staff notes that the previous subdivision was granted a waiver to the sidewalk requirement.

Recommendation: Staff recommends that the Board vote with respect to any requested waivers utilizing the criteria from RSA 674:36:

- Strict conformity would pose an unnecessary hardship to the applicant and waiver would not be contrary to the spirit and intent of the regulations; **or**
- Specific circumstances relative to the subdivision, or conditions of the land in such subdivision, indicate that the waiver will properly carry out the spirit and intent of the regulations.

The planning staff recommends that the Board grant conditional final approval to the application with the following precedent conditions to be fulfilled within 6 months and prior to plan signing, unless otherwise specified:

1. Final plans and mylars to be signed by all property owners. The Licensed Land Surveyor and Certified Wetland Scientist shall also sign and seal final plans and mylars;
2. The applicant is responsible for recording the plan (including recording fee and the \$25.00 LCHIP fee, check made payable to the Hillsborough County Treasurer) and any related documents at the Hillsborough County Registry of Deeds. The applicant is also responsible for providing proof of said recording(s) to the Community Development Department;
3. A draft copy of the deed language (if additional right-of-way dedication is proposed) to be submitted to the Community Development Department for review and approval by the town's legal counsel (legal review shall be performed at the applicant's expense). Said document shall be recorded at the Hillsborough County Registry of Deeds at the expense of the applicant;
4. The applicant shall obtain Town Council approval for the revisions to the discontinuance of Old Blood Road;
5. Satisfactorily address any forthcoming comments to be received from the Fire, Public Works, Building and Fire Departments;
6. Unless the applicant secures a waiver from Section 4.20.2 of the Subdivision Regulations, the applicant shall revise the plan so as to satisfy the provisions of Section 4.20 and provide for a pedestrian way or sidewalk;
7. Unless the applicant secures a waiver from Section 4.18 (c) of the Subdivision Regulations, the applicant shall revise the plan so as to satisfy the provisions of Section 4.18 and provide for a 24 foot wide paved roadway with required base material, etc. Prior to issuance of a Certificate of Occupancy for Lot 1, a bituminous concrete binder course and street bounds in accordance with Section 4.18 (a) on the roadway providing legal road frontage for the lot (250 ft. along Old Blood Road) must be completed;
8. Address planning staff technical comments (see next page).

Planning Staff Technical Comments

1. The applicant shall provide a recordable sheet of the subdivision plan meeting the requirements of the Hillsborough County Registry of Deeds;
2. Recordable plan sheet to include proposed lot area with zoning requirements;

3. Plan to be revised to include the language "contiguous upland area" after 100,000 S.F. in the Zoning Classification note #3 on sheet 1, and correct the apparent typo of the amount of contiguous upland area for the lot as shown on sheets 2 and 3 (which only indicates 10,134 square feet of contiguous upland);
4. Metes and Bounds legal description from Plan Reference #2 (Prince/Old Blood Road HCRD Plan #36613) for Old Blood Road to be added to the recordable plan sheet;
5. Staff recommends that the plan be revised to include a note clearly explaining the trigger point for the 50 ft. front yard setback requirement along the northwesterly property boundary (to reflect the future extension of Old Blood Rd. as shown on the 66-lot yield plan reviewed by the Planning Board at their meeting on February 7, 2012). Staff also recommends that proposed monumentation along this northwesterly property boundary (future roadway frontage) be set as stone bounds, rather than iron pins;
6. Applicant to receive, in writing (e-mail is sufficient) from the Assessing Department, a Map and Lot number to assign to proposed Lot 1 and the plan shall be revised accordingly;
7. Note 1 referencing roadway and infrastructure improvements to be revised to include HCRD Plan numbers and any other descriptive information as to location of said drawings for retrieval purposes;
8. The applicant shall modify the plan to include a note regarding the requirement to obtain a Right-of-Way (R.O.W.) Permit from the Public Works Department prior to conducting any work within the public R.O.W. of Old Blood Road;
9. After consultation with the Fire Department, please provide final street numbering for Lot 1 on the final plan;
10. Written confirmation to be provided by a Licensed Land Surveyor to the Community Development Department certifying that all monumentation has been set in accordance with the approved plan. Revising the final plan to indicate monuments as "set" would satisfy this requirement;
11. The plan shall be revised (if applicable) to list and fully describe any waivers granted by the Planning Board.

cc: File
Correspondence

ec: Old Blood Properties, LLC, c/o John Deangelis, Property Owner
Atty. Gregory Michael, Bernstein-Shur
Ken Clinton, Meridian Land Services
Captain John Manuele, Fire Department
Carol Miner and Fred Kelley, Building Department
Kyle Fox, Deputy Director of Public Works/Town Engineer



Town of Merrimack, New Hampshire

Community Development Department

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Town Hall - Lower level - East Wing

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Planning - Zoning - Economic Development - Conservation

Memorandum

Date: January 21, 2014
To: Fran L'Heureux, Chair, & Members, Zoning Board of Adjustment
From: Timothy J. Thompson, AICP, Community Development Director
Subject: **Old Blood Properties, LLC. (petitioner/owner)** – Variance under Section 3.08(2) of the Zoning Ordinance to allow a cluster subdivision in the **R-1 (Residential) District** where cluster developments are not permitted and additionally requested that six cluster lots in excess of the number that would be allowed based on the conventional subdivision requirements in the **R-1 (Residential) District**. The parcels are located at a 196-acre tract off Old Blood Road. Tax Map 5B, Lots 2, 3, 3-1, 5, 6, 7, 8, 9 & 023. Case # 2014-02.

The following information is provided to aid in your consideration of the above referenced case. Additional background and application materials are included in your packet.

Background:

This application requests 2 variances that were both previously approved by the Board (in 2009 and 2011, see attached Decision Letters and previous memos from Staff) which will allow Old Blood Road Properties to construct a Cluster Residential Development in the **R-1, Residential District, as shown on the Zoning Map**, where Clusters are not permitted and additionally to allow the addition of 6 more cluster lots than would otherwise be permitted in a conventional subdivision applying minimum R-1 zoning requirements.

Because more than 2 years have passed since the last approval was granted in August of 2011, the previous variances have now lapsed. The applicant has, during the past 2 years, worked toward bringing forth plans for the Planning Board to review for subdivision approval, but has changed design firms during this time, and the approvals have not been received to date.

The subject property consists of nine parcels (approximately 196 acres) proposed to be consolidated and re-subdivided into 71 single-family residential cluster lots as well as open space lots, along Old Blood Road.

The petitioner proposes to provide all cluster lots with sewer and water, a zoning requirement for all cluster subdivisions.

The petitioner has appeared several times in front of the Planning Board for preliminary meetings related to the application in 2012 and 2013. The Planning Board did establish a “yield plan” consisting of 66 lots, which, if the variances are successful, would result in a total number of lots equaling 72 (it should be noted that one lot has already been subdivided off the existing Old Blood Road, which leaves 71 lots available for the cluster development).

Additionally, the petitioner most recently appeared before the Planning Board for a pre-submission hearing related to the revised design of the project, and has scheduled a site walk with the Planning Board for Saturday, January 25.

Key components of the Planning Board's discussions to date have been related to the requirement for the applicant to connect the development to Madeline Bennett Road and to connect to the sewer line near the Middle School (with the requirement for the applicant to upgrade the sewer line at the middle school to correct current deficiencies in the sewer design). These points were also pertinent to the Zoning Board's decision to grant the originally approved variance in 2011, and should be part of the discussion on the current variance applications.

Standard of Review:

It is the burden of the petitioner to demonstrate that the five requirements for the granting of a variance from Section 3.08(2) of the Zoning Ordinance have been met to:

- Permit a cluster subdivision in the R-1 (Residential) District where cluster developments are not permitted; and
- Permit 6 more cluster lots than would otherwise be permitted in a conventional subdivision applying minimum R-1 (Residential) zoning requirements.

Staff recommends that the Board vote on each variance separately, and that should the Board vote to grant the variances, Staff recommends that both be granted with the following conditions:

1. That the maximum number of lots does not exceed by six lots that number that would be allowed based upon the R-1 District conventional subdivision requirements (Determined by the Planning Board on February 7, 2012 to be 66 lots based on a yield plan of lots with a minimum of 100,000 sq. ft. lot size/250 ft. of frontage);
2. The applicant shall be required to connect to (and correct current design deficiencies of) the sewer line at the Middle School, as deemed appropriate by the Planning Board.

cc: Correspondence & Zoning Board File

ec: Old Blood Properties, LLC, Petitioner/Owner
Attorney Greg Michael, Bernstein-Shur
Ken Clinton, Meridian Land Services
Carol Miner and Fred Kelley, Building Department



Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

Memorandum

Date: January 21, 2014
To: Fran L'Heureux, Chair, & Members, Zoning Board of Adjustment
From: Timothy J. Thompson, AICP, Community Development Director
Subject: **The Stephanie Tomasian Revocable Trust, Lynda & Warren Tomasian, Trustees (petitioners/owners)** – Variance under Section 3.02 of the Zoning Ordinance to allow a proposed lot with 75,800 s.f. of contiguous non-wetland uplands where 100,000 s.f. is required. The parcel is located at 5 Tomasian Drive in the **R-1 (Residential)** & Aquifer Conservation Districts. Tax Map 4B, Lot 012-02. Case # 2014-03.

The following information is provided to aid in your consideration of the above referenced case. Additional background and application materials are included in your packet.

Background:

As the Board will recall, on July 31, 2013, the Board denied the Petitioners' Appeal of an Administrative Decision under Section 3.02 of the Zoning Ordinance that determined that lot area on one side of a prescriptive roadway cannot be used to satisfy the minimum contiguous area requirements.

On September 25, 2013, the Board granted a variance, to permit a lot with 76,325 square feet of contiguous non-wetland area whereas 100,000 square feet is required and with approximately 235 feet of lot depth whereas 300 feet is required. (see previous memo from Nancy Larson and the Decision Letter, attached)

Following the Board's grant of the 2 variances, the project was then conditionally approved by the Planning Board on December 6, 2013.

While the applicants' surveyors were setting the lot corners in the field, and preparing revised plans to address the Planning Board's conditions of approval, it was discovered that the area of the lot was slightly inaccurate (it was based on a preliminary concept plan by a different design firm), and the actual amount of contiguous upland area is 75,800 square feet, which does not comply to the variance previously granted by the Board in September.

While this type of minor modification can be handled "administratively" for the Planning Board's purposes, because the variance specifically called for 76,325 square feet of contiguous upland area, the applicant must obtain a new variance for the project to proceed to final approval with the Planning Board. The overall decrease of upland area from the original variance to this request is 525 square feet.

Standard of Review:

It is the burden of the Petitioners to demonstrate that the five requirements for the granting of a variance, under Section 3.02 of the Zoning Ordinance to permit a lot with 75,800 square feet of contiguous non-wetland area whereas 100,000 square feet is required.

cc: Correspondence & Zoning Board File
The Lynda Tomasian Revocable Trust & The Stephanie Tomasian Rev. Trust, c/o Lynda Tomasian & Warren Tomasian, Trustees, 35 Tomasian Dr., Merrimack, NH 03054

ec: Christopher Aslin, Esq., Bernstein Shur
Ken Clinton, Meridian Land Services
Carol Miner, Rick Jones, and Fred Kelley, Building Department



Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

Memorandum

Date: March 21, 2014

To: Fran L'Heureux, Chair, & Members, Zoning Board of Adjustment

From: Donna Pohli, Assistant Planner

Subject: **Tomasian Drive, LLC. (Petitioner) and The Stephanie Tomasian Revocable Trust of 2001 (owner)** – Variance under Section 3.08.2 of the Zoning Ordinance to allow a cluster development in the **R-1 (Residential) District** and a Variance under Section 3.08.8 to allow the subdivision to be served by individual septic systems. The parcel is located at 10 Tomasian Drive. Tax Map 4B, Lot 009-1. Case # 2014-13.

The following information is provided to aid in your consideration of the above referenced case. Additional background and application materials are included in your packet.

Background:

The subject property (Tax Map 4B, Lot 009-01) is a 49.16 acre lot located at 10 Tomasian Drive, according to the assessing database. **The property lies within the R-1 (Residential) District** and Aquifer Conservation, Flood Hazard Conservation, and Shoreland Protection Overlay Districts. The property is bounded by Town owned conservation land to the west and south, Amherst Road to the south, Tomasian Drive to the east, and the Souhegan River to the north. The subject lot is proposed to be subdivided into 19 cluster lots. Determination regarding the number of lots that will be permitted, if the variances are approved, will be the responsibility of the Planning Board as required in Section 3.08 of the Ordinance. According to the application, each cluster lot depicts 4000 sq. ft. septic reserve area with test pit suitable for septic design and a conceptual 54' x 64' house location. The proposed lots would be served by MVD water, and the lots exceed the NHDES minimum lot size of 24,000 sq. ft.

This variance application consists of two requests:

The Petitioner requests a variance to allow a cluster development in the **R-1 (Residential) District (by map)** which Section 3.08.2 of the Zoning Ordinance specifically states is an area where cluster development is not permitted.

The Petitioner also requests a variance under Section 3.08.8 to allow the subdivision to be served by individual septic systems whereas Section 3.08.8 requires that subdivisions be serviced by public sewer.

Other than the requested variances, the plan appears to conform to all of the other criteria in Section 3.08 for Cluster Developments. Staff recommends that the Board vote and decide on the two variances separately.

Standard of Review:

It is the burden of the Petitioner to demonstrate that the five requirements for the granting of a variance from Section 3.08.2 of the Zoning Ordinance have been met to permit the cluster development in the R-1 (Residential) District and under Section 3.08.8 to permit the subdivision to be served by individual septic systems.

Should the Board vote to grant the requests for the Variances, Staff recommends that approval be conditioned upon the following:

1. Petitioner to obtain subdivision approval from the Planning Board.

cc: Lynda Tomasian, Owner
Correspondence & Zoning Board File
ec: Erol Duymazlar, Tomasian Drive, LLC.
Ken Clinton, Meridian Land Services
John Tenhave, Northview Homes
Carol Miner & Fred Kelley, Building Department