TOWN OF BARTLETT PLANNING BOARD
PUBLIC HEARING

January 4, 2017

Members Present: Chairman Philip Franklin; David L. Patch; David Shedd; Scott Grant.
Members Absent: David A. Patch (with notice); Richard Stimpson (with notice); Peter Gagne.

Also in attendance: David Publicover; Burke York; Norman Head; Hannelore Chandler; Karl Chandler; Michael Chandler; Bob Carper.

The meeting was opened at 6:00 pm by Chairman Philip Franklin, who reviewed the agenda.

1. Public Hearing on Proposed Zoning Amendments: The Chairman explained how the board had spent the past few months going over three proposed changes to the zoning ordinance. He directed people to hard copies of the amendments that were provided in the back of the room, and opened the hearing for public comment to discuss each one.

Amendment No. 1: This amendment is in response to new state mandates under RSA 674:71 to :73 pertaining to Accessory Dwelling Units which will come into effect on June 1. In 2011, the town voted to allow Accessory Apartments, but at that time they were limited to one bedroom. The new RSA requires that towns must now allow at least two bedrooms in an ADU, but provides an option to impose a maximum size limit on the unit so long as it was not less than 750 sf. This 2017 amendment proposes to make several changes to the 2011 requirements, including but not limited to changing the name from Accessory Apartment to the new statutory term of Accessory Dwelling Unit (ADU), increase the number of allowable bedrooms from one to two, and impose a maximum size limit of 800 sf. For the most part, the intent of the 2011 wording remains the same, except the board clarified that only one of the units could be rented out, either the primary residence or the ADU, while the other one had to remain for the use of the owner; that detached units were permitted; and that the ADU did not count towards the number of dwelling units allowed on a single driveway. Since the audience had copies of the full amendment wording, the Chairman asked if there were any questions or comments.

The first person to speak was David Publicover, who introduced himself as being the former chairman of the planning board. He said he had some comments on amendments No. 1 and 2, and was fine with No. 3. Mr. Publicover indicated he supported both the intent and the specific provisions of Amendment No. 1 regarding Accessory Dwelling Units. He offered written suggestions as to how the wording could be clarified to better define what he felt the board's intent was, in that only one of the units could be rented-out and the other had to be retained for use by the owner, but the owner would not be required to live there on a full-time basis. Mr. Publicover said he agreed with both of those conditions. Mr. Publicover further suggested that the reference to the Minimum Land Area Required (MLAR) could be removed from the definition since it was being added to Article VI.

Mr. Publicover next addressed Amendment No. 2, which was proposing to increase the number of dwelling units on a single driveway from two to three. He agreed it was appropriate to increase the number to three, and recalled a number of occasions where that had been the least impactful way to deal with a situation. He did not feel it should be increased any higher than that unless provisions for an enhanced driveway, which the board had discussed over the years, were implemented. Mr. Publicover noted that the only place the zoning ordinance mentioned how many dwellings were permitted on a driveway, was in Article XIX, Definitions, under the definition of a "lot". He read the definition out loud and described it as being the single most poorly-constructed sentence in the entire zoning ordinance. He recalled the board had discussed the wording over the years, and suggested if we were amending the definition as part of this amendment, that this was an opportune time to improve it and make it right. Mr. Publicover said the two provisions in the definition which stated, "such lot shall front upon and have access to a street which meets town road specifications, except that a maximum of two dwelling units may be served by a driveway" were zoning provisions and were not relevant to the definition of a lot and did not belong in that section. He felt it would be more appropriate to move them to the main body of the zoning ordinance under Article VII, Frontage, and to change the title of Article VII to Frontage and Access. He also offered wording to improve the definition of a lot which would make it more legally precise.

Robert Carper spoke next and noted the description of an Accessory Dwelling Unit said they were intended for rent or lease. He asked how that description affected a unit that was used by an elderly parent or another family member. Mr. Carper was advised that anyone could use the unit, whether a family member or not, and the description was not intended to mean that the units were only for rent or lease. When Mr. Carper asked whether the definition shouldn't cover that aspect as well, a suggestion was made to revise the description by adding the words "for personal use" so that the amendment now read, "intended for personal use, rental, or lease." Mr. Carper was asked whether that satisfied what he was asking, and he indicated it did.

Norman Head addressed the board and referred to the sentence in Amendment No. 1 which said ADUs would not count towards the number of residences allowed on a driveway, and asked whether that was state-mandated or whether the board had put it in. He was advised by the Chairman that it had come from the board. Mr. Head said he hadn't picked-up on that previously, and noted that if Amendment No. 2 passed and three dwelling units were allowed on a driveway, it could potentially result in there being six or eight. He indicated he was personally opposed to that and would vote and work against it. David Shedd said he didn't understand Mr. Head's comment, and asked for an explanation as to how there could be six or eight. Mr. Head reiterated that if Amendment No. 2 passed, it would allow three dwelling units on a driveway. He then added that you could get four with a variance which would bring it to either six or eight if each had an ADU. When David L. Patch asked Mr. Head why he felt you could get four with a variance, Mr. Head responded that you could get three with a variance now and that one was going to follow the other. David L. Patch, aware that Mr. Head's comment was perhaps a little mistaken, explained how he had spearheaded this amendment believing that allowing three dwelling units on a driveway would solve 99% of the cases he'd seen from having to go to the ZBA for a variance. Mr. Head said they didn't go to the ZBA, that they were granted by the planning board. He was informed that only the ZBA could grant a variance, but the planning board had granted several waivers from the subdivision regulations to allow three dwelling units on a driveway when they felt that was appropriate. David L. Patch said he understood where Mr. Head was coming from, but if Amendment No. 2 passed that it would take a lot of convincing for him to approve a waiver giving anybody four.

Hannelore Chandler from Allen Road said her purpose for being here was to correctly understand that she could put a mother-in-law apartment over her garage. The Chairman informed her that was correct, so long as all the other conditions such as septic were met. Ms. Chandler recalled back in 1995 when she wanted to add to her property that her application had been denied. David L. Patch explained how mother-in-law, or accessory apartments, have only been allowed under the zoning since 2011.

The Chairman asked if there were any other comments, noting nothing had been said about Amendment No. 3 which proposed to reduce the residential setback on Routes 16, 302, and West Side Road from 115-ft. to 60-ft. Norman Head said the only issue he could see down the road was what if someone purchased a property with a reduced 60-ft. setback and then wanted to change that property to a commercial use. He wondered whether they would need to go to the ZBA for a variance. The Chairman acknowledged that was a good point which the board had previously talked about, and said that any potential property buyer with commercial intent has to be made fully aware that property with a 60-ft. setback could not be used commercially according to our zoning. David L. Patch asked the two ZBA members present, Norman Head and David Shedd, if he came in and wanted to do just that, would they be inclined to say no he couldn't do it under the zoning ordinance, especially if there was no hardship involved. Norman Head said it would depend, but if there were no extenuating circumstances he would tend to say no. David Shedd said he would also say no.

The Chairman again asked if there were any further questions. David Shedd asked to address Amendment 1 again. He acknowledged the recent letter from the selectmen which expressed their desire that only ADUs attached to the primary dwelling unit be allowed. Mr. Shedd said he knew ADUs were already allowed in existing buildings, but asked if there was any provision for someone to build a new garage with the intent of putting an ADU within it, or would that be something allowed by a special exception. He acknowledged that the selectmen had also expressed a preference for all ADUs to go before the ZBA for a special exception. For the benefit of the public in attendance, the Chairman summarized the selectmen's letter saying they wanted one of the units to be the principal residence and legal

domicile of the owner of the property; that the ADU be attached to the primary dwelling unit; that ADUs be approved by special exception; and that the size of the unit and the number of bedrooms be limited (which had already been done). David L. Patch said in his opinion a detached unit had been allowed for five years now and had never presented any problems. Scott Grant broached the subject of what the state had suggested for amendment wording, and the Chairman also read that for the benefit of the public. He said when the board added the requirement that one of the units had to be owner-occupied and only one of them could be rented, that it represented middle ground and a compromise.

Karl Chandler asked whether the term "principal residence" would exclude second-homeowners. David L. Patch explained that was only a suggestion by the state, not a law. David Publicover spoke again and offered another way to look at the owner-occupied debate. He asked, what if a couple lived in a house in town and had an accessory apartment which was leased out on a yearly basis. A few years down the road the couple moved to Florida and only came up two weeks out of the year to go skiing. Does that mean they have to kick their tenant out? Mr. Publicover said under the way the selectmen were proposing it, that would have to happen, which is why he feels it was appropriate to do it the way the planning board is proposing. Norman Head argued that they wouldn't have to kick the tenant out, but reassessed his opinion when it was pointed out that the residence would no longer be the couple's principal residence and legal domicile if they moved to Florida.

Norman Head offered the board a compliment by saying he recognized a lot of work had been put into these amendments and the board had done a good job, and just because he did not agree with part of it had no bearing on the board's efforts.

The Chairman said he had the option of either closing the public hearing at this point or continuing it to the next meeting to enable further comments to be discussed. He asked whether anything had been said tonight that would alter what the board was proposing enough to require another public hearing. David L. Patch said the comments that had been made were just a different way of saying the same thing. He noted David Publicover's suggestions were the same things worded differently and put in a better place, but didn't change the substance of the original intent. He didn't necessarily think they required a second public hearing. David Shedd said he didn't think things had changed significantly, but said David Publicover's suggestion to re-word Amendment 2 was well-worth doing and that would be a change. Mr. Publicover commented that if the board did adopt the suggested language for the definition of a lot, then that could be enough of a change to warrant a second public hearing. The board finally agreed it was no problem to keep the public hearing open and a motion was made by Scott Grant; seconded by David Shedd to continue it to the January 17 meeting. Vote: All in favor. The Chairman thanked the audience for attending tonight's hearing.

2. Determination of Site Plan Review for Family Tree, LLC, Route 16. There was nobody present to speak to this request so the matter was passed over. However, the item did elicit a comment from David Shedd who queried why the minutes from the last meeting, which he had not been present at, reflected that AMSCO's proposed extension of a maintenance shed was not required to come in for site plan review. He asked whether the board only took into account the size of the maintenance building, or were all the buildings on the lot considered. It was explained to Mr. Shedd that the building was located on its own lot, was the only structure there, and the expanded size did not exceed 5,000 sf. Mr. Shedd was satisfied with this explanation.

3. Informal discussion with Burke York: Mr. York said this was a fact-finding visit and provided a plan which was proposing to subdivide two lots out of the south-west corner of an 80-acre parcel of land owned by James Howard on Cobb Farm Road. Mr. York said right now the two proposed lots were not in current use; they would be just over two acres each and one would contain the existing residence; and there was nothing being proposed for the remaining 76 acres, which was in current use. Mr. York said he had provided loading calculations for the two smaller lots and that the remaining land from Razor Brook out to the roadway was the same soil type. A note had been added to the plan documenting this fact. Mr. York said the remaining 76 acres had not been surveyed as part of this application and his question to the board was whether he needed to do bedroom and soil calculations on this remaining land.

David L. Patch advised Mr. York that in the past sometimes the board had asked for that, and sometimes a waiver had been granted, depending what was being planned. His said his opinion was that people shouldn't be subject to the expense of surveying and calculating large parcels of land if they were to remain undeveloped. In this case, he noted that two small lots were simply being subdivided out of one corner of a large tract of land, and he felt until something was planned for the remaining land that requiring calculations was a moot point. The Chairman confirmed his understanding by asking that the owners of the two lots being broken-out were okay with their septic. Mr. York said yes. The Chairman continued by saying that if someone bought the remaining 76 acres, they would do so under the risk that it would not support septic. David L. Patch noted it was the same soil type and that was a risk anybody would have to take. He didn't feel it was the board's responsibility to guarantee any potential buyer of the 76 acres that the property had sewage capability. Mr. York said that was the exact reason the note had been added to the plan stating the soil was the same. The board eventually agreed that calculations were not required for the 76 acres, but it was suggested that a written waiver request be submitted. Mr. Burke left a completed application package so that the application could be scheduled for a public hearing in February.

4. Continuation/Final Approval: Attitash Mountain Service Co., (AMSCO), Block G, Stillings Grant: File: 2013-1187. This is an application to reconvene review of a continued application to subdivide Block G into 40 residential units. Tax Map 5STLNG, Lot G00.

No action taken on this application since the plans are still in the process of being reviewed by the town engineer. The application has been continued indefinitely until the review had been completed.

5. Review and Approve Minutes: The board reviewed the minutes of the December 20, 2016 meeting. A motion to approve, as written, was made by Scott Grant; seconded by David L. Patch. Vote: All in favor.

6. Mail and Other Business:

- There was no mail to review.

With no further business, a motion to adjourn was made by Scott Grant; seconded by David Shedd. Vote: All in favor. The meeting adjourned at 6:55 p.m.

Respectfully submitted,
Barbara Bush
Recording Secretary