

**TOWN OF BARTLETT PLANNING BOARD
PUBLIC HEARING**

March 5, 2018

Members Present: Chairman Philip Franklin; David L. Patch; David A. Patch; David Shedd; Scott Grant; Kevin Bennett; Peter Gagne. **Members Absent:** None.

Also present: Mark and Beverly Dryjas; Burke York of York Land Services, LLC; Kevin Tilton of HEB Engineers; Andrew Fisher of Ammonoosuc Survey Co.; Andrew Dean, Esq. of Cooper Cargill Chant; Andrew Chalmers; John Verani; Craig DuVarney; Norman Head.

The meeting was opened at 6:00 pm by Chairman Philip Franklin, who reviewed the agenda. Since the applicant for Item 1 on the agenda had not yet arrived for the meeting, the Chairman said the board would proceed to Item 2.

2. Conceptual discussion with Burke York and Andrew Dean, Esq. regarding frontage of property belonging to Robert B. Ferguson and John J. McInerney, Jr. Revocable Trust, identified as Tax Map 2GLENL, Lot 69B00, and located off the end of West Ledge and Middle Ledge Roads.

Mr. York reminded the board he had been in a few months ago for a preliminary discussion when it was being proposed to subdivide this 157± acre parcel into five lots. He said things had now changed and the owners were looking to divide it into just two lots. Mr. York said this was an unique situation in that a brook ran through the property, dividing it roughly in half, which resulted in there being 83.7± acres on the north side of the brook and 74.5± acres on the south. This division is why the property fronted onto both Middle Ledge and West Ledge Roads. He provided a plan which showed the two areas of land, as well as cul-de-sacs at the end of both roads. Detail A on the plan showed two cul-de-sacs at the end of West Ledge Road; one cul-de-sac was existing and the other one had been proposed back in the early '80s, but was never fully-built all the way out to the end. A shaded area on the detail showed the location of existing pavement and Mr. York said access to the 74-acres would come off this pavement.

He then addressed the 83-acre area, which he said would have frontage from a right-of-way only, which came off a cul-de-sac at the end of Middle Ledge Road. Mr. York said the cul-de-sac was built about 300-400 ft. to the south of where it was originally supposed to be as shown on a subdivision plan approved by the planning board back in the early '80s. This subdivision included Lots 1, 2, and 3, but Mr. Burke said when Lots 1 and 2 were sold, a deed restriction stipulated there could only be one building between the two lots. This left Lot 3 as another building lot, along with the right-of-way to this parcel. David L. Patch asked how old the plan was that created Lots 1, 2, and 3, saying if it was pre-zoning, that would make them lots-of-record. Mr. York said it was 1984. Mr. York said what he would be asking for is that the board allow them to have frontage on the right-of-way off Middle Ledge Road. The Chairman asked how much frontage there was off the ROW. Mr. Burke said it was approximately 80-ft. The Chairman asked whether it was existing pavement and who maintains it. Mr. York said the pavement was existing, and that the town maintains it to the cul-de-sac and then it was privately maintained from thereon. David Shedd asked if the cul-de-sac had been built to town specs, and Mr. York said he thought it had been.

David L. Patch said one issue he could see was that Mr. York was creating a new lot. When Mr. York said that was correct, Mr. Patch said in Bartlett, in order to create a new residential lot you needed to have 50-ft. frontage onto a town road or town-spec road. Atty. Dean advised our regs said it could be a street or a street right-of-way. David L. Patch repeated it still had to be on a town spec road or right-of-way. Mr. York indicated that was what he was here to find out. The Chairman read the definition of a street, which said "...any avenue or boulevard, road, lane, or other traveled way to support public service to more than two dwellings, whether or not the traveled way is intended to be publicly or privately owned." David L. Patch agreed that was the definition of a street, but said what we are talking about is the definition of creating a new lot. The Chairman said he was under the impression we were trying to determine whether the ROW could be considered a road or not, as that made a difference to Mr. York's case. Mr. York agreed with that assessment, saying it meant his client could either have one lot or two. The Chairman asked whether Middle Ledge Road could be extended down to the property. Burke York said there was ledge in the area and the cost would be prohibitive to build a 500-ft.-long town spec road. However, he said putting a driveway in should present no problem. David Shedd asked who actually owned the land under the ROW. Mr. York said it was owned by the same people who owned Lot 3, prompting Mr. Shedd to say that while people had the right to pass over the land, how could it be claimed as frontage when it wasn't owned by the party requiring the frontage.

The board spent a lot of time discussing possible solutions with Mr. York, some which were not feasible and some which appeared to have potential. Mr. York said he would go back and have further talks with the landowners and thanked the board for their helpfulness in working with him.

With the arrival of Mark Dryjas, the board returned to Item 1 on the agenda.

1. Public Hearing: Dryjas Holdings, LLC and Mark & Beverly Dryjas, Highland Road: File: 2018-1241. This is an application for a boundary-line adjustment to convey 5.73 acres from Tax Map 6SACOR Lot 032HR0 to Lot 033HR0. After adjustment, Lot 032HR0 will contain 14.43 acres and Lot 033HR0 will contain 11 acres. Each lot will then be subdivided into a 3-unit PUD.

The Chairman noted the board had looked at this application on several occasions, but asked Mr. Dryjas to describe what he was proposing to do. Mr. Dryjas did so by saying the reason for the boundary-line adjustment was to increase the size of a 5-acre landlocked parcel he owned so that it would have road frontage onto Highland Road, which was a town road. He said in 1985, townfolk had voted to accept the end portion of Highland Road, known as Highland Road Extension, which would have provided frontage for the lot, but the town had never actually taken it over. Mr. Dryjas said a few years ago he had been granted a waiver by the planning board to extend a driveway from his abutting lot into the 5-acre parcel to provide access, but he felt the concept being proposed tonight was a much better solution. He said the boundary adjustment did not affect density, which there was plenty of, and there was similarly enough density to support the two 3-unit PUDs. He described how this property had previously been approved for a 13-unit PUD, so there is certainly enough density available to support this reduced number of units. He said the 13-units had never been developed because of the exorbitant cost and the amount of cut-and-fill required to build a town-spec road. Mr. Dryjas said the two PUDs would be served by gravel-packed driveways, the construction of which would have far less impact on the environment and the landscape than building a road would have. Mr. Dryjas said he was very happy with the new design, especially since it lessened drainage on the property by having less impervious surfaces. Mr. Dryjas said the previous condominium documents had been updated and approved by the state for the two PUDs.

The Chairman asked if there were any questions from the board. Peter Gagne asked since this was a PUD, why wasn't a town-spec road being required. He was reminded Bartlett now allows three dwellings on a single driveway, which is what Mr. Dryjas is proposing. The Chairman asked if there were any further questions from the board. With none, he called for a motion to accept the application. Motion made by Scott Grant; seconded by David A. Patch. Vote: All in favor. The Chairman then opened the public comment period and asked if there were any questions from the audience. With nobody wishing to speak, the public comment period was closed. With no further questions from the board, the Chairman called for a motion to continue the application to the March 19 work session. Motion made by Scott Grant; seconded by Peter Gagne. Vote: All in favor. Mr. Dryjas was reminded the work session was being held on Monday the 19th, not the regularly-scheduled Tuesday, so as to not conflict with the town deliberative session.

3. Preliminary discussion with Burke York re Greg Tsoules' project on Town Hall Road. Mr. York provided a plan showing the latest concept for this project and said he just wanted to come-in and let the board know where things stood. He said nothing had really changed since he was in last time. He said the application had actually been submitted, but was withdrawn when the NHDES required condo documents for the exclusive use and common areas which Mr. Tsoules' lawyer was unable to work on due to being on vacation. Mr. York said the documents were now being processed and will be submitted to the DES, and the application should be ready for a public hearing in April.

David Shedd asked where the access to Exclusive Use Area B was. Mr. York responded that it was off the existing driveway. Mr. Shedd noted Mr. York had just said that nothing had changed, but last time we looked at the plan access was from the right-of-way. Mr. York said Mr. Shedd was correct, as that was a change. He explained how further research of Mr. Tsoules' deeds had turned-up an amendment to the original Declaration of Covenants, Easements, and Restrictions document which granted all lots the right to use a 35-ft. right-of-way along the existing paved drive, not just Lots 1 and 2 as stated in the original conveyance. What the revised conveyance did was to allow Exclusive Use Area B to be accessed from the paved driveway, and Mr. Tsoules' Exclusive Use Area A to use the driveway immediately off Town Hall Road. The Chairman asked if there were any other questions. Scott Grant repeated his understanding of who could use the rights-of-way, which Mr. York agreed was correct. David Shedd

again expressed his concern as to how he felt the frontage requirements had been compromised by developing a commercial PUD, and said he would like to see the issue addressed. Mr. York agreed this was an unique situation, which would probably never happen again.

4. Informal discussion with HEB Engineers re a proposed two-lot subdivision of land belonging to the Society for the Protection of New Hampshire Forests (Society) on East Branch Road. Tax Map 1EBRAN-1, Lot 041R01. Kevin Tilton presented and said the property contained approximately 54 acres, the majority of which was subject to deed restrictions. These restrictions applied particularly to land in the back area of the property, which had been placed in a conservation easement by Richard Ware, the previous owner. However, Mr. Ware's restrictions also made provision for ten acres in the front of the property along East Branch Road to be set aside and subdivided out for residential use. It is this ten-acre area that the proposed 5.74-acre house lot is now being subdivided out of. Mr. Tilton said the Society had signed a purchase and sales agreement with the Upper Saco Valley Land Trust for the back land, as well as the remaining 4.26-acres of the front developable land. Mr. Tilton said plans for the remaining land were unknown at this stage, but there was talk of the Forest Service potentially using it as a trailhead for a new trail coming down the back side of Bartlett Mountain. Mr. Tilton pointed-out an old woods road/ski trail traversing the property which would be used, and also showed how the remaining portion of land had 120-ft. frontage onto East Branch Road where the trailhead would be located. He said the 5.74-acre building lot being proposed would have its own driveway which had been designed to ensure the curves and grades would accommodate emergency and fuel delivery vehicles. Additionally, two test pits had been dug which showed the lot had good percolating soil with no evidence of groundwater in either pit.

Mr. Tilton said he had run density calculations which showed the 5.74-acres would support three building lots under our subdivision regulations, however that number exceeded the conditions of Mr. Ware's conservation easement which only allowed two. Mr. Tilton said the one building lot being proposed was a very conservative approach. Mr. Tilton said the main reason he was bringing this before the board tonight for a preliminary discussion and not as an official application, was the fact they were unable to delineate wetlands due to the snow cover. He said preliminary observations of the property during the fall indicated there could be potentially wet areas or poorly-drained soils and, to be conservative, the density calculations had excluded these areas along with the 75-ft. setback areas surrounding them. Mr. Tilton said he wanted to be sure that was okay with the board before going ahead and submitting the application for the April public hearing since the submittal deadline for that meeting was on Monday. The Chairman asked Mr. Tilton whether he thought he would have the wetlands issue squared-away as soon as possible. Mr. Tilton explained there was a bit of a problem in that there was a purchase and sales agreement in place which was supposed to expire at the end of April. He said if he could get the application on the April meeting and get it approved, they wouldn't be able to get a wetlands scientist on-site for the wetlands information to be added to the plan to get final approval until the May meeting, at the earliest. The Chairman said what Mr. Tilton was basically looking for would be conditional approval. Mr. Tilton said that was essentially correct. David Shedd noted the Society was putting a number of conditions on this lot, and it would seem to him they would have certainly taken any wetland issues into account. Mr. Tilton agreed. Mr. Shedd said the lot wasn't pushing up against wetlands, and after having been on the property for test pit observation, he agreed the area where the test pits had been conducted appeared to be the most-practical site for a house. Mr. Tilton said he would be submitting the application for the April public hearing and thanked the board for their time.

5. Discussion with Ammonoosuc Survey re C.C. Russo property on Granite Ledge Road. Tax Map 2GLENL, Lot N2. Andy Fisher presented and said he had been in for a similar preliminary discussion a few months back. He provided two sets of plans for the board's review; one with contour lines and one with the contour lines removed for clarity. He said at his last visit he was operating as if Granite Ledge Road was considered a road. He said under that assumption it had been proposed to develop three units on high ground at the rear of the property. Mr. Fisher said the planning board had doubts about the status of the road and suggested he speak to the selectmen, which he did. The selectmen subsequently informed him Granite Ledge Road was not considered a road, but rather a driveway. Mr. Fisher said with that information he reevaluated the project. He said three units are still being proposing, but now one will be shifted down to have access off Pebble Ledge Road, while the other two on the higher ground will have access off Granite Ledge. However, this would still result in there being four units off Granite Ledge Road.

Mr. Fisher said he went to the selectmen again to get their opinion on whether or not it might be acceptable to allow the two units off the end of Granite Ledge Road. The selectmens' opinion was that Mr. Fisher would need to request a waiver from the planning board to allow an additional dwelling off a driveway, and Mr. Fisher said this is what he would be proposing to do. The Chairman asked Mr. Fisher which driveway he was talking about. Mr. Fisher explained that Granite Ledge Road was considered a driveway by the selectmen and that there were already two properties which had access off it and the two being proposed would make four, which exceeded what our subdivision regulations allowed. He said Lot 24, on the corner of Glen Ledge and Granite Ledge, had frontage on Glen Ledge Road even though they accessed off Granite Ledge. Lot 26 also accessed off Granite Ledge Road. David Shedd noted the board had previously discussed the issue of lots fronting onto a town road while having their driveway come off a private road. He said here we are dealing with the situation again, which made it a little confusing with the number of houses on a driveway and then frontage on a town road. He said even though the Christies (Lot 24) had their driveway off Granite Ledge Road, they still had frontage on Glen Ledge, so he wouldn't say they counted towards the number of dwellings allowed on a driveway. There was both agreement and disagreement with this comment. David L. Patch said we have always allowed people to put their driveway wherever they wanted, but their actual frontage had to be on a town road. Scott Grant said he plowed Granite Ledge Road and described it as being a long way from Glen Ledge Road up to the Hurley's residence on Lot 26, and another long distance to the end of the road. It was also steep, and Mr. Grant advised that the road would need to be widened and emergency vehicle pullouts would be required. Mr. Grant also asked how many units were going on Pebble Ledge Road and whether a driveway was going off it. He reminded Mr. Fisher the road was owned by a Mr. Anderson, who lived at the end. Mr. Fisher said only one dwelling with one driveway was being proposed, and that Mr. Russo had a right-of-way over the road. David Shedd told Mr. Grant that frontage on Pebble Ledge wasn't required since what was being proposed was a PUD. He said Mr. Russo could put as many houses on the lot as the soils would support, so long as driveway standards were met. He asked how many houses were on Pebble Ledge at the moment and was told there were two. He said it appears as though our choices are to grant a waiver to allow a fourth house on a driveway, or to not count the Christie property since it had frontage onto a town road. David L. Patch said when he supported the zoning amendment last year to increase the number of dwellings on a driveway from two to three, he had made it very clear that it would take a lot to convince him to grant a waiver to allow any more than that. He said he wasn't sure this would be a waiver he could support.

Scott Grant shared he knew for a fact that Mr. Russo had approached the Christies to see if they would move their driveway twenty feet so that it came off Glen Ledge Road, but they were not willing to do so. Mr. Grant said that would have been a very doable solution. Andy Fisher said the proposal to build two houses at the far end of Granite Ledge Road was not a new one. He said back in 1983, the original owner had attempted it and had even been granted septic approval from the state and town. He said he understood that the regulations read as they did, but the reason he was here was in the hope that something could be worked out. Mr. Fisher tried to say that it would be a hardship for his client not to be able to develop his property, especially since it had frontage on Glen Ledge Road. Peter Gagne asked what the hardship was; that he couldn't put more houses up? Mr. Fisher tried to explain why he considered it a hardship by saying that assuming everybody who had the right to travel along Granite Ledge Road also had their access on the road, that the first three people would be okay to build while the others would be out of luck. He said two people currently have access onto Granite Ledge Road so if only one other one did, this large lot at the back would be unbuildable. David A. Patch immediately informed Mr. Fisher that was not true, as it was a lot of record and therefore one house could be built.

The Chairman attempted to bring the discussion to a head, by asking how would it be possible to make these two houses work when a couple of board members weren't wild about the idea of granting a waiver to allow four houses on a driveway. He said he was still confused about who has access onto Granite Ledge and would like to see a plan with that very clearly defined. He said if the Christie property didn't count, that left only the Hurley property which accessed Granite Ledge Road. During this discussion, David A. Patch asked if we were talking about houses or units, since the Hurley house was a duplex. The board said Mr. Patch raised a good point, which prompted David Shedd to say that was another question; if you have a building with five units in it, do you have to have a town road to get to it? Peter Gagne read the definition in the zoning ordinance which used the term "dwelling unit." He subsequently read the definition of a dwelling unit, which indicated it was a single unit for the use of one family. This raised the question of whether the town was taxing the Hurley property as two dwellings or one, and the board felt this was something which should be verified by checking the tax records. The Chairman said since Granite Ledge Road will

need substantial upgrading, he asked how much more would it cost to bring it up to town spec standards. Mr. Fisher said that was not something his client was looking to do, but he believed the expense would not be worth it and could not be recuperated. The Chairman said it appeared the board would not be able to give Mr. Fisher a definitive answer tonight. Mr. Fisher thanked the board for their input.

6. Review and Approve Minutes: Since some members reported they had not had time to read the minutes prior to the meeting, a motion was made by Scott Grant; seconded by David Shedd to defer review of them until the March 19 work session.

7. 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. This application has been continued indefinitely until an engineering review is completed.

8. Mail and Other Business:

- Norman Head expressed his objection to people coming in to speak to the board after the agenda had been posted, noting two people were present tonight who were not listed on the agenda posted last Thursday. The secretary tried to explain to Mr. Head that these people had emailed a request to be on the agenda last Friday, which was prior to the agenda deadline, but because the planning board office is only staffed on Monday and Thursday, the emails were not seen until today. It was further noted these people were only present to ask non-binding, informal questions of the board which did not involve a vote in any way and did not involve any application which had been formally submitted. Peter Gagne agreed if people had questions, they should be allowed to speak to the board at any time.

With no further business, a motion to adjourn was made by Scott Grant; seconded by David L. Patch. Vote: All in favor. The meeting adjourned at 7:42 pm.

Respectfully submitted,
Barbara Bush
Recording Secretary