

**TOWN OF BARTLETT PLANNING BOARD
WORK SESSION**

June 18, 2019

Members Present: Scott Grant; David L. Patch; David A. Patch; David Shedd; Kevin Bennett; Barry Trudeau; Kevin McEnaney. **Members Absent:** none.

Also Present: Philip Franklin representing the Bartlett Historical Society; Andrew Fisher of Ammonoosuc Survey.

Chairman Scott Grant called the meeting to order at 6:00 pm. After reviewing the items on the agenda, he led all present in the Pledge of Allegiance.

1. Pre-application Review, Bartlett School District, School Street, Bartlett Village. File: 2019-1254. This is an application for a boundary-line adjustment to convey 0.11-acres from the former St. Joseph Church parcel to the main school parcel with the purpose of establishing new 15-ft. perimeters around the existing church on the north, south, and east sides. Tax Map 5VILLG, Lots MAI-BES and STA-RCC.

Phil Franklin presented and said he was representing the Bartlett Historical Society (BHS), who are hoping to buy the church property from the Bartlett School District for use as a museum. He said nothing had changed on the plan since the last informal, non-binding discussion. Mr. Franklin said one of the points talked about at that meeting had been whether the school district would allow the area being removed from the church property to be used by the BHS to satisfy future density calculations, should a new septic system ever be needed. This area was shown as being stripe-hatched on the plan, and Mr. Franklin said nothing would be built on it, either above or below-ground, and the square footage would only be used to satisfy density requirements. Mr. Franklin said he had met with the school board who had agreed to allow this via a 5-0 email vote. Selectmen's representative David A. Patch advised Mr. Franklin that at the last selectmen's meeting he had become aware that using an off-site area for septic density was not allowed. He was unsure whether this was a state or town requirement. Mr. Franklin was discouraged to learn that and said the school was definitely not giving the BHS any additional land. It was asked whether there were any other properties in town which used off-site areas for density, with David Shedd mentioning Mountainside at Attitash and Stillings Grant as possible examples. It was suggested that open space areas could be involved at some of those locations. Mr. Franklin reiterated that this area would be used for density only in the event the existing drywell failed. David L. Patch said if that happened, it could be replaced in the same location, which is something he had personally done. David Shedd said he found it hard to believe that the drywell would fail, due to the small amount of use the museum would generate. Kevin McEnaney recalled at the last meeting that someone was going to check whether the commercial district went back as far as the railroad tracks, and asked whether we had any clarification on that. The Chairman said he believed the church was zoned as residential when the school purchased it. David Shedd thought we could reasonably assume that a commercial designation required the property to have frontage on Route 302, which the church property does not have.

Mr. Franklin said that was all he had for the board tonight, but asked if anybody had further questions. David Shedd asked what would happen if this application was denied by the planning board, saying he thought that was what we would need to do since he couldn't see how we could make a non-conforming lot less conforming. He felt the issue would need to go to the ZBA. The Chairman noted that there were two items at issue here; the change-of-use which was a selectmen or ZBA matter, and the boundary-line adjustment which fell under the planning board's jurisdiction. He noted that the board looked at every situation on an individual case-by-case basis, and thought a case could be made to allow this, saying the townspeople had voted for it and the school board and everyone else was okay with it. David Shedd questioned that comment, saying the towns folk had not voted to diminish the size of the lot. The Chairman explained what he meant by saying a vote had been taken but it had not directly specified what the dimensions of the lot would be. Mr. Franklin agreed. He said he did not have the exact wording with him, but paraphrased it as being along the lines of the school board was allowed to proceed with the sale of the church property for one dollar on terms that were agreeable to the school board, or to the advantage of the school board. He recalled he tried to get the BHS included as also being an advantaged party, but had been unsuccessful in that endeavor. He said no boundary lines or details had been set at that time, it was simply an agreement that the school would sell the church for one dollar once the terms of the sale were agreed to.

Mr. Franklin responded to David Shedd's previous question by saying if the planning board voted to deny this application that he would accept that decision and move on. Mr. Shedd said everyone would like to see this work, even though there were issues to deal with. He suggested it may even be necessary to go to the ZBA twice; once for the boundary-line adjustment and once for the change-of-use. Mr. Shedd said he couldn't help but think the boundary-line adjustment could be approved, and once that happened it would be harder for them to deny the change-of-use since they would have to go-back on themselves after having started to move in a certain direction. Mr. Franklin said he had already received a denial for a change-of-use from the selectmen, so that process was underway. David L. Patch wondered why this would not be considered a subdivision; not a boundary-line adjustment. It was explained that the school were not creating a new lot, they were merely changing the boundary of the church lot which they purchased as a single parcel in 1999 from the Roman Catholic Diocese. Basically, the school district was adjusting with themselves by changing the boundary of two pieces of property which they currently owned, and the application had been submitted under the school district's name. Mr. Patch listened to this explanation and agreed this was not a subdivision. During the discussion it was noted it was the school district who was creating a substandard lot, with the eventual intention of selling it to the BHS for one dollar. The Chairman, who also sits on the Bartlett School Board, defended this by saying the school was its own government entity and did not have to follow a lot of the town's regulations.

Kevin McEnaney also expressed his desire to see this project succeed and asked whether the planning board could write a letter of support to the ZBA asking that they look favorably upon the request when it came before them. This was briefly discussed and it was felt it would not be appropriate to single-out a specific project when there may be other instances worthy of support in the future. Mr. Franklin agreed a letter of support would be a nice thing, but said whether the ZBA would use it or not was another story. It was eventually decided that individual members could write a personal letter of support if they so desired. Mr. Franklin said he would work hard to present a strong case at the ZBA meeting and felt a lot of people would attend to show support. However, he said if they got denied at the ZBA level, then the BHS would have a lot of decisions to make as to whether they went ahead with this project, with the ultimate decision being that they abandon the project, write to the donors and explain what happened, and offer to return their donation money. If the donors wanted their money back, he would write a check and it was as simple as that. He acknowledged he had the option to submit a petitioned warrant article for next year's town meeting, but said there were many, many other factors involved that limit how much time was available for the BHS to act. The Chairman said if the project was abandoned, the school would demolish the church.

David Shedd asked how the selectmen perceived this. He noted they had already denied Mr. Franklin a change-of-use, which Mr. Franklin confirmed and said was expected and appropriate. Mr. Shedd asked the selectmen's representative, David A. Patch, whether he thought the selectmen would prefer the planning board deny an application in a situation like this, or waive some of the requirements. Mr. Patch said it actually wasn't discussed at the selectmen's level, so he was not sure. Mr. Shedd then answered his own question by noting that, in general, the selectmen did not like waivers. Mr. Shedd said he had asked the question in case the board needed to move in a different direction since he did not want to deny anything if there were other options available. Mr. Franklin said he still had the option of going to the ZBA. David L. Patch said, after listening to everybody, he could kind of see the planning board being pushed down a narrow path. He agreed with the Chairman's previous remark that the school, being its own entity can do a lot of things, but said creating a substandard lot was not one of them. He said as far as granting waivers go, to him it was always the last resort. He agreed everything was on a case-by-case basis, but said a pretty-good reason was needed to grant a waiver and to be able to defend that decision the next time someone wanted one and we didn't give it. He said as much as everyone in the room would like to see this happen, the board still has to follow the regulations. David Shedd said he agreed with Mr. Patch that the best thing we could do was to deny the application and provide individual support to their ZBA endeavor.

The application will be formally submitted at the July 1, 2019 public hearing.

The Chairman asked if the board minded if the agenda was taken out-of-order and go to Item 5 since Andy Fisher was present in the audience and nobody else was waiting to speak. The board agreed to do this and Mr. Fisher was invited to the table.

5. Informal non-binding discussion relative to site plan review determination for Moat Mt. Brewery, Limmer Lane. Mr. Fisher introduced himself as being from Ammonoosuc Survey and said he was here representing Federal Spice, a company better known as Mt. Mountain Brewery which was located in the Limmer barn off Route 16A. Mr. Fisher said he had been here in about 2011 for site plan review for the transition of the barn into the brewery. Part of that review involved a future expansion on the back of the barn. He said that expansion was issued a building permit and was currently under construction, but during a sign-off review by the mortgage financing company, their lawyer had discovered that the expansion was built larger than was presented during site plan review. Mr. Fisher said his company had become involved when the question arose as to whether this larger expansion would now trigger another site plan review. He cited the provision in the site plan regulations which allowed for an applicant to come before the board for an initial determination if there was any question as to whether a review was required, which was the reason he was here tonight.

The Chairman asked whether the board had any questions or comments. David Shedd said after reading the email sent to members yesterday about this issue, he had enough of a concern that he went and got a copy of the building permit from the selectmen's office. He said what was shown to the board during site plan review was a 32x40 addition, and the new building is 35x70, which is almost twice as big. Mr. Shedd said what he had a concern about was on the back of the building permit application was the notation, "Addition proposed is as shown on the proposed site plan approved by the Bartlett Planning Board on 1/17/13." Mr. Shedd said this statement was not true. He further advised that he had been shown a letter the selectmen had sent to Federal Space reminding them they had put a grain silo in without getting a building permit. Mr. Shedd said this silo had been built not only in the greenspace, but also in the setback. He also reported that they were parking over the boundary line, and while he does not take real issue with some of these things, they were doing lots of things that they shouldn't be doing. Mr. Shedd said at the very least he would recommend that a determination not be made tonight as to whether further site plan review is required, saying we may want to take it up at the regular meeting. He said he would almost think it may be worthwhile asking permission to go and find out what else is happening there, such as where they are parking, being that this was a business in a residential area where they can't just be doing whatever they want.

Mr. Fisher said he did not want to come in with a formally-revised plan tonight, but did provide a new one which he said basically reflected the information that was shown on the original site plan. He said during the site plan review there was an approved green area exchange involving the parking area in front of the building. He said parking was provided under the building and along the side. He said there was a paved driveway where people were parking, and there was grass, and whether people were parking across the sideline he couldn't be sure. He did advise, however, that Moat owned all the abutting properties so technically if they were, they were parking on their own land. Mr. Fisher acknowledged David Shedd's concerns and said they would raise red flags for him also, but as far as the building permits and silo were concerned, he said he couldn't speak to how or why they happened as his company had been outside of that process. He wondered whether it was simply confusion on the part of the company as to what they were allowed to do as far as the size the expansion went. Mr. Shedd said he wasn't taking issue with the fact they put an addition on, even though it was right up against the side setback, but the fact that they told the selectmen that this is basically what the planning board approved does bother him. This is why he would like someone from the company come in and explain what happened, but said he wouldn't object if the rest of the board found this request unreasonable.

David A. Patch asked Andy Fisher what the total square footage of the building was now. Mr. Fisher said he had not looked into that. David Shedd said he had looked into it and it was close to 10,000 s.f., which he said did not exceed the 25,000 s.f. limit for commercial buildings. There was a short discussion about the silo being in the setback. David L. Patch said since they owned all the surrounding property that they could possibly do a boundary-line adjustment to move the boundary further away from the silo. David Shedd responded to this suggestion by cautioning about adjusting a residential lot into a commercial lot. He then asked Mr. Fisher how many parking spaces had been provided, and requested to see them on the plan he had. Mr. Fisher said he wasn't sure, but thought at least eleven had been provided in the front. He said he had not researched that information as he was unaware that he would be discussing parking tonight; he thought he was coming in for the building expansion. He said the

plan he had with him was not a site plan, per se, and did not show parking, but did show the driveway and lawn where parking was apparently happening. David Shedd said this raised another issue if they were parking on the lawn, being that the lawn was considered greenspace where no activity whatsoever was permitted. It was asked whether the selectmen had had a copy of the site plan when they granted a building permit for the expansion. David A. Patch said they probably did, but likely only looked at items such as setbacks, etc. Mr. Fisher said even if they did have the site plan, it did not show the dimensions of the expansion but simply showed where it would be located. David Shedd expressed his opinion that the company had been deliberately misleading on their building permit. Mr. Fisher felt this characterization was unfair, saying it may have been an unintentional misunderstanding and we needed to wait until all the facts were known. David Shedd said this is why he would prefer to see a representative from the company attend the next meeting to explain why the size of the expansion was represented as being as approved during site plan review, where parking was occurring, and an explanation of the silo. The Chairman asked if this is what the board would like to see happen, and the board agreed. Later in the meeting, and after Mr. Fisher had left, David L. Patch said he had been re-thinking about this matter and while it was good to notice all the irregularities, he felt it was out of the planning board's purview and believed it was the responsibility of the selectmen to take issue with the incorrect building permit application. He felt the planning board only needed to make a yes or no determination as to whether site plan review was needed for that much extra square footage of building. David Shedd pointed-out one of the responsibilities of the planning board was parking, and said he did not see where it was shown on the site plan. He felt parking was a little bit out of control with them parking anywhere they wanted to. David L. Patch said he did not disagree with Mr. Shedd, but since the planning board had approved the site plan as it was shown, they may come back with an attorney who could argue that the only question for the board was whether another site plan review was warranted for that much square footage. He said he wanted people to think about that. David Shedd said he would not advocate to re-visit site plan review but just wanted some questions answered and for the company to know the board was trying to pay attention to an unusual situation. Kevin McEnaney read from a section in the site plan review regulations that said any subsequent change to the plan based upon such approvals shall require a new application submission. David L. Patch said they didn't change the location of the silo on the plan, and the fact they didn't put it where they were supposed to put it was a selectmen's issue. Mr. McEnaney asked about the size of the expansion having almost doubled and was larger than it was supposed to be. Mr. Patch said that was a selectmen's issue also, and explained that once the planning board approved certain things it was up to the to be the "police" and make sure the applicant does what they're supposed to do. He said he still felt that it was the selectmen's job to tell them that they had built bigger than the building permit. Barry Trudeau asked was that because the selectmen issue the building permit? David A. Patch said he was fairly sure that the building permit would have reflected the correct size of the building, but said as far as parking went, the selectmen would need to check the ZBA's decision to see whether it said anything about the number of employees allowed. Mr. McEnaney reiterated that he thought they needed to submit a new plan. Kevin Bennett and David Shedd agreed. It was eventually decided to wait until the applicants came to the next meeting with answers to the board's concerns before making any further decision.

3. Pre-application Review, MacKeen Attitash Realty Trust; Attitash Mountain Service Co., Ltd.; and Bruce M. Sather & Denise A. Peters, Parker Ridge Road, Stillings Grant. File: 2019-1255. Application for a boundary-line adjustment to divide Lot A50 in half and to add one half each to the two abutting lots, Lots A49 and A51, while eliminating Lot A50. Tax Map 5STLNG.

The board reviewed the plan and did not identify any issues at this time. The application will be formally submitted at the July 1 public hearing.

4. Voluntary Merger of Lots, PP&B, LLC (Joshua Brustin), Route 16. File: 2019-1256. Bartlett Tax Map 2RT016, Lots 182R01 and 192R00. The board identified where these two properties were located on Route 16 and determined that both were commercial lots. Deeds were provided which showed both properties were owned by the same entity, and the mortgage holder had also provided their written consent to the merger. Motion to approve made by David L. Patch; seconded by Kevin Bennett. Vote: All in favor.

6. Continuation/Final Approval: RSM Bartlett Properties, LLC, (Richard Girardin), 590 US Route 302. File: 2018-1251. This is an application for a 14-unit subdivision (7 duplexes) on a 13-acre parcel identified as Tax Map 3RT302, Lot 53R00.

This application had been previously continued to the July 1 meeting since the applicant was still waiting for state subdivision and septic approvals. Additionally, the road design was being revised to relocate the catchbasins out of the road right-of-way.

7. Continuation/Final Approval: River Run Co., Inc., Route 302/Haystack Loop. File: 2018-1252. This is an application for a 3-lot subdivision of a 10.29-acre parcel of land. Tax Map 3ATTDV, Lot UND-D00.

This application had previously been continued to the July 1 meeting since it was also waiting for state subdivision approval.

8. Review and Approve Minutes: The minutes of the June 3, 2019 meeting were reviewed. With no comments or corrections, a motion to approve, as written, was made by Barry Trudeau; seconded by Kevin McEnaney. Vote: All in favor.

9. Mail and Other Business:

- There was no mail listed on the agenda to review.
- The Chairman advised that three board members, David L. Patch; Barry Trudeau; and himself had conducted site visits at the LA Drew and Glen Sand & Gravel (Sean Shannon) gravel pits last week. The Chairman reported that the Drew pit was all-set and was looking great and Glen Sand & Gravel had not added any more material and what was there was almost all gone. He said the gravel crushing operation looked good, nobody had been up to the 25-acres up top, and Mr. Shannon was building his home further down on the flat area. The Chairman said what had been discussed by the members was whether the board should look into potentially writing a zoning amendment to for next year's ballot to allow existing gravel pits to expand on their own footprint. David A. Patch made a generalized suggestion to make gravel pits allowed by special exception. David L. Patch said that was his thought as well. When David Shedd asked the Chairman what he meant by "expanding on their own footprint," the Chairman said the Drew pit could expand on their contiguous lots up to the residential lots and the Glen Sand & Gravel could expand onto their 25-acre parcel.
- The Chairman said he had attended the ZBA meeting last night where Glen Ellis Campground had received approval for up to an additional 40 sites, and gave a heads-up that they may be in shortly for site plan review.

There being no other business, a motion to adjourn was made by David L. Patch, seconded by Barry Trudeau. Vote: All in favor. The meeting adjourned at 7:30 pm.

Respectfully submitted,
Barbara Bush
Recording Secretary