

**Town of Bartlett
Zoning Board of Adjustment
Public Hearing
August 22, 2018**

Members present: Chairman Richard Plusch; Julia King; Norman Head; Anita Burroughs; Peter Gagne.
Members absent: None.

Also present: Joseph Boucher; Tom and Judith Workman; Karl and Susan Pfeil; Carol and Leonard White; Tom and Diane Sawyer; William Rice; Ed Poliquin; Doug and Candace Armstrong; Kathleen Sullivan Head; Kyler and Darlene Drew; Jeff Graves; Nathaniel “Chip” Sawyer; A.O. Lucy; Nat and Marianne Lucy; Lisa Borninski; Martha Corrock; as well as several other people who did not sign the attendance sheet.

Chairman Plusch called the meeting to order at 7:00 pm by announcing the case number, name of applicant, and purpose of the application. He advised the meeting notice for this application was published in the Conway Daily Sun on August 11th and 22nd, 2018 and publicly noticed at the Bartlett, Glen, and Intervale post offices, as well as the Bartlett town hall.

1. Public Hearing - File 2018-03:

Applicant:	Joseph Boucher
Location:	19 West Side Road, Bartlett, NH
Bartlett Tax Map:	Tax Map 6WSTSD, Lot 399-R00
Purpose:	A variance to permit an existing parking lot to be used for public off-road parking to accommodate people visiting Diana’s Baths. Article XV, Section H of the Bartlett Zoning Ordinance states off-site parking used by any facility must be located within 400-ft. of that facility. In this instance, the parking lot and Diana’s Baths are more than 400-ft. apart.

Zoning Ordinance Section: Article XV, Section H.

The Chairman invited Mr. Boucher to present his case which Mr. Boucher did by describing how he and his family have owned and operated a machine shop on the subject property for the past thirty-seven years. He said the recent increase in popularity of Diana’s Baths had created a situation whereby people were parking their vehicles along the road which caused a safety issue with doors opening into oncoming traffic, children darting out from behind parked vehicles, etc. Mr. Boucher described how he had been approached by visitors who said they had driven for hours to visit the Baths, only to find the parking lot was full. When they drove by his business and noticed cars parked in his parking lot, they asked if they could also use this parking lot and walk down to the Baths. Mr. Boucher agreed to this, believing he was helping people out and also alleviating some of the parking congestion along West Side Road. He said people paid between \$5 and \$10 for parking and were grateful for the opportunity to do so. He said some had written letters of thanks, one of which was included in his application packet. The Chamber of Commerce had also expressed appreciation to Mr. Boucher for providing this parking and the police had indicated it helped them out as well by providing another parking venue, other than along the roadside.

However, Mr. Boucher said this summer he was issued a cease-and-desist order by the Bartlett selectmen, claiming he could only offer parking if the distance between the two facilities was not greater than 400-ft., which is the reason he was here tonight requesting a variance from that restriction. The Chairman asked if the board had any questions for Mr. Boucher. Julia King asked Mr. Boucher why he had submitted a change-of-use permit and whether he was changing the use of his property from a machine shop to a parking lot. Mr. Boucher said he was not looking to start another business and the property would only be used for a machine shop, but he would like to offer parking to overflow visitors to Diana’s Baths for a few months of the year. The change-of-use form was what he had been instructed to fill-out and submit. Peter Gagne asked what the maximum number of cars that were able to be parked on the property was. Mr. Boucher said about twenty-five. Anita Burroughs asked whether people were still attempting to park along the road, despite signs being posted which warned of fines being imposed for doing so. Mr. Boucher said yes, and people were also parking in private driveways and on private land. Mr. Boucher said what he offered was certainly not a solution, but it

helped a little bit. Norman Head asked Mr. Boucher about the "no parking" signs around his business. Mr. Boucher said he had placed the signs to deter people from parking in the abutting Glen Builders lot. When Mr. Head asked whether people were allowed to park at Glen Builders, Mr. Boucher said parking was not allowed there now. Mr. Head said one of the reasons he asked the question was because Bartlett zoning required 200 s.f. for every parking space and if Mr. Boucher was offering parking for twenty-five vehicles, that correlated into an area of five-thousand square feet, or a quarter of an acre, an amount quickly corrected by Mr. Head to be an eighth of an acre. Mr. Boucher provided an aerial Google Map printout of his property which showed where the offered parking was located which the board reviewed.

The Chairman asked if there were any further questions. Peter Gagne asked what the actual distance was from Mr. Boucher's property to the entrance of Diana's Baths. Mr. Boucher said he had stepped it out at 400 steps, a distance he felt was probably about two-tenths of a mile. He said the entrance was approximately two-hundred feet over the Conway town line. Julia King noted it was interesting that the distance wasn't all under the jurisdiction of Bartlett's zoning ordinance; some would be under the jurisdiction of Conway's zoning. The Chairman agreed it was a difficult situation being that the parking lot for Diana's Baths was located in Conway, whereby Diana's Baths itself was in Bartlett. He described the meandering boundary between the two towns and wondered who really had jurisdiction. Norman Head disagreed there was any question of who really had jurisdiction, saying the "whole thing" originated in a parking lot in Bartlett. Julia King asked whether this parking lot was an allowed use, noting the selectmen did not mention that issue. Peter Gagne said the ordinance did not address paid parking but felt if people were allowed to park there for free that would be considered the spirit of the ordinance. Norman Head again disagreed. The Chairman read aloud Section XV.H, Off-Street Parking, the section of the ordinance relative to this situation, which said, "Whenever any new use is established or any existing use is enlarged, off-street loading and parking shall be provided in accordance with the following provisions: H. Parking provided by public lots in lieu of or in combination with on-site parking may be utilized when provided within a distance not to exceed four hundred (400) feet." The Chairman said he would assume that distance would mean from the business which has the parking, in this case Mr. Boucher's. However, it wasn't Mr. Boucher who needed the parking for customers of his business, he was merely allowing people to park on his property. Norman Head said he disagreed; that this was a new use of the business and Bartlett's ordinance does not say anything about multiple uses on a lot. Julia King said Mr. Boucher could have two businesses on one lot but he would have to apply for some type of license, but agreed this was a new use. Peter Gagne noted this property was in the Industrial Zone and anything was basically allowed so long as it was listed as a permitted use. He said he did not see anything saying a commercial parking lot was an allowed use and felt there was a difference between a parking lot and a commercial parking lot, i.e., one which people paid to use. Julia King noted the selectmen also did not mention anything about that in their denial letter. Norman Head cited the list of allowed uses in the industrial district shown on page 14 of the zoning ordinance and said there was nothing on the list allowing commercial parking lots. The Chairman reminded him every use listed in the residential and commercial zone was also allowed. He further noted that Section XV addressed commercial off-site parking, but the caveat was that it had to be located within 400-ft. of the facility requiring the parking, per Item H. The lack of this distance appeared to be part of the crux of the selectmen's denial. The Chairman said his take on Item H is that it referred to parking required by the business, but Mr. Boucher was not requiring any parking for his own business in this instance. Norman Head argued that the Chairman was bypassing the words "new use." When the Chairman asked whether Mr. Head was saying Mr. Boucher could not have two business on his lot, Mr. Head replied that was not what he had applied for.

When the Chairman and Norman Head engaged in a discussion as to what Item H was intended to mean, Julia King asked the Chairman, who had been on the original committee who wrote the ordinance, whether he had any comment as to what the spirit of the ordinance was intended to be. The Chairman said he remembered the spirit as being to let everyone do what they wanted with their land, which is why the ordinance is not terribly restrictive in a lot of places. He agreed the intent could be clearer in some cases.

The Chairman asked whether the board had any further questions. With none, he opened the public comment period and asked people wishing to speak to approach the table so their comments could be heard by the recorder.

Susan Pfeil said she lived in the condo development on Nearledge Road which was located between the machine shop and Diana's Baths. She said she appreciated Mr. Boucher's feeling that he is doing a good thing for the tourists. She said she understood that and shared her similar experience in Bar Harbor last summer when she was unable to find a parking spot. However, she did object to people parking on her private property and the hassle of having to call both Conway and Bartlett police about traffic blocking West Side Road on either side of her driveway. She expressed concern that parking will also be allowed on the now-closed Glen Builders property which will increase the problem even further since there will be nobody around to stop them. She also cited the destruction and overuse of the Diana's Bath trail and felt this extra parking facility compounded that overuse by overriding the limited number of vehicles allowed to park at the Baths themselves. Anita Burroughs said she was curious to know if parking was not allowed at the machine shop, whether people would still park illegally in Ms. Pfeil's development trying to get into the Baths. Ms. Pfeil felt the illegal parking would continue regardless, and twenty-five extra parking spaces was not going to solve the problem. Julia King asked whether Ms. Pfeil felt allowing twenty-five extra vehicles at the Boucher parking was going to have a negative, positive, or neutral effect. Ms. Pfeil said she didn't think twenty-five cars was going to put a dent in the number of cars trying to reach the Baths, but felt it was going to be very negative in terms of public safety involving people walking along the road. Anita Burroughs agreed the problem was going to continue and said she would like to see the Chamber of Commerce stop pushing and promoting the area so hard to tourists.

Martha Corrock introduced herself as being the town of Conway's parking attendant at the Baths. She said the main problem is overuse of the Baths and a limit needs to be set as to how many people can visit. This needed to be determined in collaboration with the Forest Service, and the towns of Conway and Bartlett. She described the abuse and problems she encountered when irate tourists were unable to get into her parking lot which often caused her to fear for her safety and necessitated her calling the police. She said people often refused to pay the Forest Service user-fee to visit the Baths, especially when they had already paid \$10 to park in Mr. Boucher's lot. Ms. Corrock felt that two full-time attendants were required to monitor the parking situation and her feeling was that when the lot was full it was full, and people should be encouraged to go elsewhere. She felt the area also needed a gate house, such as Echo Lake had, so it could be closed down when necessary.

Karl Pfeil of Nearledge Road condos felt an environmental study was needed to determine the effect all the tourists were having on the Baths. He said in his opinion pedestrian safety was the number one concern, closely followed by environmental issues at number two. He said there were not enough bathrooms at the Baths to serve all the visitors and claimed he finds human waste, toilet paper, and dirty diapers on his property. He said the situation was getting worse and was not going to get better with additional parking being allowed.

Diane Sawyer said she lived at Westside Woods which was on the other side of Glen Builders. She wanted it known that the Chamber of Commerce were now telling tourists to visit the Humphrey's Ledge area instead of Diana's Baths when it was full, saying they can park anywhere over there. Ms. Sawyer said that area was now just as congested with vehicles parked all along the road and people walking haphazardly across it with their inner tubes. She said it all created a dangerous situation, especially since vehicles do not slow down or drive the speed limit in the area. The Chairman said he drives that road every day and knows to slow down, but a lot of people don't. Additionally, Ms. Sawyer described the trash, dirty diapers, dog waste, etc. all along the road and feels the Forest Service should take a stand on the situation and stand-by their decision, whatever that may be. The Chairman said he agrees with Ms. Sawyer's comments and acknowledged it is a problem and nobody has solved it. Martha Corrock responded to this by saying a new idea could be to charge people \$10 to visit these areas to cover upkeep, but recognized people would not pay if nobody was there to monitor them.

Len White said he lived next door to Mr. Boucher's property and described him as a great person and a great neighbor who put a fence up when he started parking cars and always monitors and controls the parking situation closely. Mr. White felt the problem was the way the Forest Service overly-promoted the area. He said he did not know what the answer was, but the twenty-five parking spaces provided by Mr. Boucher helped as he saw a big difference in the cars parking along the road once the off-site parking started being offered.

Lisa Borninski said she lived right next to where the parking lot was and her complaint was about the number of people cutting through her property and walking up her driveway. When the Chairman asked her whether these people were those who had parked at Mr. Boucher's property or whether they had parked further up the road, Ms. Borninski said she couldn't say that for sure, but this was the first summer she had experienced it happening. She felt if a variance was given tonight, that the situation needed to be better enforced so the trespassing did not continue.

A.O. Lucy said he lived a couple of doors down from the Bouchers and he appreciates what Mr. Boucher is trying to do to be helpful. Mr. Lucy said he agreed with a lot of the things being said tonight, mainly that the area was being overused and the preservation of Diana's Baths was very important. He added that when the Forest Service extended their parking lot he thought they had conducted a study which concluded that the area had reached its limit and any more would ruin the place. He said he did not usually agree with governmental studies but, in this instance, he felt the Forest Service did a good job but were doing a "piss poor" job of managing things. He did acknowledge, however, it was hard to control the situation when there were no gates in place to close things off. He expressed concern that if this variance was approved it would set a precedence whereby someone could buy the abutting Glen Builders property and ask for the same thing. Peter Gagne noted the Lucy family had also offered parking in the past for approximately thirty-five cars and asked when they had stopped doing that. Mr. Lucy said he was not sure when that happened.

Marianne Lucy said Mr. Boucher was a neighbor and a friend. She confirmed a Forest Service study had been conducted to determine how much further use the Diana's Baths area could withstand and agreed the conclusion of that study was as A.O. Lucy had just stated. She said she appreciated Mr. Boucher's efforts, but suggested if he really wanted to help, he should install a 40-stall bathroom on his property.

The Chairman asked if anybody else wished to speak or if the board had questions. Julia King asked if anyone had spoken to the police departments about the situation. Nobody had, but Mr. Boucher said both Conway and Bartlett police had been to his business and said he had the support of both departments as they indicated his efforts helped them. Mr. Boucher said people did walk down the road but it was a fairly safe thing to do as the shoulders were relatively wide in the area. He said when people parked in his lot he always instructed them where to walk and he did not understand why some of them felt the need to cut through people's property. He agreed the bathroom situation was a problem and felt the two porta-potties provided by the Forest Service were not adequate to meet the public's needs and said people were always asking to use his bathroom.

Judy Workman said she lives at 20 Nearledge and agrees with the other comments made tonight, specifically that Mr. Boucher's kindheartedness encourages more people to park and visit the Baths, despite 25 vehicles only being a drop-in-the-bucket in solving the parking problem. She expressed her concerns that the Glen Builder property could be purchased and turned into a large, money-making parking lot and said if a variance was granted tonight that it would be difficult to deny one for anybody else wanting to do the same thing. She said she has observed a lot of cars parked on the Glen Builder's property since there is nobody there to prevent them from doing so and also asked what would prevent regular homeowners in the area from offering parking on their properties to earn a little extra money. Mr. Boucher said the difference was that his property was commercial. He said he had been there and paying commercial taxes for thirty-seven years, and asked why he shouldn't be allowed to earn a little bit of extra money from his property. Julia King said she would like to clear one thing up, which was if Mr. Boucher was granted a variance then Glen Builders would have to go

through the exact same process if they wanted to have parking on their property. Each application was reviewed on a case-by-case basis and it did not mean that Glen Builders would have the automatic right to do the same thing. The Chairman added that each decision could have conditions attached to it such as the number of vehicles allowed and hours of operation, etc. Peter Gagne observed that Glen Builders could allow as many cars as they wanted parked on their lot, as could Mr. Boucher, so long as they did not charge. It was the pay-to-park aspect which made it a commercial venture.

Bill Rice said he was one of the owners of Glen Builders, the property everyone was talking about. He said he had heard the comments about a lot of vehicles being parked on his property the last few days and said he had been there the last two days of this week and had not observed any parked vehicles, other than his own. The portrayer of the parking comment said it was mainly happening on weekends. Mr. Rice said he understood the overcrowding problem as much as anybody else did, but felt that until the Feds and the two towns could come up with a permanent solution, offering parking was at least part of a solution.

Jeff Graves said he had lived in the area for forty-five years and after the Lucy parking snafu, he was opposed to seeing any further parking being allowed.

Nathaniel Sawyer said he was Mr. Boucher's brother-in-law and having spent thirty years in law enforcement he had some knowledge of pedestrian and parking safety. He said he agreed with Mr. Boucher's comment about there being an adequate walking path to Diana's Baths and noted that if people were smart, their vehicles could be pulled even further off the road the entire distance from the parking lot to the Baths themselves which would allow even more room for pedestrians to walk around them. He felt perhaps this activity on the roadway was what the selectmen's denial was about. Norman Head said he respectfully disagreed. He said the violation, in the selectmen's opinion, was that the parking and the activity were more than 400-ft. apart. He said in this case the activity was Diana's Baths and it did not matter which town the activity was located in, the violation was being created in Bartlett. He said some people were hung-up on the semantics of that, but to him it was very clear.

Anita Burroughs said going back to the criteria the board needed to consider before granting a variance which involved the value of surrounding properties. She said if she lived in an area where parking was a problem and people were trespassing on her property, she felt her property value would decline. Diane Sawyer addressed the same issue and advised one of her neighbors was selling her property if this parking was allowed because she was concerned about the value of her property decreasing. Ms. Sawyer said another neighbor was very upset and was also thinking of selling because he did not want a parking lot near his backyard, either, as it would disturb his time in his outdoor hot tub where he liked to be naked. And she advised of yet a third neighbor who sold due in part to the parking problems in the area. Peter Gagne noted this was an industrial piece of property and a lot of businesses much worse than a parking area lot could be located there. Norman Head asked Mr. Gagne whether he felt parking was industrial. Mr. Gagne said he didn't, but it was an allowed use in an industrial zone. Norman Head argued that only when it was within 400-ft. of the activity. Mr. Gagne indicated he disagreed with that restriction and if somebody wanted to have a parking lot, then have a parking lot, but at the moment it was not listed as a permitted use and was only allowed via a variance. Mr. Gagne said he had reviewed the criteria for a variance in his mind and, at this point, he can't find a way to grant it because it's not allowed in the zoning ordinance as an approved use. He said it needs to go to the town voters to be added to the zoning ordinance as a special exception.

Ed Poliquin said he has owned the Glen Builders property for forty-eight years and asked what the downside was of someone building a parking lot in the industrial/commercial zone. Norman Head said it depended on what the parking lot was used for. If it served an individual's business, that was one thing, but if it was being used to park cars for an activity that was more than 400-ft. away, then that doesn't comply with the zoning.

With nobody else wishing to speak, the Chairman read a letter of opposition into the record from William and Connie Gagnon and a letter of support from NH Senator Jeb Bradley. The public hearing was then closed and the board discussed the five criteria required to grant a variance as follows:

- a) The variance will not be contrary to the public interest, which the Chairman said included the entire public including tourists. He asked if there was any discussion. Anita Burroughs said it was contrary to the interest of tourists because of the safety hazard. The Chairman agreed it was somewhat contrary to them as it was degrading the situation, and as much as he would like to say that a man is entitled to make money off his parking lot because it is his property, maybe the little extra he earns does not help anything by adding twenty extra cars. The Chairman said until something can be done to restrict the number of people visiting the Baths to the number that are supposed to be going in there, the problem will continue. Julia King said it was against the public interest because it encourages people to walk along a public or state highway which is against the law. This statement was immediately refuted by Peter Gagne who said it was not illegal to walk along West Side Road. Norman Head said it was contrary to public interest for the simple reason that people had to walk 1,100 feet to their destination which made the situation even more dangerous.
- b) Owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, which the Chairman said does not necessarily mean financial hardship. He informed Mr. Boucher that he did not feel his lot was any different than any other lot in the industrial zone, which was the basic thrust of the argument being that it was not harder on him than anybody else. There was no further discussion on the issue.
- c) The spirit of the ordinance is observed. The Chairman attempted to explain what the "spirit of the ordinance" actually meant by reading the preamble to the zoning ordinance. This preamble cited the spirit as being to help preserve a rural, tranquil, and open environment free from sound, visual, air, and water pollution while at the same time promoting and encouraging the orderly and wise development of a viable economy for the benefit of all. The preamble ended by saying it was intended that the administrators of the ordinance keep in mind the spirit as well as the letter of the document. The Chairman said regardless of what happened in the town of Bartlett, that was often hard to do and that a lot of things had kind of violated that spirit. He felt that was due in part to the fact that there were a lot more people here than there used to be. He said, somehow, we need to ignore the amount of money these people bring in by saying, "no, you can't do some of these things." He agreed that this makes it a tough decision, especially for people in business. The board had no further comments on c).
- d) Substantial justice is done. Norman Head read Mr. Boucher's response to this item from his application form, which said justice would be done because it would allow people to park off the road, thus promoting the health, safety, and welfare of the general public. Mr. Head questioned Mr. Boucher's intent, asking him if he was really doing it for safety, or was it to earn a little bit of extra money. Mr. Boucher said it was both. Julia King said we were encouraging a dangerous situation by giving people permission to do what everyone says you shouldn't do, i.e. parking outside the parking lot and walking along the side of a road, which was narrow and winding and not designed for pedestrian traffic.
- e) The value of surrounding properties will not be diminished. The Chairman said he did not think twenty cars was going to make a difference one way or another, but felt the overall situation could be a concern if people wanted to move into the area. However, he did not think it would have a great impact since the area was enjoying a real estate boom at the moment, and people would buy regardless. Julia King pointed-out, hypothetically, Mr. Boucher's business could also enjoy a boom which could result in twenty-five cars being in his parking lot every day; that being the nature of business. Norman Head noted that those twenty-five cars would probably not be parked there all day.

At this point, the Chairman said the board would vote on the above criteria. Before doing so, he addressed the audience and urged them to put pressure on the town, the government, and everybody else to solve this problem as much as they can. He said it was a big problem, not just at Diana's Baths but also at Humphrey's Ledge.

- a) Granting the variance will not be contrary to the public interest. Vote: 1 agree (Gagne), 4 disagree.

- b) Owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship. Vote: 5 disagree (unanimous).
- c) The spirit of the ordinance is observed. Vote: 5 disagree (unanimous).
- d) Granting the variance would do substantial justice. Vote: 1 agree (Gagne), 3 disagree (Head, King, Burroughs), 1 abstain (Plusch).
- e) The value of surrounding properties will not be diminished. Vote: 3 agree, 2 disagree.

Based on the above vote, the application for a variance to allow an existing parking lot at 19 West Side Road in Bartlett to be used for public off-road parking to accommodate people visiting Diana's Baths was denied. The selectmen will be advised of the board's decision.

Review and Approve Minutes: The minutes of the May 10th meeting were reviewed. Julia King noticed a typo in the first sentence of page 2, whereby the word "discussed" should read "discuss." Motion to approve the minutes, as revised, was made by Julia King; seconded by Norman Head. Vote: 4-0-1, with Peter Gagne abstaining since he had not attended the meeting.

With no further business, a motion to adjourn was made by Julia King; seconded by Anita Burroughs. Vote: All in favor. Meeting was adjourned at 8:47 pm.

Respectfully submitted,
Barbara Bush
Recording Secretary