

**Town of Bartlett
Zoning Board of Adjustment
Public Hearing
August 6, 2019**

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

Also present: Nancy Keleman; Scott Grant; Lloyd Jones; Hannelore Chandler; Michael Chandler; Angela Lanigan; Ronald Lanigan; George Howard; Cheryl Nealley; Phil Franklin; Steve Blum; Vicki Garland; Bill Fabrizio; Steve Hempel; Susan Franklin; Lloyd Chandler and several other people who did not sign the attendance sheet.

Chairman Plusch called the meeting to order at 7:00 pm. He announced the case number, name of applicant, and purpose of this application and advised the meeting notice was published in the Conway Daily Sun on July 26th and August 6th, 2019 and publicly noticed at the Bartlett, Glen, and Intervale post offices, as well as the Bartlett town hall.

1. Review and Approve Minutes: The minutes of the June 17, 2019 meeting were reviewed. Norman Head noted two revised pages had been handed-out tonight which reflected corrections he had previously requested. On page 1, last paragraph, Norman Head asked whether the 3.98-acre figure cited as being dedicated to campsites was correct. The secretary said that was the figure quoted by Atty. Cooper during his presentation and also noted in his written submittal. On page 3, Mr. Head noted Marshall Allan had been misidentified as Mark Phaneuf, and on page 5, beginning of last paragraph, a comment had been attributed to Norman King. This name should have been either Norman Head or Julia King. When Ms. King said the comment sounded like something she would have said, it was decided to ascribe it to her. Norman Head made a motion to approve the minutes, as revised and with the insertion of the pages handed-out tonight; seconded by Peter Gagne. Vote: All in favor.

2. Public Hearing - File 2019-04:

Applicant:	Bartlett Historical Society
Location:	School Street, Bartlett Village
Bartlett Tax Map:	Tax Map 5VILLG, Lot STA-RCC
Purpose:	A Variance to allow the former St. Joseph Church to be used as a museum. The zoning ordinance does not provide for museums in the Town Residential District A, which is where this property is located.
Zoning Ordinance Section:	Article XIII, Permitted Uses

Phil Franklin presented. Norman Head recused himself from the hearing since he was a member of the historical society. The Chairman called on alternate Peter Pelletier to take Mr. Head's position on the board.

The Chairman explained the purpose of this application and noted the Bartlett Historical Society (BHS) had provided a comprehensive application, which members had all been given a copy of. He asked if the board had any questions concerning the application. Mr. Franklin asked if he could make a few comments, saying he would like to make clear for the record that everyone understood what the society was trying to do. He said he would be happy to answer any questions regarding the responses he had provided in the application to the five criteria questions relative to the granting of a variance. Mr. Franklin identified himself as the president of the Bartlett Historical Society and advised the society was the applicant for this variance even though the school district still technically owned the church building. He said the society was seeking a variance to allow the church to be used as a museum. He said the variance was needed because a museum was not a permitted use in Residential District A, which is where the church property is located. He said at the March 2019 annual meeting of the Bartlett School District, voters had approved a warrant article authorizing the sale of the church building to the historical society. He said the society was now working with the Bartlett school board and SAU9 to purchase the property with the intention of renovating the church and reopening it as a museum, but said two steps had to be undertaken before the sale could be finalized. One of those steps involved the variance being requested tonight, and the other was a boundary-line adjustment to define a small lot for the church

which was separate from the school property. Mr. Franklin said the planning board had approved the boundary-line adjustment on July 1st.

Mr. Franklin said the museum will be a cultural and learning center which would have revolving displays depicting Bartlett's history. It would also provide a central location to exhibit historic artifacts and documents which, at this time, were scattered all over town. Mr. Franklin said it was also proposed to continue offering educational opportunities to the students at Bartlett Elementary, and in this regard the vicinity of the museum to the school was perfect. Mr. Franklin said the museum would also offer opportunities for people to conduct genealogical research. He described the former St. Joseph Church as being a historic structure which was listed on the state registry for historic places, and was also recognized by the NH Preservation Alliance as one of their designated 2017 Seven to Save buildings. Mr. Franklin said neither of these designations were easy to come by. Mr. Franklin said the church itself was in dire need of repair and there were concerns of it surviving another winter of heavy snow load. He said this was the main reason he was seeking a variance tonight as he did not want to wait until the March 2020 town meeting to submit a petitioned warrant article. He said the BHS does not have the funds to complete all the repairs at this time, but further fund-raising efforts to facilitate the rest of the renovations will be started once the sale is finalized. He said should the variance request fail and the church could not be used as a museum, the society would have some hard decisions to make as they would not want to own a building which could not be used in the manner they intended. He advised if the sale did not eventuate and the church was retained by the school district, that the school would likely tear it down, an event which would be at taxpayer's expense. He asked if the board had any questions.

Peter Gagne asked when the church was built. Mr. Franklin said in 1890. It was sold to the school by the Roman Catholic Diocese of Manchester in 1999 and has sat vacant for the last 17 years. Julia King asked what the consequences would be if the variance was granted and the historical society then did not succeed. The Chairman said that issue could be talked about and added as one of the conditions of approval, should the variance be granted. Mr. Franklin answered that the BHS currently had enough funds to complete the first stage of the renovations, which would be to remove the hazardous materials from the building and then replace the roof and make the building weathertight and structurally sound. He said it may take another year to raise sufficient funds to proceed with stage two, which included mechanical systems and finish work, etc., but noted at least the building would not be in danger of falling down, as it was now. Julia King asked whether not owning the building impeded the society's ability to fundraise. Mr. Franklin acknowledged some donors had indicated they would not give additional funds to the project until the BHS actually had full ownership of the building, which put the society in a kind of quasi-situation. He said having ownership certainly showed the society's dedication to the project and a willingness to do everything possible to make it succeed.

Anita Burroughs noted the BHS had currently raised approximately \$200,000 and asked how much more was going to be needed. Mr. Franklin said the full anticipated cost of the project was \$425,000 so approximately another \$225,000 would be required. When Ms. Burroughs asked whether that amount could be raised within a year, Mr. Franklin said they would certainly do the best they could. He said they had talked to people who may be able to open some new doors for them which they hadn't been able to break-through before, and they were always looking at funding opportunities through grants. Mr. Franklin said this was truly a grass-roots operation with many, many people contributing. He said the largest donations they had received were \$20,000 along with several in the ten-to-fifteen-thousand-dollar range; however, most were in the hundred to five-hundred-dollar range and some folk could only afford \$5.00. Mr. Franklin said no matter the amount, the society was very grateful for every dollar received.

The Chairman asked if the board had any further general questions. When Julia King noted Mr. Franklin had submitted a very comprehensive application, the Chairman agreed and suggested the board go through the application step-by-step and review the evidence Mr. Franklin had offered in support of a variance. The first question asked was whether the proposed use would diminish surrounding property values. The Chairman read Mr. Franklin's response as being property values would not be diminished and would, in fact, be improved

because the church was presently in a state of disrepair and the BHS was going to restore and renovate the structure and bring it back to its original condition which would enhance the neighborhood. Additionally, the material contaminated by mold, mildew, lead and asbestos would be removed from the entire building and this would mitigate concerns the school held about these hazardous materials being in close proximity to school buildings. The Chairman asked if the board had any questions or comments on whether they felt property values would be diminished. Julia King said in her opinion it would enhance property values. Peter Gagne agreed. The Chairman said he agreed also and felt it would be an improvement to the neighborhood. He said the church had always been a gathering place for the people of Bartlett but had since fallen into disrepair. He noted, historically, the church has been recognized as a building worth saving. Julia King spoke of how the town library had once been located in the church basement under the tutelage of the late Jean Garland. Peter Gagne asked when the church had left. Mr. Franklin said two dates were involved, the first being 1999 when the Diocese sold the church to the school district. At that time the two entities agreed to co-exist and both use the building, an arrangement which continued until October of 2001 when the church officially closed and consolidated with Our Lady of the Mountains in North Conway.

The Chairman asked if there were any further questions on property value. With none, he proceeded to the second item which asked whether granting the variance would be contrary to the public interest. Mr. Franklin had addressed this by noting that voters had overwhelmingly approved a warrant article at the March 2019 annual school district meeting allowing the school to sell the church property to the BHS. Furthermore, one of the objectives of the town's master plan was to preserve the traditional character of the town by encouraging the protection of historically-significant buildings, which the church certainly qualified as. It was further noted that the planning board had approved a boundary-line adjustment which allowed the church to remain at its current location while conforming to the property boundaries mandated by the school district. Public support for the museum had been demonstrated by the numerous local people who had made donations to the restoration project and the school district had also expressed their support for the museum and was working with the society to provide educational programs for students. The Chairman asked if the board had any comments on this item. Julia King asked whether the boundary-line adjustment was necessary to give the society the density calculation they needed. She was told no. Mr. Franklin directed her to a plan which he had provided as part of his application package and explained that the shaded area shown on the plan was originally part of the church property but was now being retained by the school district for use as a playground. He said as part of the sales agreement, the school was only willing to give-up a 15-ft. perimeter around the church itself, and the boundaries of this perimeter was what the boundary adjustment defined. Mr. Franklin said the society had asked the school for more land so they would have room to accommodate any future septic requirements, but the school was unwilling to grant the request.

Peter Pelletier asked whether the parking lot beside the church had been conveyed to the school. Mr. Franklin said it had. Mr. Pelletier then asked whether the school was allowing the museum to use the parking lot so vehicles did not park out on the street, which he felt could be contrary to public interest. Mr. Franklin said the society had a lease agreement with the school district whereby they would allow the museum to use the parking lot when the school was not using it. Mr. Franklin said most, though not all, of the museum's events took place during weekends or on evenings. When Peter Gagne asked whether School Street was fine for parking along, Mr. Franklin said it was not. The Chairman asked whether there were any further questions or comments. With none, he proceeded to the third criteria, subsection a), which asked whether denial of the variance would result in unnecessary hardship to the owner because the zoning restriction as applied to the property interfered with the reasonable use of the property, considering the unique setting of the property. The Chairman said uniqueness was one of the prime reasons that allows a variance, and also rules out any sense of establishing a precedent. He said each variance is looked at on an individual basis and noted in case laws, uniqueness is always the first thing looked at. The Chairman felt this 1890 property certainly qualified as being unique. Subsection b) asked that no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restrictions on the property. He said he concurred with Mr. Franklin's finding that granting a change-of-use variance to allow a museum on a residential parcel which was located

immediately adjacent to the school's commercial property was reasonable, since the school had originally purchased the property with the intention of using it as a classroom environment. This did not happen due to the unsafe condition of the building. While a museum was not identical to classroom use, it would still offer educational opportunities to both students and the general public. He asked if there were any questions. Peter Gagne said he had a question for school board member Scott Grant and asked, in theory, whether the school could open a historic center on its property if so chose to. Mr. Grant said the school could do whatever it wanted to do. School board chairman Nancy Keleman agreed the school could open such a center, but the church required too much work to make it a safe environment for students for that to happen.

Subsection c) asked whether granting the variance would injure the public or private rights of others. The Chairman said courts had repeatedly found that any loss to an individual which is not outweighed by a gain to the general public was an injustice. The Chairman felt in this instance, there was substantial gain to the public by having access to the museum as a cultural center and he could not identify any individual loss. Furthermore, he found there would be a loss to the general public if the church was demolished by the school as the public would be responsible, through taxpayer dollars, for the costs of demolition and remediation of the hazardous materials which currently exist in the building. He asked whether the board agreed with that finding, and they indicated they did. Anita Burroughs noted the BHS was a non-profit organization and asked what would happen to their assets if they were not able to generate enough funds to proceed with this project. Mr. Franklin said if that happened, they would meet with their advisers to decide what their options were. Ms. Burroughs asked, hypothetically, if a large donor offered to contribute enough money to complete the project, could their name be somehow associated with the museum. Mr. Franklin said he would love for that to happen, and would seriously talk to them about naming something after them, even though the museum was to be known as the Bartlett Historical Society Museum. He cited an example as the ski museum in North Conway naming their building in honor of a foundation who had donated a lot of money.

Julia King said if justice was being talked about from a historical standpoint, then she felt justice was being served in this case by having a central location to store artifacts where they would be easily accessed by the public. She recalled when the library was in the basement of the church, the librarian documented everything and a book was even written on Bartlett's history using the library's material. However, as time went on and more material was collected, things weren't archived correctly or catalogued, and weren't readily available to the public as they were scattered all over the place. As well as the public, Ms. King felt the school would benefit by this centralized location by being able to take advantage of the educational programs being offered. She said, however, that she did not want the school to have to pay for this project since that would raise her taxes, and she wanted the cost to be borne by the non-profit historical society.

Peter Pelletier said he had taken a ride up to the church and had walked around it. He asked Mr. Franklin about his statement that a substantial snow load on the building this winter could be too much for the building's frame to endure. Mr. Pelletier asked what the basis was for that conclusion and whether it was a professional engineer's opinion. Mr. Franklin explained that the south side of the church which faces the parking lot gets a lot of sun and when it snows, the sun melts the snow off that side of the roof which causes an unbalanced weight on the building. Mr. Franklin said from a structural perspective, this unbalanced weight is resulting in framing failure and the roof is unlikely to support another snow load this winter. He said last year, the north side of the building had about three-to-four feet of snow on it. Mr. Franklin said the roof also supported three layers of old asphalt shingles which did not help with the weight problem. He said the interior wall of the north side of the church was exhibiting cracking which was getting progressively worse. He answered Mr. Pelletier's question by saying the church had been professionally looked at by a structural engineer, an architect, and a contractor.

With no further comments, the Chairman proceeded to item 4 which asked whether the use was contrary to the spirit of the ordinance. He read the applicant's response that Residential District A, where this property is located, also allows several different types of uses other than residential, including home industry, churches,

agriculture, forestry, cross country ski trails and golf courses. The addition of a museum through a variance does not add an element that would create undue noise, unsightly environment, hazardous living conditions, or physical stress to the neighborhood. The Chairman informed Mr. Franklin that the addition of a museum was not correct as it was not being added to the zoning ordinance, it was being allowed by a variance if one was granted. Mr. Franklin said he understood. The Chairman asked if there were any questions. Peter Gagne said he did not realize a school was only permitted in a commercial zone. This comment elicited a discussion and the Chairman reviewed the zoning ordinance for allowed uses where he found schools were not defined as an allowed use anywhere. Peter Pelletier finally pointed-out that even if the board had a concern about the church property being sold and used for another commercial use, that would not be allowed since the parcel did not have frontage onto Route 302. Mr. Franklin confirmed this by agreeing that it was a non-conforming lot.

At this point, the Chairman opened the public hearing and invited people to speak after they came to the table and introduced themselves for the microphone. Nancy Keleman said she was a town resident as well as the chairman of the Bartlett school board. She described how the school had been working for four years to have the church demolished, but last year the voters had decided they wanted it saved and repaired. Ms. Keleman said at that time the BHS came to the school board with an offer to buy the church and restore it. She said she would like to clarify a question asked earlier in the meeting regarding what would happen to the property if the historical society failed. Ms. Keleman said if that happened, under the terms of the purchase and sales agreement, the school would have the right of first refusal, though they weren't obligated to buy it. Scott Grant refuted Ms. Keleman's statement by saying if the historical society owned the property, then it would go to the town in the event the society failed, not the school. He said the school was in the business of education, not real estate, which is why the agreement was written that way. Ms. Keleman said if the sale did not go through because this variance was not granted or for some other reason, then the school would retain ownership and would be responsible for the church. Ms. Keleman said the school still currently owned the church, but had a lease agreement with the BHS.

Scott Grant spoke and said he noticed the board had gone through the checklist but there had been no comments from the members and asked did that mean everyone was okay with things. The Chairman informed Mr. Grant that he wouldn't know that until the board had voted, but said things would seem to indicate that. Mr. Grant agreed things would indicate that and said a lot of people here were for it and he did not think anyone was actually against it. Vicki Garland introduced herself as a Bartlett selectman and said she was supportive of the project. She said this was the first time she had heard that the church could potentially come back to the town and would like to clarify the potential cost to the taxpayers down the road. She asked whether the town's counsel had been involved in that decision of responsibility and asked how the decision had come about. Scott Grant said if the BHS did not purchase the church property, then the school would retain ownership of it. Ms. Garland said she understood that part. When Mr. Grant continued by saying everyone knows if that happened that the church was going to be torn down, Ms. Keleman told Mr. Grant he can't be saying that since he did not know that for sure. The Chairman asked to interject to clarify what was being said, and asked if the historical society decides not to proceed with the museum down the road, does the town have the right of first refusal? Scott Grant said the school has the right of first refusal. The Chairman explained what he meant by saying if the historical society owned it, did the school still have the right of first refusal. Mr. Grant said no, it would go to the town in that case. The Chairman said he did not believe the school could legally make that decision and do that, but the town could certainly be offered the right of first refusal. Mr. Grant said either way, a public town entity was going to have control of the church, whether it be the town or the school. Ms. Garland asked how could the school board decide that the public entity was going to be the town instead of the school? She said what she was hearing was the way the sales agreement was written, the language suggests the town does not have a choice as to whether they took on the responsibility of the church or not. She said she was not anticipating anything bad happening to the historical society, but in her role as a selectman she needed to guarantee that there would be no cost to the taxpayers. The Chairman asked Nancy Keleman to explain what the school was proposing should the society fail. Ms. Keleman said if the society owned the church and something happened to them, then they couldn't just go and sell it to someone else as

the school would have the right of first refusal. When Ms. Garland asked what would happen if the school refuses to take it back, Ms. Keleman said it could go on the market. Ms. Garland then asked where would the town fit in and was told it doesn't. She again expressed that she did not want to see the church become a taxpayer burden.

Peter Gagne commented that whether the school or the town had responsibility, the taxpayers would still have to foot the bill since monies for both parties came from the taxes they paid. Phil Franklin said perhaps he could clarify some of the confusion. He said the BHS had been in discussion with the facilities committee representing the school board and representatives of SAU9, and the way things are written in their by-laws at this very moment is if the historical society failed, then the building would go back to the school and the collection the society had would go to the town. Mr. Franklin said the BHS had been asked to make a change to that, which was if the society fell apart and disbanded that the building and collection would go to the town. He noted what was brought-up tonight was a little different than what the BHS had been asked. He said the society had not yet purchased the building, so there was still room for discussion and still room for change. He said the society had not seen a draft copy of the new proposal nor of the deed. Nancy Keleman said a draft copy of the deed had not come to the full school board, either. She said right now it remains that the school had the right of first refusal, as that was what was discussed at the full-board level. Ms. Keleman said the lawyers were still working on the deed, after which it would come back to the full board for approval. Anita Burroughs asked whether it could be written to say that if the society disbanded, any money they had could go to either the town or the school to cover the cost of demolition. Both Mr. Franklin and Ms. Keleman said no. Ms. Keleman said that would be up to the historical society who were on-hold making any decisions as they were waiting to hear whether this variance was granted. Ms. Keleman said the school board was still working on details, but some members were concerned about the right of first refusal as they did not want to see the society be able to just sell the property to anyone should they disband. Mr. Franklin said when the sale between the Diocese and school occurred in 1999, the Diocese had imposed provisions that the building would not be sold and used for certain activities which went against their Christian doctrine, such as sex, pornography, demonic worship, etc. He said this was done to promote a healthy environment with the school. Ms. Keleman reminded the board if anything happened to the society, they had a building which was non-conforming with no parking and located on a non-commercial lot which would restrict any sales efforts. Ms. Keleman said she wanted to reiterate that the town voters, elected officials, and everyone else should work together to do the best that they possibly to support this effort, as the museum would be a good asset to the town and the community. She encouraged approval of the variance and thanked the board for their time.

The Chairman asked if anyone else would like to speak. George Howard spoke in strong support of the museum. He said years ago Bartlett was a vibrant little village which offered a lot of services to its residents. He said over the years, through economic reasons and town government actions, most of those services were now on the list of prohibited commercial activities and nothing was being done to attract these services back. Mr. Howard felt little emphasis was being placed on sustaining the viability of the village. He asked whether this is what the town really wants, or do we want a town that provides services for its people. He said this museum is the first new initiative to come along which offers something other than a commercial enterprise. He said not just the village benefited, the whole town did and he urged the board to grant the variance. The Chairman noted Mr. Howard had also written a letter of support to the board, which was included in the packet of materials. Also noted for the record were letters of support from the board of selectmen, the former chair of the planning board, David Publicover, and an email of support from Margaret and Michael McCluskey.

With no further comments, the Chairman closed the public hearing and asked there were any further questions. Julia King asked if they could vote. The Chairman said he wanted to talk about the criteria checklist for granting a variance again to decide whether it was necessary to attach any conditions. This was done and the findings-of-facts talked about was basically a recap of the deliberations which had taken place earlier in the meeting, though several additional items were discussed. The Chairman said if the variance was granted, he wanted it made conditional that the society purchased the church from the school district. He also wanted to

make sure that the parking lot stayed with the church and asked whether that had been negotiated. Nancy Keleman said the parking lot did not go with the church, but stayed with the school. Mr. Franklin said there was a negotiated agreement that the society could use the parking lot when the school was not in session. The Chairman said what he wanted to prevent was a future school board deciding they did not want the museum to use the lot. Ms. Keleman said that would not happen as perpetual use of the lot would be documented in the deed. The Chairman asked what signage would be allowed in a residential area, and felt residential signage would be covered under Article XVI-C. Julia King said, in theory, weren't we taking this out of residential use and granting a variance so that it was a commercial use. She was told no, that the board could not do that. What they were doing was making a variance so that a museum could exist in a residential area, so therefore it was still residential. Julia King noted in any case, signage was part of the building permit and it was up to the selectmen to decide what they could have. She said there used to be a sign there, but Mr. Franklin said it moved to the other church in North Conway. Julia King wondered whether there was any grandfathering associated with the old signage on the lot.

After concluding discussions regarding the finding-of-facts, the Chairman said the board could consolidate all the criteria and vote on them as one. Several members felt they needed to be voted on individually, but the Chairman read from literature he had obtained on-line which said when it was time for a vote, the chair should call for a motion on the ultimate question to grant or deny the application. The motion should state the reasons based on the discussions held during the deliberative session. The motion should state that the variance was granted because the evidence presented for the findings of the five variance criteria had been met. He noted only one condition of approval had been decided on which was the historical society would purchase the church from the school district. Peter Pelletier felt that was all that was needed.

The Chairman then called for a motion to grant the variance requested by the Bartlett Historical Society because the evidence presented supports the finding that the five variance criteria had been met. The motion was made by Julia King and seconded by Anita Burroughs with the condition attached that the society purchase the church from the school district. Vote: All in favor. The selectmen will be informed of the board's decision.

With no further business, the meeting adjourned at 8:35 pm.

Respectfully submitted,
Barbara Bush
Recording Secretary