

**Town of Bartlett  
Zoning Board of Adjustment  
Public Hearing - January 13, 2015**

**Members present:** Chairman Richard Plusch; Peter Pelletier; Jonathan Hebert; Julia King; Helen Crowell.  
**Members absent:** None

Also present were Paul Pagliarulo; Bert George; C.J. Valladares; Eugene Black; Daryl Mazzaglia; Mark and Jessica Spaulding; John Greenwood; Chris Hilson, Esq.; Gene Chandler; Bill Duggan; Elizabeth Gray.

**Public Hearing - File 2014-03:**

<b>Applicant:</b>	Paul Pagliarulo, dba Northern NH Nursery
<b>Location:</b>	1226 US Route 302, Bartlett, NH
<b>Bartlett Tax Map:</b>	Tax Map 5VILLG, Lot MAI-70
<b>Purpose:</b>	The applicant is appealing decisions made by the Board of Selectmen regarding a change-of-use permit, development in the flood plain, and a building permit associated with agricultural activities being proposed by the applicant on the property identified above.

**Zoning Ordinance Section:** Article XVII, Section F

Chairman Richard Plusch called the meeting to order at 7:30 pm. He opened the hearing 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 January 3<sup>rd</sup> and 13<sup>th</sup>, 2015 and publicly noticed at the Bartlett, Glen, and Intervale post offices, as well as the Bartlett town hall.

**1. Review and Approval of Minutes:** The minutes of the August 21, 2014 meeting were reviewed. Motion to approve, as written, made by Jon Hebert; seconded by Peter Pelletier. Vote: All in favor. The minutes of the October 7, 2014 meeting were reviewed. Motion to approve, as written, made by Julia King; seconded by Jon Hebert. Vote: All in favor.

**2. Public Hearing: Paul Pagliarulo, dba Northern NH Nursery:** Mr. Pagliarulo is a commercial nurseryman who purchased the former Cook Farm on Route 302 in Bartlett village with the intent to grow plants and shrubbery for wholesale distribution. The selectmen informed Mr. Pagliarulo that he would need to apply for a building permit for a storage trailer, and a Permit for Activity in the Floodplain. Mr. Pagliarulo argued that he did not need to apply for these permits, but eventually did so under threat of civil penalty. However, both permits were denied and returned as being incomplete, and additional/missing information was requested by the selectmen. The building permit was denied because the trailer did not meet setback requirements and a certificate of elevation was not provided as the selectmen deemed the property as being located within the designated floodplain. Similarly, the Permit for Activity in the Floodplain was denied since it was not signed by an engineer or surveyor who were required to verify the elevations where the activity is to take place and the relationship to the floodplain elevations and classifications. Mr. Pagliarulo had indicated on the applications that the property was not located in the floodplain. Mr. Pagliarulo was also asked to apply for a change-of-use permit.

The Chairman asked Mr. Pagliarulo to present his case. Before doing so, Mr. Pagliarulo provided handouts of written information, including copies of state RSAs pertaining to agriculture, which the board reviewed. In a brief overview of the issues, he documented three items for the board to consider: 1) That a change of use is not required, that the property has and is being used as farming as it has for many decades; 2) That there is no building development in a floodplain whatsoever at the property and only farming activities as described in RSA 21:34a; and 3) A building permit is not required as existing use is farming and no building construction is taking place. He felt he did not believe he needed to submit any of the documentation requested by the selectmen. Throughout his testimony, Mr. Pagliarulo repeatedly cited RSA 21:34-a.

Each of these items were discussed. Mr. Pagliarulo said he did not consider what he was proposing was a change-of-use, as the property had been used by the Cooks for agricultural purposes and he was continuing an existing use which was already there. He said the use pre-dated zoning by decades and was thus grandfathered. He said even if it was not grandfathered, the agricultural activities he was proposing were allowed and encouraged by the state, even in a floodplain, as the state considered farming to be the best use of floodplain areas. Mr. Pagliarulo noted how most farms in the area, such as the Hussey farm, were located along rivers and in floodplain areas. He also felt a building permit was not necessary since he was not proposing any physical building or development in the floodplain and the storage trailer, which he described as an allowed ancillary use to farming, was not affixed to the ground and was moveable using a skidder. He said it could be either relocated to meet setbacks, raised, or removed from the property entirely. He said it was used to store pots, fertilizer, etc. Mr. Pagliarulo said he had been issued a cease-and-desist order by the selectmen with the threat of daily fines should he proceed with his activities. Mr. Pagliarulo described the selectmen's actions as arbitrary and retaliatory, and affirmed his opinion that the town was anti-business, particularly if it involved "outsiders." He further stated his right to farm overrides any town ordinances.

Mr. Pagliarulo was asked about the heavy equipment observed on-site and a large stockpile of soil. On July 12, 2014, Bartlett Police Chief Tim Connifey observed and documented the equipment as being one excavator, one loader, one tractor, three dump trucks, one pick-up truck, and one loam screener, as well as a quantity of shrubs and plant bulbs located at the rear of the property. Mr. Pagliarulo explained that the Cooks had raised pigs on the property, which resulted in the top layer of soil being "mucky" and being wet and boggy. He said the stockpiled material resulted from scraping an approximate 200'x200' swath of topsoil and mixing it with potash, ash, and organic fertilizer, per strict Dept. of Agriculture best-practices standards. The soil was then screened and was to be used to fill three hundred one-gallon pots for planting purposes. Mr. Pagliarulo said his activities were not detrimental to the floodplain nor to the topsoil. He said he was a professional nurseryman and was well-aware of the benefit of good topsoil, which took years to develop. He said the heavy equipment on-site was necessary to lift and condition the soil, as lifting and moving large quantities of heavy soil was not a job that could be done by hand with a shovel. He said that once the growing fields were established, the equipment would be removed. He described his growing operations as a 4-to-10-year process, where purchased seedlings were raised in pots and allowed to mature before being sold to wholesale customers only. Mr. Pagliarulo said he would eventually like to have greenhouses where he could raise plants from seed and not have to buy seedlings. Mr. Pagliarulo further acknowledged having built a road on the property to access the rear portion of his land. He said this was necessary due to boggy low areas, which caused his vehicles to become stuck in the mud for long periods of time. He said the material used to construct the road all came from on-site, and nothing was transported onto the property.

Julia King asked Mr. Pagliarulo about the "not in the floodplain" box being checked on his application for a building permit. Mr. Pagliarulo explained that his online research of the FEMA website had indicated his property was located in Zone B on the FIRM maps. Ms. King provided conflicting documentation, also from the FEMA website, which indicated that while part of the property may be in Zone B, most of it was in Zone A and AE, which is classified as "an area of special flood hazard." Jon Hebert noted that in the eyes of anybody driving by, there would appear to be a lot of activity going on the property. Mr. Pagliarulo responded to this by repeating he was not developing or building in the floodplain. Mr. Pagliarulo was asked how the selectmen could evaluate whether he was developing in a floodplain if he refused to provide floodplain elevations? He responded by saying that Selectman Doug Garland had acknowledged that the FEMA flood maps are a mess, disorganized, and conflicting. He added that when zoning conflicts with the right to farm, that farming rights supersedes zoning.

Atty. Chris Hilson, from the law firm of Donahue, Tucker & Ciandella, PLLC, spoke. He prefaced his remarks by acknowledging his firm was the town's attorney, but that his role tonight was representing the board of selectmen. Atty. Hilson said he grew-up on a dairy farm and he was not trying to shut down any agricultural purposes. He said nobody is saying Mr. Pagliarulo can't do what he wants to do, but he needs to get the proper

permits. Atty. Hilson provided additional information for the board's review, including a photo taken from Google Earth showing the property with the boundary lines outlined, a photo showing the stockpiled loam and equipment on the property, and a copy of an inspection report from Burr Phillips of Civil Solutions. He acknowledged Mr. Pagliarulo was correct in saying that state statutes are protective of agriculture, but that it doesn't give agriculture a free pass, and does not absolve someone of permitting requirements.

He said RSA 21:34-a covered rules of construction, but that RSA 674:32.a, b, and c expressly said that agricultural uses are not exempt from generally-applicable permit requirements, which is what we are talking about tonight. Mr. Pagliarulo interrupted to ask what the term "generally-applicable" meant. Atty. Hilson said they were requirements that were applicable "across the board," and not just to agriculture use. Atty. Hilson acknowledged that the Cooks sold pies at their farm stand which perhaps contained some of their own apples. He also understood they sold stuffed animals. Atty. Hilson said what is being proposed by Mr. Pagliarulo is not, "I'm going to put in a few apple trees and have a farm stand." What is being proposed is a wholesale industrial nursery operation to include loam sifting, heavy equipment, etc. and there is no evidence that the property was ever used in that manner in the past. Because it is a completely alternate agricultural use, the selectmen have the obligation to insist on permits. In addition, if the property is in the A/AE zone, placing any structure, such as a trailer, on the property required a permit.

Atty. Hilson described Mr. Pagliarulo's ongoing conflict with the selectmen and how they could not come to an agreement. He said since compliance was not forthcoming, that meant the next step was to issue a cease-and-desist or notice of violation order, which was the core reason we were here tonight. Mr. Pagliarulo strongly disagreed that was not the reason for the meeting. He said he was appealing administrative decisions based on the three items he provided; that he does not need the permits which the selectmen returned as not being complete. Atty. Hilson responded that he wasn't sure if a determination as to whether the permits were complete or not was appealable to the ZBA, but that it might be. Julia King asked if the ZBA gave the appellant relief from the selectmen's decision, would that make the cease-and-desist order null and void. Atty. Hilson said if that happened, the selectmen would have the right to appeal the ZBA's decision. Ms. King then asked if the ZBA did not grant relief, whether that meant the cease and desist was still in place. Atty. Hilson said it did, and the selectmen would then have to make a decision. Mr. Pagliarulo offered that a second option would be a feasible resolution. He felt a happy medium could be reached where, if the selectmen were truly interested in protecting what they claim to be protecting and they needed to satisfy abutting neighbor's concerns in the event of a flood, they could understand and agree to his right to farm so long as he did "this, this, and this."

The Chairman then opened the hearing for public comment. Mr. Pagliarulo requested that only abutters be permitted to speak. He was told by Peter Pelletier that this was a public forum and anybody had the right to address the board. The board would listen to all comments, and then decide what information to take into consideration when it came time to make a decision.

Eugene Black spoke and said he was elected by default to represent the Skidaddlers Ski Club due to another member being sick. Mr. Black said he has been familiar with the Cook property since 1982, and he doubted that apples from the property were used for making the pies. Mr. Black said the Cook property definitely goes under water and shared a story of how John Cook would park his vehicle on high ground near Route 302 so it wouldn't float away, and would row back and forth to his house in a dinghy which he tied to the back door. Mr. Black said he recalls two occasions when the floodwaters came up one-foot on the back of his house. He expressed concern that Mr. Pagliarulo's activities would cause erosion to his property.

John Greenwood, an abutter across the river stated he had never been notified of this hearing. A postal receipt was produced which showed a certified letter had been sent to his brothers in Massachusetts, whose names were on the tax records as being the owners of the property. Mr. Greenwood said he had already lost 10-ft. of his property and he was concerned that Mr. Pagliarulo's digging activities would create eddies that would

cause further loss of his land. He stated it was not a good use of the property and that Mr. Pagliarulo should not be allowed to strip the land which he feared would send water across the river. He further stated the Cooks bought apples from Vermont to make their pies, as the apples growing on their property were not suitable for pie making. Mr. Pagliarulo denied his activities would cause erosion and stated he was establishing a buffer zone by growing native riverbank trees such as river birch along the riverbank. He also denied having stripped the land.

Daryl Mazzaglia identified herself as being the chairman of the Bartlett Conservation Commission. She noted that one of the requirements of the Shoreland Water Quality Protection Act is that persons carrying out such agricultural activities and operations in the protected shoreland shall work directly with the local representative of the above agency. She said there were a couple of these representatives with offices in North Conway, and she was curious whether Mr. Pagliarulo had made contact with them. Mr. Pagliarulo said that he hadn't, and that the Department of Agriculture Natural Resources Conservation Services, which also has an office in North Conway, had never got back to him. Mr. Pagliarulo said that he worked closely with the Department of Agriculture Division of Forest and Lands and he absolutely complies with best management practices for farming. Ms. Mazzaglia then asked whether anybody had walked Mr. Pagliarulo's property, and if a determination had ever been made by a wetland scientist as to whether any wetlands were involved, as this was something the conservation commission would like to know. Mr. Pagliarulo said the commission was more than welcome to walk his land. Julia King advised that selectmen Doug Garland and David Patch had walked it, and Ms. Mazzaglia said she would contact them.

Mark Spaulding acknowledged that he was not an abutter when asked by Mr. Pagliarulo, but said that he lived up the street. He urged the board to support the select board and to not set a precedence for every landowner along the river to do whatever they want in the floodplain.

The Chairman asked if there were any further questions from either the public or board members. Helen Crowell asked Mr. Pagliarulo what his objections were to filing the permits requested by the selectmen. Mr. Pagliarulo did not answer fully, but said he probably couldn't pass the "litmus test" when it came to floodplain elevations and that he would be incriminating himself. As far as a change-of-use permit went, Mr. Pagliarulo said the only reason he purchased the property was because it had farming attributes attached to it. Ms. Crowell asked how Mr. Pagliarulo had established that fact. He stated he had checked with his lawyer and the town, who informed him that only two properties along the road, the Cook farm and Gene Chandler's property, had established farming rights. Mr. Pagliarulo said if he has to file for a change of use, it indicates he wants to change the use, which he does not want to do. He intends to keep it the same use as it was before. Peter Pelletier noted to Mr. Pagliarulo that sometimes a good business decision requires doing things that you don't like or agree with.

At this point, the public hearing was closed and the board deliberated on Mr. Pagliarulo's appeal. After discussion, the board came to the decision that the selectmen had the right and responsibility to request more information to enable them to make an informed decision in Mr. Pagliarulo's case. While nobody was saying Mr. Pagliarulo could not conduct agricultural activities on his property and was not being denied use of his property, he still needed to obtain the proper permits to do so. The information provided on these permits would also provide information to allow the town property files to be accurate, and to enable fair and proper property taxes to be assessed. It was felt the road which Mr. Pagliarulo freely-admitted to constructing on the property constituted enough of a development in an area designated as a "special flood hazard" to require a permit for activity in the floodplain. This also required an engineer-certified certificate of elevation. The fact that conflicting information was provided as to whether the property was in Zone B or Zone A/AE made it even more important for the elevations to be officially verified. It was felt that Mr. Pagliarulo's proposed operation of a commercial nursery involving heavy equipment, loam screening and reconditioning, road construction and other activities was a significant change of use from the previous owners having a pie stand

and perhaps growing a few apples and berries. It was felt the situation involving a building permit and the placement of the storage trailer could be worked-out with the selectmen.

The Chairman called for a motion to either uphold or deny the selectmen's decision. A motion was made by Jon Hebert; seconded by Peter Pelletier to uphold the decisions made by the selectmen. Vote: All in favor.

With no further business, a motion to adjourn was made by Peter Pelletier; seconded by Julia King. Vote: All in favor. Meeting was adjourned at 8:43 pm.

Respectfully submitted,  
Barbara Bush  
Recording Secretary