

**Town of Bartlett
Zoning Board of Adjustment
Public Hearing
September 10, 2019**

Members present: Norman Head; Anita Burroughs; Julia King; Peter Gagne; Alternate Peter Pelletier.

Members absent: Chairman Richard Plusch (with notice).

Also present: Shawn Bergeron; Wilburn Miller; Vickie Miller; Kenneth Belovarac; Marilyn Belovarac; James Fitzgerald; Edward Davis; Bill Smith.

In the absence of Chairman Plusch, the meeting was chaired by Vice-Chairman Norman Head and Alternate Peter Pelletier filled Mr. Plusch's seat on the board.

The Vice-Chairman called the meeting to order at 7:00 pm. After introducing himself and the board members to the applicants and to the public in general, he announced the case numbers, names of applicants, and purpose of these applications and advised the meeting notice was published in the Conway Daily Sun on August 31st and September 10th, 2019 and publicly noticed at the Bartlett, Glen, and Intervale post offices, as well as the Bartlett town hall.

1. Public Hearing - File 2019-05:

Applicant:	Federal Spice Corporation, dba Moat Mountain Brewing
Location:	9 Limmer Lane, Intervale
Bartlett Tax Map:	Tax Map 1RT16A, Lot 24L00
Purpose:	An Equitable Waiver of Dimensional Requirement to allow an existing silo to remain where it was constructed.
Zoning Ordinance Section:	NH RSA 674:33

Shawn Bergeron of Bergeron Technical Services introduced himself and advised he was representing the applicant, Federal Spice Corporation. He said he was here seeking an equitable waiver of dimensional requirement from Article IX-A:4) of the Bartlett Zoning Ordinance. He said within the procedures for granting this waiver was a series of questions which needed to be answered. Mr. Bergeron said these questions had been addressed in his application as follows: 1) This request involved a dimensional requirement, and not a use requirement; 2) The non-conformity was discovered after the structure was substantially completed: The silo had been approved as part of site plan review in January of 2013. At a later date it was constructed unintentionally in a different location than shown on the approved plan and partially within the buffer. The violation was not an outcome of ignorance of the law or bad faith, but resulted from a legitimate mistake when the property owner simply erred when placing the silo on his property. 3) The non-conformity does not constitute a nuisance nor diminish the value or interfere with future uses of other property in the area because, as located, the silo best-served the brewery and its equipment. It does not diminish the property value nor interfere with futures uses, as a silo is an item that is normally associated with agricultural uses. This silo stores grain and may even visually enhance. 4) The cost of correcting the violation far outweighs any gained public benefit since the cost to relocate has both an interior and exterior component. The exterior component of dismantling, taking-up the concrete pad, etc. would be significant as would the interior component of piping and controls which would need to be reworked and reconfigured. None of this work would result in any gain to the public.

Mr. Bergeron provided an 11"x17" plan presenting the layout of the brewery property, as well as a colored photo showing the location of the silo as it exists today. He said when the silo was constructed a few years ago, the 14'x14' concrete pad it sat on was inadvertently placed in such a manner that it encroached 77 s.f. into the greenspace. Mr. Bergeron explained that in January of 2013, Federal Spice had been through site plan review with the planning board, and the silo had been approved at that time. However, when the silo was actually constructed several years later, its original location no longer worked and it also interfered with the location of a handicap ramp. Since the brewery was in operation, the owner placed the silo where it best-suited his needs to

supply grain to the equipment inside, not realizing the location was slightly in the greenspace. Mr. Bergeron noted the Limmer building was an existing grandfathered structure and almost the entire north side of it was located in the greenspace. He also noted Federal Spice owned all the surrounding properties. He asked if the board had any questions. Anita Burroughs asked what the distance was between the intended original location and where the silo finally ended-up. Mr. Bergeron said approximately thirty feet. Peter Gagne asked how much distance in feet did the 77 s.f. violation represent, and how far did the concrete slab encroach into the greenspace. Mr. Bergeron said it was approximately four-and-a-half to five feet, and to move the slab that distance would hardly be noticeable to the general public. Julia King asked whether the size of the silo changed from what was presented at site plan review. Mr. Bergeron said the site plan review was basically a land-use approval to allow the Limmer property to be used as a brewery. Anita Burroughs asked about the Limmer boot business, and asked who owned the building. Mr. Bergeron said Federal Spice owned the property having purchased it from the Limmers, but there was an agreement to allow the boot business to stay and operate in perpetuity. Peter Pelletier asked what the cost to move the silo out of the greenspace buffer would be. Mr. Bergeron said he did not have an exact figure, but based on his knowledge of construction and through his experience as a building inspector, he would estimate about ten to fifteen thousand dollars. Peter Gagne asked how long the silo been in existence for, and had Mr. Bergeron inspected it during its construction. Mr. Bergeron said he believed it was constructed in 2015, and his duties as the town's contracted building inspector were confined to the original construction and renovation of the Limmer barn to convert it into a brewery, and he was not involved with the construction of the silo which happened a few years later.

Julia King asked Mr. Bergeron about a letter the selectmen had sent to Federal Spice dated July 1, 2019 which identified several areas of concern which had originated at the planning board level. Mr. Bergeron said he had been back to the planning board since then and these items had all been resolved. He also said the applicant had submitted a building permit for the silo, which he had neglected to originally do. Mr. Head expressed his disapproval of people who did not do the right thing, and instead of being in compliance with the regulations in the first place, asked for forgiveness after-the-fact. Mr. Bergeron agreed this sometimes happens, and said that was why the state implemented the equitable waiver of distance process a few years ago to address these types of situations when the cost of correction outweighed any gain to the public. It was asked whether a boundary-line adjustment would have been a better solution. Mr. Bergeron said he would love to have had an easy solution like that, but it would have been too problematic due to the non-conforming aspects of the abutting property. He said any time land was taken from a property where it was uncertain what its status was, and it was added to a lot where the status was known, then some kind of issue would be created which would need to be resolved. Mr. Bergeron said that is why he did not go that route. Norman Head asked what the non-conformity with the northerly lot was. Mr. Bergeron said it was in the Town Residential A District so it was a residential use, but the owner had also run a business there so which use governed? He asked whether it was a grandfathered, non-conforming use like Limmer Boot, and acknowledged he did not know the answer. Mr. Head suggested it was perhaps a home business. Mr. Bergeron agreed that may be the case and said a home business was allowed in the residential district without changing the zoning of the property. He said that is why he still had the quandary which would likely have to be dealt with at some point. Mr. Head indicated he did not understand Mr. Bergeron's comment since we can't change the zoning of the lot. Mr. Bergeron agreed, and said that was his point, as land would be taken from the residential lot and added to something that was recognized as being a non-conforming commercial lot. When Mr. Head disagreed, saying that land would be taken from the non-conforming commercial lot and added to the residential lot, it was pointed-out to him by other board members that it was the other way around; land would be taken from a residential lot and added to a non-conforming commercial lot, which would result in that non-conforming lot being made even more non-conforming.

Peter Pelletier said he had several questions regarding the design of the brewery. He noted this was a grain storage facility which, he assumed, had piping through a hole in the wall to supply grain to the brewing equipment inside. Mr. Bergeron said that was correct. Mr. Pelletier said he struggled with the claim that the silo was "unintentionally placed" and asked how hard would it be to move the silo 5-ft. out of the greenspace buffer

and change the piping going into the building without any interior adjustments. Mr. Bergeron said he could move anything, but what it came down to was what the law said about “equitable waiver,” and could the cost be substantiated by any gain or benefit to the general public. Mr. Bergeron said he did not believe there was any public benefit in this case. He said the silo was only visible from two places, those being the owner’s property and from Route 16A when passing by, and moving it 5-ft. would hardly be noticeable to the public from Route 16A. He suggested waiting to hear if there were any comments once the public hearing was opened. Peter Gagne asked if the silo was also in the setback, or only in the greenspace. Mr. Bergeron said it was only in the greenspace. Julia King recalled she was on the planning board at the time of site plan review and greenspace was considered an important item. Peter Gagne agreed it was, but said there was a surplus of greenspace on the backside of the building. Mr. Bergeron also agreed that the property was not lacking in greenspace.

The Vice-Chairman asked if the board had any further questions. With none, he opened the public comment period which was subsequently closed when no public comment was offered. The board then deliberated on the criteria required to grant an equitable waiver of dimensional requirement, and the Vice-Chairman reviewed the questions and answers provided in the application. He asked if there was anything in the zoning ordinance which addressed these equitable waiver requirements, and was told there was not. Julia King said the master plan speaks to some of the issues mentioned in question four, by requiring a public benefit and retaining the rural character of the town. Peter Gagne acknowledged the silo encroached into the greenspace buffer, but said the applicant owned both properties on either side of this buffer and there was still plenty of greenspace on the rest of the property. He said he agreed with Mr. Bergeron that if the silo was moved, the move would not be noticeable from Route 16A. The Vice-Chairman asked Mr. Gagne whether he would be comfortable if other applicants came in wanting to move something from one greenspace to another. Mr. Gagne said every lot was different. In this case, four-and-a-half foot of the silo was in the greenspace, and it wasn’t as though one-hundred percent of the entire structure was. He said if that was the case, he may feel differently. When the Vice-Chairman questioned the correctness of those dimensions, Mr. Bergeron explained the pad was 14’x14’ and half of that was seven feet, and the four-and-a-half-foot encroachment was less than seven.

Julie King said she would argue with Mr. Gagne and noted that when someone went through site plan review, it was a lengthy and exhaustive process. Mr. Gagne said he agreed with Ms. King, who then went on to say everything is supposed to be detailed down to the inch. In this case, the silo was shown to be in a specific location at that time, but now the size of the silo had changed. Mr. Gagne said he didn’t think it did, and noted the fact that the town does not have a building inspector was a problem. He said Mr. Bergeron was contracted-out to provide inspection duties during the renovation of the Limmer barn, but the silo was added several years after that. Norman Head asked whether that meant that an applicant could just ignore the rules and build wherever they wanted to. Mr. Gagne said he was not saying that, but he would have a hard time making them now move the silo four-feet at great cost. Mr. Head asked Mr. Gagne was it only four feet, or was the distance thirty feet from the original approved location? When Mr. Gagne asked Mr. Head whether he was saying they had to go through site plan review again, Mr. Head responded that he struggled with the fact that they went through site plan review and then built it where they wanted to. He said the applicant admitted in their letter that it was a temporary removeable structure. Mr. Gagne said he understood what Mr. Head was saying, but he still disagreed. The Vice-Chairman asked if there were any further questions. Anita Burroughs said she did not believe this was an accident, but also agreed with Mr. Bergeron that moving the silo would not provide any public benefit. She asked when something like this happens, did it set a precedent and was told each case was looked at on an individual basis.

The Vice-Chairman asked if there was any further discussion. With none, he asked if somebody would like to make a motion. He said the motion could be to postpone making a decision, to deny the application, or to grant the application for an equitable waiver of dimensional requirements to allow an existing silo to remain where it was constructed. Peter Gagne made a motion to grant the equitable waiver of dimensional requirement. The motion was seconded by Anita Burroughs. Vote taken: 3 yes (Gagne, Burroughs, Pelletier); 2 no (Head and King). The selectmen will be advised of the board’s decision. Mr. Bergeron thanked the board for their time.

Public Hearing - File 2019-06:

Applicant: Wilburn and Vickie Miller
Location: 27 Linderhof Strasse East, Glen
Bartlett Tax Map: Tax Map 2MITTN, Lot 6-0
Purpose: A Special Exception under Article XVIII, Section D-1-b to reduce the front setback requirements to allow a garden shed to be located 55-ft. from the centerline of Linderhof Strasse.

Zoning Ordinance Section: Article XI, Section B-2 (Setbacks)

Mr. Miller presented, and introduced himself to the board as Buddy Miller. He said he was trying to build a garden shed but his property was quite narrow and sloped-off steeply towards Linderhof Strasse. Due to these slope constraints and the location of his septic tank and leachfield, Mr. Miller said the only practical area to locate the shed was where he was proposing to build it. He said after installing the footings, he became aware that he was in violation of the sixty-foot front setback distance, as measured from the centerline of the road. He said while the steep slope made measuring difficult, the distance was between fifty-five and fifty-eight feet. He said another issue which restricted the location of the shed was that it was only sixteen-feet from the back boundary, so he was unable to move the shed any further away from the road towards that direction. Mr. Miller said he had originally intended to build an 8x12 shed, but had since reduced the size to 8x10 to help with the setback situation. He said he had considered many options as to the location of the shed, including kitty-cornering it, but felt this final location made the most sense.

The Vice-Chairman asked if the board had any questions. Julia King said she and Norman Head had visited the site and agreed it was a small grandfathered lot, which would not be allowed by today's standards. She concurred that where the shed was being located was the only practical area that was available. She noted it was on an upslope and would likely not be very noticeable from the road. She said that the neighboring property had been recently surveyed, so the rear boundary was accurately portrayed as being 16-ft. away from the shed. Norman Head agreed it could have perhaps been placed to gain a few extra feet, but he did not feel any intentional harm was done, or any harm at all was done, and that the location was the best the applicant could do on the small lot. Peter Pelletier asked Mr. Miller if the board granted a 20% reduction, as was allowed under the special exception, and the setback was reduced to 48-ft., would he be likely to build a larger-size shed. Mr. Miller said no, because he had already installed the piers for an 8x10 shed.

At this point the Vice-Chairman opened the hearing to public comment. With nobody present to speak, the public comment period was closed. The board then deliberated and voted on the criteria which had to be met before a special exception could be granted, as follows:

1. The site is an appropriate location for the proposed use: Vote taken: 5 yes (unanimous).
2. A preponderance of evidence is found that property values will not be reduced due to incompatible land use by such a use: Vote taken: 5 yes (unanimous).
3. No traffic hazard will be created: Vote taken: 5 yes (unanimous).
4. No nuisance or other hazard is involved: Vote taken: 5 yes (unanimous).
5. Adequate and appropriate facilities will be provided for the proper operation of the proposed use: Vote taken: 5 yes (unanimous).
6. There is adequate area for safe and sanitary sewage disposal according to state regulations: N/A.
7. Operations in connection with such a use shall not violate the provisions of Article IV of this ordinance: Vote taken: 5 yes (unanimous).

Based on the above vote, the Vice-Chairman called for a motion to grant the special exception. Peter Pelletier made a motion to grant a special exception for a 5-ft. reduction to the front setback requirements of Article VI-B to allow a garden shed to be located 55-ft. from the centerline of Linderhof Strasse East. Motion seconded by Peter Gagne. Vote: All in favor. The selectmen will be advised of the board's decision.

Public Hearing - File 2019-07:

Applicant: Kenneth J. and Marilyn B. Belovarac
Location: 85 Washington Avenue, Intervale
Bartlett Tax Map: Tax Map 1INTPK, Lot WAS-270
Purpose: A Variance under Article XI, Section B to reduce the front setback requirements to allow a garage to be located 33.5-ft. from the centerline of Washington Avenue.
Zoning Ordinance Section: Article XI, Section A (Setbacks)

Mr. Belovarac presented. To help explain his application request and for the board's benefit, he provided a surveyed map of his property at 85 Washington Avenue which had been produced by Ammonoosuc Survey. The setback areas were depicted by a red dotted line and Mr. Belovarac indicated where the proposed garage was to be located and its proximity to Washington Avenue. He said the garage would be served by his existing circular driveway so would not be accessed directly off Washington Avenue. Mr. Belovarac also said his lot was small and was encumbered by steep slopes, trees, boulders, bedrock outcrops, propane tank, septic tank and leachfield, etc., and the only area he had for the shed's location was as being proposed, which unfortunately encroached into the setback. He said the garage would replace an existing 8'x10' tool shed and a tent, and Mr. Belovarac felt that combining these structures under one roof would enhance and neaten the appearance of the property. He said the tent was not permanently attached to the ground, but covered an antique motorized rail car he owned. Mr. Belovarac said the intent of the new garage was to house and protect the rail car and to have a small area for use as a tool shed. He said the size of the garage, as shown, was 20'x20' but that size could perhaps be reduced to 18'x18'. The Vice-Chairman said he wanted to confirm with Mr. Belovarac that his intention was to remove the existing shed and tent if the garage was built. Mr. Belovarac said that was correct. Peter Pelletier asked whether the shed was sitting on cinder blocks. Mr. Belovarac said it was, and that it was there when he purchased the property in 2009. He asked whether anyone from the board had gone up to see his property. Julia King said she and Norman Head had. Ms. King then asked whether Mr. Belovarac had a permit for the tent, stating it was a "Canadian garage" and not a tent. Mr. Belovarac said he did not as, he was not aware he needed one. He said for a long time he simply had a tarpaulin thrown over the rail car and felt the tent produced a neater appearance. The Vice-Chairman confirmed that the town considered these types of tents as a structure, which required a permit.

Peter Gagne asked what the Lower Bartlett Water Precinct's setback was. Mr. Belovarac said he believed it was fifty feet from the property line whereas Bartlett measured from the centerline of the road. Mr. Gagne asked whether Mr. Belovarac would also need to go before the precinct, and was informed that the precinct had advised Mr. Belovarac to go to the town first. Norman Head said the precinct had already denied him. Mr. Belovarac said they denied his building permit and told him to go to the town's ZBA first, and then apply to their ZBA who would consider his application based on the town's decision. Discussion ensued about the difference in setbacks required by the town and those imposed by the precinct, with it being noted that the precinct had stricter standards than the town did. Mr. Belovarac said his house was grandfathered and did not meet setbacks. Norman Head asked Mr. Belovarac whether he had built the shed or whether it was existing when he bought the property. Mr. Belovarac said the shed was already there and a variance had been granted to the former owners in 1990 to build it, which was something he only found out when he applied for his building permit. Julia King summed-up her opinion by saying that the house was non-conforming as it was built prior to zoning; a variance was issued to build the shed which made it more non-conforming; and the Canadian garage was not permitted at all. Peter Pelletier asked whether the proposed garage could be moved closer to the house and away from the road, perhaps by using pylons. Mr. Belovarac said it would be expensive and take a lot of work as it would require a large retaining wall and a lot of backfill. He said the area was full of very large boulders and he was not sure they could even be removed or whether they were part of the bedrock. Mr. Belovarac said this was their year-round second home and he was simply trying to improve the appearance of the property by building a nice garage to get rid of the shanty look.

The Vice-Chairman asked if Mr. Belovarac had anything else to add, and when he did not, he opened the public comment period and invited people to approach the table to view the plan. Edward Davis spoke and said he lived across the street. Mr. Davis said he was against this as he did not like Mr. Belovarac's toy, the rail car, because of the noise and the diesel fuel smell that was created when he started it up. Mr. Davis said he had to live there, and to wake-up to the noise and smell was not acceptable. He noted the non-conformity of the property but said he accepted the tent, even though it was three feet from the property line, and he had no problem with the shed as it looked nice and went with the house. However, he felt the garage did not fit on the property and said he would have to look at it from his porch. The Vice-Chairman said Mr. Davis' point about the tent being close to the property line was a valid one, but the board could not make a decision based on the noise or smell. Mr. Davis said he had another issue with Mr. Belovarac's contractor starting work at 5:30 in the morning. Mr. Belovarac explained that his home had suffered \$50,000 worth of water damage last winter due to ice dams which he was trying to get repaired, but said the contractor did not start work at 5:30.

Jim Fitzgerald spoke in opposition by saying Mr. Belovarac's lot was pretty-much filled up. He also noted the non-conformity of the lot and said a home in front of him had built a garage and then converted a portion of it into living space and he did not want to see that happen in this case. Bill Smith also spoke in opposition saying his biggest issue was that there was no room on the lot as it was very tiny. He said he understood the need for a garage and did not have a problem with it in general, but even what was there now was too close to the road. With no further public comment, the Vice-Chairman closed the public hearing and asked if the board had further questions. Anita Burroughs asked Mr. Belovarac if he rented his property for short-term rentals. He said he had rented in the past, but it became too much of a headache and he no longer does it. Julia King said her problem was the shed had to have a variance so it was non-conforming, and the garage is going to be bigger than the shed. She said whoever got the variance for the shed got it for that size, not for a bigger size, and said in the spirit of the law and in good conscience she can't approve something bigger and make it more non-conforming. Peter Gagne agreed the setback was too small and the garage would be too close to the road. He also felt there was the potential to diminish property values in the area. Anita Burroughs agreed with Mr. Gagne's comments. Peter Pelletier said he would go back to his earlier comment that the garage was too close to the road and again suggested looking at the possibility of a re-design and moving it further back and closer to the house. He agreed this could be an expensive proposition, but said it may then qualify for a special exception which he felt was a better way to go.

The Vice-Chairman asked if the board was ready to go over the checklist. When members indicated they were, they deliberated and voted on the criteria which must all be met before a variance can be granted, as follows:

- a) Granting the variance will not be contrary to the public interest. Vote: 5 disagree (unanimous).
- 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: 5 disagree (unanimous).
- e) The value of surrounding properties will not be diminished. Vote: 5 disagree (unanimous).

Based on the above vote, the request for a variance to reduce the front setback to allow a garage to be located 33.5-ft. from the centerline of Washington Avenue was denied. The selectmen will be advised of the board's decision. Julia King suggested Mr. Belovarac obtain a copy of the 1990 variance. When Mrs. Belovarac asked how they would do that, she was advised by the Vice-Chairman to go to the selectmen's office and get a copy of their property file.

Review and Approve Minutes: The minutes of the August 6th meeting were reviewed. Motion to approve the minutes, as written, was made by Peter Pelletier; seconded by Julia King. Vote: All in favor.

Other Business: Peter Gagne advised he had taken it upon himself to email the selectmen's office to complain that the last ZBA minutes were posted on their website in February. He also noted the selectmen's minutes had not been updated since August. Mr. Gagne further stated it would be nice if meeting notices were on-line so people did not have to go to the post office or read the paper to learn about them. While the meeting notices are posted in compliance with state RSA regulations, Mr. Gagne nonetheless described these methods as "old school" and said people now went to websites looking for information. Mr. Gagne then said he had a problem with the timeline of tonight's Federal Spice application, noting it had been submitted on July 19 and noted there was a 30-day rule to hold a meeting. He was informed an applicant could not apply to the ZBA unless they had been first denied by the selectmen or planning board. In this case, the applicant had not been issued any denial but had submitted a ZBA application prematurely to the selectmen's office on July 19. Mr. Gagne was directed to the selectmen's denial letter which was dated August 12. After the denial letter and abutter envelopes were delivered to the ZBA office by the applicant on August 15, the application was deemed complete and the process of trying to arrange a meeting date suitable to everyone began. The meeting was eventually scheduled for tonight, and was held within the 30-day time period. Mr. Gagne felt the board was at a point where regularly-scheduled monthly meetings should be held, which could be canceled if nothing was on the agenda. The board currently meets on an as-needed basis. Members discussed this and agreed it would be a good idea, if only to approve the minutes of the previous meeting, but decided to wait until the Chairman was available to discuss it further. Anita Burroughs advised that after January, she would only be available on a Monday or Friday, due to her commitments in Concord. Several other miscellaneous items were brought-up including budgeting extra time for the secretary, if needed, and the ZBA budget was checked in the town report to see if it would support the purchase of a copier which, for some reason, Mr. Gagne felt the office needed.

With no further discussion, the Vice-Chairman called for a motion to adjourn. Motion made by Julia King; seconded by Peter Pelletier. Vote: All in favor. The meeting adjourned at 8:35 pm.

Respectfully submitted,
Barbara Bush
Recording Secretary