

**TOWN OF BARTLETT**  
**ZONING BOARD OF ADJUSTMENT**  
**56 TOWN HALL ROAD**  
**INTERVALE, NH 03845**  
**603-356-2226**

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**Approved Minutes**

**ZBA MEETING**

**December 9, 2024**

**6 p.m.**

**Present:** Julia King (Chair); Steve Hempel (Vice Chair); Scott Grant; Richard Plusch (Alternate)

**Absent with notice:** Peter Gagne; Peter Pelletier

1. **Call to Order:** by chair at 6 PM
2. **Pledge of Allegiance-** led by chair
3. **Minutes of last meeting- Motion** made by Scott Grant seconded by Steve Hempel to approve the October 14, 2024 minutes as written vote: unanimous
4. **Unfinished Business**
5. **New Business**
  - Nomination of Kali Brennick to ZBA as an alternate. Julia King nominated Kali Brennick as an alternate to the ZBA Seconded by Steve Hempel vote unanimous. Julia King explained that after Kali was voted on, she has to go to the Town Clerk to be sworn in and then she can speak at any future meetings and if she is asked to step up to vote she can.
  - **Jennifer A. Bartlett (Tax Map 5 VILLG/GR020 and 5VILLGF/CEN70)-** Variance Article VI Section A/B of zoning ordinance. Jennifer and David Bartlett were present and stated their case. Jennifer Bartlett explained that they own 5 parcels in Bartlett Village – the combination of 8 Grove Street has 3 parcels and Central Street has 2 parcels. They are asking to take a portion of one of the lots that is in the middle and move it with the Central Street address (this is 0.3-acre 17,257 sq. feet currently) and the Grove Street property is 49,685 sq. feet. There was an involuntary merge of the properties and the date of the merge and who was notified of the merge is unknown. There is a new house on Grove Street that has its own septic plan signed off by the town and the state. Only a small amount of the lot was calculated for the septic density. The house on the Central Street

house has septic approval for 4 bedrooms and it is already a non-conforming lot. The Bartletts stated that the lot they wanted to keep had an old cabinet and a burnt-out barn on it. They cleaned up the lot and have used it as a lawn- her daughter lives in the home and she and her husband live in the barn. The deeds list all three lots separately as well and we made an error in judgement. We came to the Selectmen to unmerge the lots that are merged and asked them to add this lot to the Central Street address. This would still provide us with two lots in the Village but configured differently. This request was denied. We then went to the Planning Board for assistance. Again, there was an error of wording- we used terms like subdivision- not knowing the right terminology. There is no intent to build or do anything- we just want the yard to go to the big house. David Bartlett stated it was raised that the lot is non-conforming and that the lots are supposed to be at least 30,000 sq. feet which to his calculation is .6887 of an acre. We are not doing anything unusual, untold or untoward as we are going to stay within the nature and the character of the neighborhood. He pointed out that the two abutters across the street have lots that are 0.3 of an acre and the one next to them is 0.23 of an acre. Around the corner the measurement is 0.22 of an acre and one is 0.17 of an acre. All we want to do is take the cleared off lawn that we created and have it gone with the Central Street house. Also, the house on Grove Street cannot physically see the lawn because of the gully and the tree line. Richard Plusch asked the applicants which lot is conforming? It was stated that neither are conforming by today's standards. Scott Grant provided the history of the application to the Planning Board. He stated that the Bartletts have septic density on both lots they have houses and they own the whole property together. So if they wanted to cut off or sell the property or change the lines to quote-unquote sell the property now after zoning was created, the Planning Board can't technically make a non-conforming lot more non-conforming. He did not know if the Bartletts considered an easement as an option but stated that under no circumstances would they be allowed to get a building permit for anything on that property. He added that the Selectmen gave them a septic permit and a building permit for the house on Grove Street. The issue now is if they want to separate the parcels to different names or something and they need to make them as conforming as possible. After coming to the Planning Board several times, the soil type was discovered to be did not meet the minimum land area requirement- it needed to be more dense and as a result the MLAR was 48,000sq feet. There is no way the Planning Board could technically make this happen. Steve Hempel asked if the parcel is split up would it make the lots more conforming. Jennifer Bartlett answered that Central Street would be more

conforming. Steve Hempel stated that if the lot was not conforming what are the ramifications? For example, if you wanted to sell the home. The Bartletts replied when they bought the home and it was not conforming. Steve Hempel stated it may be something they may want to address if possible. David Bartlett replied the land is the land- we cannot add any. Julia King stated that if you took all the property and divided it in half and gave what is necessary to the smaller lot, they both end up with 33,471 sq. feet which means we are make a conforming lot non-conforming. Board informed that the Selectmen sent a letter to the board for them to read.



Selectmen  
Letter.docx

Julia King replied the Selectmen took the response from Attorney Hilson and condensed it. She read from the letter "in saying the five criteria for a variance are the deciding factors and that the board cannot meet the criteria as there is nothing special or unique here to allow it. These properties have existed like this for a long time with no issues, there is no hardship, as they can be used or sold as is and it would not meet the spirit of the zoning ordinance as it specifically says in Article 12 section b creation of a non-conforming lot is not permitted." That is their position and you have the email from Attorney Chris Hilson. Julia King said she looked at the warranty deed and there were 5 names of 5 different lots that were conveyed on 08/01/2011. She asked the Bartletts to the best of their knowledge was this all of the people who owned the lots? David Bartlett responded that they had to go back and find the descendants of the people because the lands was owned by a family trust. We tracked people down in Maine and there were notices posted by state law in the newspaper trying to attract people and we did our due diligence. Julia King concurred that the Bartletts did their due diligence- she asked if they were the owners of the property as of 08/01/2011? The Bartletts answered they purchased the property in 2015. The warranty deed is for Central Street. Jennifer Bartlett also explained she had a warranty deed and a new deed for 8 Grove Street. They did a quick claim deed in 2015 and a lot of the heirs had not signed off on the deed. They went then to Superior Court in New Hampshire to get another deed recorded which took like 8 months. The Bartletts had to trace the Murphy family back to the 1800's and follow the heir tree to the present. In 2015 they purchased the land from Andrea Murphy and Leah Thomas (this is the 8 Grove Street property). Discussion with the board regarding the lots- there are two lots (Grove Street and Central Street) but the deed lists each lot individually and the Bartletts stated that is where the confusion is. They explained that they get two tax bills and the lots were merged prior to when they

bought either one and they were not aware of the merge. The third lot attached to the Grove Street deed is the grassy area and they acquired it via a sale of the Murphy property on Grove Street. Julia King stated she had a discussion with a planning board member and was told that the grassy area could have easily been merged with the Central Street lots as it was with the Grove Street lots. It was just a matter of an arbitrary line drawing for tax bill purposes-there is no separate tax bill for the grassy area. Jennifer Bartlett described the buildings on the Central Street property- there is a big house, a barn and they just got a permit for a shed. On the Grove Street property there is a connected barn and house. Chair asked the board if they have any questions. Public comment will be open after the board has completed their questions/comments. Richard Plusch stated that no-one is able to create a non-conforming lot. He asked if there were really 3 non-conforming lots and you combined the smaller lot with either of the two lots did they become conforming. Jennifer Bartlett responded that if we did the combination the lot on Central Street would become conforming and the Grove Street lot would be non-conforming based on the soil group. No matter what the combination is one lot will be non-conforming. Scott Grant clarified that through a member of the Planning Board that the soil type, according to the town ordinance, needs more square footage to be conforming lot. The town did not know it at the time so it was deemed conforming. And now it is non-conforming due to the soil type. If the soil type was not a factor both lots would be conforming.



Septic Map Bartlett  
Property.docx

Julia King asked the applicants if they received any notification that both lots were non-conforming. Applicants replied no. Julia King stated she asked for legal counsel and cannot ignore his response- "we feel they cannot meet the criteria and there is nothing special or unique here to allow it" (indicating the application). Mr. Bartlett indicated that he felt the attorney is unable to see what they (the applicants) are trying to do- have a nice yard next to a nice house. Julia King stated she understood his frustration but indicated that there are laws on the books that the ZBA has to follow. It is not a matter of practicality but a matter of law. Richard Plusch stated that it was too bad that there does not seem to be any relief from this situation legally. He stated whether a different attorney or a different group of attorneys could make a case he did not know. Chair opened the meeting to the public for comments. Mr. Ross Baker spoke as an abutter on Grove Street -across the street from the applicant. He voiced his confusion because the state and town have approved a permit for the septic and now there seems to be an issue with the sq. footage due to soil type. He felt that the lots should be grandfathered

in and feels that the investigation that was done by the planning board is irrelevant because the septic has been signed off. He voiced that all the Bartletts want to do is provide a lawn to themselves. He indicated that the property would not change at all, just that there would be a large yard for the grandchildren. Discussion with the board and the applicant regarding the process of obtaining a state/town permit for septic. Scott Grant explained that the state comes in and inspects the septic system and says this is good to go. The state then sends a letter to the town and unless the town has some other reason to deny the permit it is issued. The building permit is to build on that property a three-bedroom house with that septic. Steve Hempel questioned why the ZBA was asked as the septic is already approved and there. Why is this a problem at all? The hardship is the applicants cannot put the lots in the way that benefits them. Julia King stated that we are told that we cannot create a non-conforming lot but, in all reality, there is already a non-conforming lot. Board agreed and re-stated that it was without the applicant's knowledge. Steve Hempel agreed and stated that the merge was done to make it easier for taxes and nothing to do about the land itself or soils type. What the Bartletts have done with the property has enhanced the look. Scott Grant provided a point of clarification regarding the Planning Board- he stated that Planning Board is restricted and cannot make a non-conforming lot. So, an applicant has to work the process and gain relief from the Selectmen or the ZBA. That is why the Bartletts are here tonight because the Planning Board is not legally able to that – I am not saying what we wanted to do or didn't want to. The Bartletts could have gone for an easement but they chose not to and they came to the ZBA. Julia King read from Attorney Hilson's response. - the first paragraph reads" after consulting with some of my colleagues, they share my initial opinion: If the owner/applicant can meet the criteria for a variance, they may be able to get a lot line adjustment. As you mentioned, the Zoning Ordinance has a broad prohibition against creating lots that are non-conforming, which is what this boundary line adjustment proposal would effectuate. Variances are meant to be relief-valves from the strict application of zoning ordinances such as to avoid a manifestly unjust or incantational result, meaning the ZBA **does** have the power to grant relief from that flat prohibition." They then go on to say that they don't think they can meet the criteria.



Letter from  
Attorney.docx

Valerie Smith was recognized from the public. She indicated that she bought their house around 1999-2000. The village has undergone changes since they lived there but the

neighborhood is a good neighborhood to raise children and everyone is respectful. The lot in question was poorly kept and the Bartletts transformed it into what you see today. The neighborhood helps each other. She indicated that the majority of the lots in the village are non-conforming but where would more land come from to make them conforming? She understands that laws are for our own good. Julia King asked about the gully on the property- does the water flood? Jennifer Bartlett explained that the town dredged to take the run off from Albany Avenue and they created a culvert and a pond. Bob Lakeland (representative of the Bartlett Village Water Precinct) provided the history of the dredging. He informed the board that around 1930 or so there was a trench that went right through the village by the Bartletts property across Albany Avenue and down behind what was the old thermostat factory down to Bartlett Brook and there was a drain for the village because it flooded. Part of the gully being discussed was part of that drainage- it has been abandoned by the town in the early 1960's or maybe sooner. Since it was dug up and turned over you cannot say it is a natural barrier – it was created by the town. What they are saying is there are two separate lots that cannot be merged together with the Grove Street house because there's been a berm or trench built there. What they are trying to do is incorporate this into the Central Street property. Physically you can't have it with Grove Street because of the digging that was done along time ago. David Bartlett provided history regarding the properties- he stated that the house on Grove Street was originally built to bring Jen's parents over and they were going to move there. The Central Street property was for Jen's daughter. Things have changed and now we want to sell the Grove Street property outright to someone else. The alternative was an easement and what person in their right mind is going to have a quarter acre lot and pay taxes on that lot for someone else to have the right to transverse it and do whatever they want with it, you know have access to it. Julia King asked the applicants if a real estate agent came to the house and said I have a buyer for your house on Central Street can you sell it independently of Grove Street? David Bartlett explained that if you sell the house on Grove Street it would have to sell with the lot that extends to Central Street. Richard Plusch asked for clarification of the deeds- are there three separate deeds. Jennifer Bartlett responded that there are two deeds but, on each deed, there are separate listings of the parcels- it is listed as parcel one, parcel two and parcel three. Richard Plusch asked if the deed could be amended. Scott Grant clarified that if he had three lots and obtained a building permit it does not matter where the lines go because I own the three lots. However, if I wanted to sell my current home I would have to go and redefine the property off of the rest of the property. That now defines the potential hardship of the Bartletts. The reason is right now they cannot sell the properties they own- one is conforming and one is non-conforming. You have to draw the line so it can be potentially sold and it was discussed ad nauseum. Board asked if the deeds can be

corrected? Jennifer Bartlett explained that no she spoke to Alpine Title Services and was told that without a letter from the town they would not be able to create two new deeds. The clerk read the following from the handbook The Zoning Board of Adjustment in New Hampshire Updated 10/2023 to the board and audience: **Statutory requirements (RSA 674:33.1(b))**

Literal enforcement of the ordinance would result in unnecessary hardship. Unnecessary hardship can be shown in either of two ways: First is to show that because of special condition of the property that distinguish it from other properties in the area: (a) There is no fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property; and (b) The proposed use is a reasonable one. Alternatively, unnecessary hardship exists if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

**Explanation:** The applicant must establish that the property is burdened by the zoning restriction in a manner that is distinct from other land in the area. (a) Determine the purpose of the zoning restriction in question. The applicant must establish that, because of the special conditions of the property, the restriction, as applied to the property, does not serve that purpose in a “fair and substantial” way. (b) The applicant must establish that the special conditions of the property cause the proposed use to be reasonable. The use must not alter the essential character of the neighborhood. Alternatively, the applicant can satisfy the unnecessary hardship requirement by establishing that, because of the special conditions of the property, there is no reasonable use that can be made of the property that would be permitted under the ordinance. If there is any reasonable use (including an existing use) that is permitted under the ordinance, this alternative is not available. Steve Hempel felt the hardship of the Bartletts is that if they do not reconfigure the lots it has the grassy lot ids of no use to anyone – it is landlocked. Julia King re-phrased a comment from the community regarding the closeness of the community and how it is tightly knit. She stated the Master Plan’s purpose is to maintain the rural character of the town. Zoning came into effect in 1984 and prior to 1984 the village was built rather haphazardly-it was a railroad town. She felt the Planning Board should have taken the time to create an overlay Village District. What she is hearing from the audience is that the people from the Village are saying that it is appropriate for the lots to be small and that it is compacted. It would uncomfortable if you had neighbors that are bothersome but you can get that even if you were on 5 acres. Richard Plusch brought up some history regarding the zoning ordinance. When it was written there was talk of creating a Bartlett Village district but the people who lived there said no as they did not want the restrictions. This happened about 2 or 3 more times in the following

years. Scott Grant stated there has been discussions about this in the past- it mostly dealt with commercial setbacks in the village and the village precinct. David Bartlett reported to the board that most of the houses in the area are non-conforming. If they are able to move the boundary line it would allow them to sell the house on Grove Street which would be easier to sell once the boundary line is defined. Scott Grant stated the key point here is that they have a building permit for the house. If there was not a building permit for the house and they wanted to do these property line adjustments and it came before the Planning Board it would not happen. Julia King asked for the application and read what the applicant wanted to do. She pointed out that the ZBA cannot merge the lots. The applicant acknowledged she used the wrong language. Julia King stated that what the applicant is trying to do is to create two non-conforming lots. She asked the applicant if she was in agreement with that. Applicant agreed to the new language. Scott Grant made the motion seconded by Richard Plusch vote unanimous to change the application to create two non-conforming lots from the five lots they own. Steve Hempel asked the applicant if the lot was non-conforming when the houses were built originally- applicant replied affirmative. He then stated so what you are trying to do is make them a little less non-conforming. Applicant again answered affirmatively. Richard Plusch asked the applicants if it was possible to make one lot conforming and one lot non-conforming. Applicants answered they have gone through with the Planning Board multiple times and there is not enough land to do that. Julia King explained that the zoning board is the only one who can grant a variance and this responsibility is not taken lightly. The decision is permanent. The board then discussed the checklist and the findings are as follows:

### **Finds of Fact for a Variance**

**Case Number** 2024-03

**Name of Applicant** Jennifer Bartlett

**Address** 23 Central Street and 8 Grove Street

**Owner** Jennifer and David Bartlett

(if same as applicant, write "same")

**Location of Property** (Tax Map 5 VILLG/GR020 and 5VILLGF/CEN70)

(street, number, sub-division and lot number)

### **Application for a Variance**

A variance is requested from Article VI \_\_\_\_\_ section \_A and B\_\_\_\_\_ of the zoning ordinance to permit Jennifer Bartlett \_\_to create two separate lots of equal land size from five lots

**Facts in support of granting the variance:**

1. **Granting the variance would not be contrary to the public interest because:** there are existing dwelling units on the property that are in the character of the neighborhood. All voted unanimously
2. **If the variance were granted, the spirit of the ordinance would not be observed because:** because the ordinance seeks to preserve the rural character of the town. The property under discussion is located in a congested residential area built long before zoning was adopted in the town and the creation of two lots from the five into two nonconforming lots is in keeping with the neighboring lots. All voted unanimously
3. **Granting the variance would do substantial justice because:** the property currently consists of five parcels that were involuntarily merged into one. There is one house on Grove Street and one house on Central Street with another parcel between that has no access except through the lots on Grove Street and Central Street. This parcel is a grassy area used by both residents and bounded by a drainage ditch constructed by the town in the early 20<sup>th</sup> century. Dividing this parcel to create two equal lots, although nonconforming, is the best use of the land. All voted unanimously
4. **If the variance were granted, the values of the surrounding properties would not be diminished because:** the variance brings this property in line with the surrounding properties and could actually increase property values and increase saleable housing inventory. All voted unanimously

**5. Unnecessary Hardship**

**a. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:**

5.
  - i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because: specific application of the provision of the Zoning Ordinance to the property doesn't recognize the effect of the involuntary merger of five lots into one prior to the current owners purchases of the lots. The Bartletts were unaware of the complications, and unaware of the process to remerge that carried a time limit. To summarize: The Bartletts own one lot with five parcels on which there are two dwelling units buffered by a grassy area All voted unanimously

- and -

6.
  - ii. **The proposed use is a reasonable one because:** By taking the whole square footage and dividing by two to create two separate but equally sized lots relieves an unnecessary hardship with respect to selling the property. Instead of one lot with two houses, this creates two lots, each with one dwelling unit on it. All voted unanimously All voted unanimously

**b. Explain how, if the criteria in subparagraph (a) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it. N/A**

Julia King let the applicant be aware that there are only 4 members of the Zoning board present and they only need 3 to pass the variance request. Also, that they are entitled to 5 members be present. Applicants agreed to proceed and not postpone the vote.

Motion made by Scott Grant seconded by Richard Plusch vote unanimously to accept the variance.

## **6. Communications**

- Changes to Planning & Zoning Laws 2024- document provided to board to review
- Survey request- document provided to board to review
- Explanation of Difference between Minimum Land area and septic density- document provided to board to review
- End of year report/budget - clerk will work with chair to prepare

## **7. Other Business**

- 8. Adjournment-** Motion made by Scott Grant seconded by Steve Hempel vote unanimous to adjourn at 7:40 PM.



Board sign in  
12-09-2024.docx



Public sign in  
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Respectfully submitted

Louise B. Burns

ZBA/Planning Board Clerk

603-356-2226