

**TOWN OF BARTLETT PLANNING BOARD
WORK SESSION**

May 15, 2018

Members Present: Philip Franklin; David L. Patch; David A. Patch; David Shedd; Scott Grant; Kevin Bennett; Kevin McEnaney. **Members Absent:** None.

Also present: Paul Pagliarulo; Barry Trudeau; Victoria Laracy; Norman Head.

The meeting was opened at 6:00 pm by Chairman Philip Franklin, who reviewed the agenda.

1. Continuation/Final Approval: CC Russo, Granite Ledge and Pebble Ledge Roads. File: 2017-1237. This is an application to create a 3-unit planned unit development (PUD) on a 9.3-acre parcel between Granite Ledge and Pebble Ledge Roads. Tax Map 2GLENL-1, Lot N-2.

The Chairman acknowledged a letter had been received from the selectmen tonight, which he said he had not had time to read. He suggested the board go over the issue being raised by them which was they were opposed to the board granting a waiver to allow Mr. Russo to build three dwellings off the end of Granite Ledge Road. They were, however, agreeable to a waiver to allow one dwelling in order to allow Mr. Russo use of his lot. The Chairman asked selectman David A. Patch for his input on the selectmen's letter. Mr. Patch said it really did not get discussed heavily at the meeting since Chairman Chandler had not been present and had signed the letter out-of-session. Mr. Patch had abstained from signing it. The Chairman noted the issue was that the selectmen were calling Granite Ledge Road a driveway and if that were the case, the number of houses allowed on a driveway would be exceeded by Mr. Russo's PUD. David A. Patch said he wanted to check the subdivision regulations further to see what it actually specified in regards to a town-spec road or a driveway. The selectmen's interpretation appeared to be there were only town-spec roads or driveways in town, with no middle ground such as a private road not built to town standards.

David L. Patch said he totally disagreed with that as there were many private roads in town that were not driveways. The Chairman agreed. Scott Grant said this was a lot of record and it was not Mr. Russo's fault that a duplex had been allowed when perhaps it should not have been since it exceeded the number of houses allowed on a driveway at that time. He felt that was unfair to Mr. Russo and affected how many dwellings he could have. There was also disagreement with the selectmen's assertion that the first house on Granite Ledge should count towards the number of houses on a driveway. This corner lot had frontage onto Glen Ledge Road, a town road, while its driveway came off Granite Ledge. David L. Patch said in his opinion it was the lot which was served by a town road and the dwelling was served by the driveway. He said in all his years on the planning board, people had always been allowed to put their driveway wherever they wanted to. David Shedd said he didn't think the density or frontage were an issue, but the only issue was access. He said he understands the selectmen's concerns about waivers for additional houses, but there were certainly problems with the fact that the duplex should not have been built because that became the third house on a driveway. Mr. Shedd said he still thought there was a possibility, because Mr. Russo owned the road, that there was enough room for two driveways down the ROW which could meet setbacks, emergency pullouts, etc. One drive could serve the existing dwellings on Granite Ledge, including the duplex, and the other one could go all the way down to the end to provide access to the three new homes. The logistics of this solution were discussed, much of which was a repeat of the discussion which took place last meeting, but the prevailing sense appeared to be that the board did not agree with the selectmen's view on this matter. The Chairman asked David A. Patch if the planning board voted to approve the three dwellings, whether the selectmen would then deny Mr. Russo when he presented for a building permit. Mr. Patch said he would hope not, but reminded him it was a three member board. It was eventually decided to continue the meeting to June 4 at which time the applicant or engineer would be present to provide extra input. The motion to continue was made by Scott Grant; seconded by David Shedd. Vote: All in favor. After the vote, David Shedd commented that even though he disagreed with the selectmen, he really appreciated their conservative perspective as it made the town what it is.

2. Continued discussion with Paul Pagliarulo re his workforce housing project at 833 US Route 302, identified as Tax Map 3RT302, Lot 176-L00. File: 2018-1243. The Chairman noted he had been absent from the last meeting but had read the minutes and had spoken to members as to what had taken place. He briefly summarized his understanding of the meeting by saying Mr. Pagliarulo had wanted to submit his application for workforce housing but the board had only been agreeable to accepting it so long as was clearly marked as a draft copy and provided for informational purposes only. This was because the rooming house/dormitory-style housing Mr. Pagliarulo was proposing was not necessarily addressed in our zoning ordinance. Mr. Pagliarulo agreed that is what happened and noted he had emailed the board a link to the state's affordable housing website which he hoped would familiarize them about the program and explain the need for workforce housing. Mr. Pagliarulo added that many

towns had adopted specific workforce housing provisions through their zoning ordinance, but Bartlett was not one of those towns. He acknowledged this was Bartlett's right to do if they so choose, but said it created grey areas. The Chairman said at the last meeting it was decided to seek assistance from the NH Municipal Association (MA) and some questions had been sent to them which their attorney had now responded to. Before the Chairman discussed this response he asked Mr. Pagliarulo whether he had anything further he would like to add. Mr. Pagliarulo said no, that he was here looking for feedback from the board and to hear what the MA attorney had to say. Mr. Pagliarulo said the way he looks at it, his project certainly complies with the zoning ordinance but if the attorney had a different opinion then he would be happy to hear what he had to say.

David Shedd asked Mr. Pagliarulo whether he was waiting for the board to accept the application. After hesitating, Mr. Pagliarulo answered yes, at some point, since that would start the process. He described how Attitash was already very concerned since they had lost their other housing and have sixty people for the winter season with nowhere to house them. He said they were anxious for him to get this project started. Mr. Pagliarulo provided the board with a sketch of the basic floorplan of his building which showed a single-story structure with bedrooms and a centrally-located kitchen and living area, which he described as being essentially dormitory style. He said the building could be increased to two stories should the need arise. David Shedd said he had trouble trying to visualize what Mr. Pagliarulo's project would look like. He asked him if, at this point, he was looking at accommodation for 110 people. Mr. Pagliarulo said what he was trying to do was to maximize the soil type. He said he wanted to build the infrastructure, which at this point would be the septic system, to the maximum capacity of what the lot would support. He said that did not mean he was going to do a complete build-out right now, since he could probably get away with just one building which would house 60 students for the next two or so years, but said he would want septic approval for the whole project at some point, as it was not feasible to go back and re-do the septic system once it was in the ground. Because of this, he would rather build the initial system to the full capacity of what the soils on the property would support and whatever the planning board would give him approval for.

David Shedd reminded Mr. Pagliarulo that Bartlett based their density on bedrooms, and asked how many bedrooms would be needed to accommodate 60 or 110 people. Mr. Pagliarulo said this is where we are going to start getting into the legalese and asked what the feedback from the MA attorney was. He said he could better answer that question once he understood what the attorney's interpretation of this not being in Bartlett's zoning was. He said there were a couple of different ways to look at it, but the way he looks at it was that it would fall within the zoning guidelines because there were less than five living units as described in the zoning.

The Chairman addressed the questions the board had asked of the MA attorney, and read them out loud. The first question asked was whether Mr. Pagliarulo's proposed project of dormitory-style accommodation with 110 beds based on gpd was allowed under our zoning ordinance. The Chairman read the attorney's response to that question as being, "Your interpretation of how to apply the soils based lot requirement for a septic system that would serve a 110 bed rooming house seems perfectly reasonable." Mr. Pagliarulo asked what that interpretation would be. The Chairman said we were looking at it based on Bartlett's density requirements, and Mr. Pagliarulo asked what classification that would be. When the Chairman mentioned bedrooms, Mr. Pagliarulo said it was five living units, adding this is a classification which needed a little bit of intelligent thought since it was not a typical rental unit for a mother, father, grandfather, etc., but rather was housing for unrelated students who were between twenty-one and twenty-five years of age. He agreed this was all a little different, and said it could be classified as a rooming house or a dormitory. The Chairman said, again, that rooming houses or dormitories do not fit under our zoning regulations.

Mr. Pagliarulo said he had discussed this fact with his engineer and had looked at the regulations where case laws had been found where towns had been required to accept the state's regulations if something had not been addressed in their own. Mr. Pagliarulo said he would reasonably assume he could go to the state and ask what they would do in similar circumstances when something wasn't specifically mentioned in a town's zoning ordinance, under the guise of creating a realistic opportunity for workforce housing. David Shedd reminded Mr. Pagliarulo the nature of Bartlett's zoning was exclusionary-based. In other words, just because it wasn't addressed didn't mean that it was allowed. David L. Patch agreed, saying we were based on minimum land area requirements which applied to everybody. The Chairman continued to read the MA attorney's response by saying he had provided a definition of workforce housing which he read as being, "housing which is intended for sale and which is affordable to a household with an income of not more than 100 percent of the median income for a 4-person household..." He said, based on that and based on state regulations, it appears the workforce housing Mr. Pagliarulo is talking about is only something which is for sale. Mr. Pagliarulo said what the Chairman just read was only a small portion of the RSA,

and if he read the whole description he would find that it was also for rent. He said the key word was “housing,” which there was a great need for. The Chairman read the attorney’s reply further which went on to say that affordable housing was for a household, not for an individual occupying a bed in a dormitory and indicated he thought it unlikely a dormitory for temporary resort employees would qualify as workforce housing under RSA 674:58-61. He also noted a dormitory or rooming house was not listed as a permitted use under Bartlett’s zoning.

The Chairman said as Mr. Pagliarulo’s sketch clearly shows, he was presenting the board with a situation where he was setting-up bedrooms with common bathrooms and living areas, commensurate to a modern college dormitory. Mr. Pagliarulo said he would agree with that. The Chairman again went on to say that our zoning doesn’t allow for that in town and this is where we seem to be in a bit of a gap. Mr. Pagliarulo said if it was a “definitional gap” then he would agree with the Chairman, but it should be a situation where the parties were trying to bridge the gap and create a win-win opportunity for Attitash, who was a big employer, and the students who are coming in. He said from a practical standpoint, the students were already here and because of the housing shortage they were living twenty or more in shoddy houses which had septic systems designed for two bedrooms right here in Bartlett. He said if the planning board was really serious about protecting the groundwater, his project would be a situation which helped do that as it would cure all those overcrowding ills by providing housing in one location with a septic system designed to accept the amount of use generated by that many people. He said that would also free-up the substandard houses these students were now occupying and allow them to be renovated and put on the market for local families to own or rent.

David Shedd queried the floorplan sketch provided by Mr. Pagliarulo by saying, conceptually, we had been presented with a plan which showed sixteen beds for a building that was supposed to house sixty people. Mr. Pagliarulo said they were bunk beds and there would be four per bedroom. He said this was only a preliminary concept and the secondary plan will show a two-story building. Mr. Shedd asked Mr. Pagliarulo why he would present the board with one plan and then say there’s another one coming which will be different? Mr. Pagliarulo responded that he was basically deferring to the board’s judgment because of Bartlett’s reduced septic capacity, and that he was looking for feedback as to what he was allowed to do from the state’s standpoint and from the town’s standpoint. He said he had spent a considerable amount of money on the preliminary plan and it would be foolhardy to spend any more until his application had been submitted and accepted and the board had given him direction as to how many beds and how many people he could have, and what the five units needed to be like, etc. If he had that information he could get a handle on the overall cost and then put more time and effort into it but, at this point, his application hadn’t even been accepted. When he described his efforts to have it accepted he was reminded the board could not accept something that was not allowed under the town’s regulations. When Mr. Pagliarulo alluded that the board was using stonewall tactics to avoid accepting his proposal, the Chairman objected to his use of that term and noted how the tide kept shifting with each proposal Mr. Pagliarulo came to the board with. Mr. Pagliarulo said that was because he was looking for direction from the board to tell him what they wanted to see developed, and what type of building they would prefer, etc. He was informed it was not the planning board’s responsibility to design the project for him and they had no authority to tell him what style of building they wanted to see him build. Usually an applicant presented with completed plans which the board then reviewed for compliance with our regulations. Mr. Pagliarulo was surprised that the board did not have the authority to dictate how projects and buildings should be developed under things such as site plan review.

A further long discussion took place about the acceptability of this application with the board attempting to explain their reasons for not accepting it and Mr. Pagliarulo describing a lot of things as being a grey area. David A. Patch said after reading what the MA attorney had to say, there appeared to be nothing for Mr. Pagliarulo to apply to the planning board for. He suggested Mr. Pagliarulo apply to the selectmen’s office for a building permit, which would be denied based on the fact that it did not fit our regulations. Mr. Pagliarulo said he was requesting a written formal denial of his application stating the denial was based on the attorney’s advice. He said he respected what Mr. Patch was saying and said he understood the board had sought legal advice and was within its rights to rely on that advice, even though he felt the advice given was wrong. He again requested a denial letter, along with the reasons for denial, so he could move forward and either talk to his attorney to come-up with something different or seek other legal remedies that were available to him. The Chairman said nothing had been accepted so there was nothing to deny.

David L. Patch referred to Mr. Pagliarulo’s frequent references to “grey areas” regarding the acceptance of his application and said an important point to remember was that each time Mr. Pagliarulo was before the board it was for a discussion only so the board could understand what was being proposed and not to accept an application. Mr. Pagliarulo disagreed with that and stated he had tried to submit it to the secretary who had been unwilling to take it,

instead suggesting he first meet with the board to determine what kind of application was needed. Mr. Patch continued by saying since it seems that the type of dormitory-style accommodation being proposed did not qualify as workforce housing, he asked Mr. Pagliarulo whether he could call it something else and re-apply with something that conformed with the zoning regulations. Mr. Pagliarulo said if it was called workforce housing then occupancy could be controlled by deed restrictions. He said he did not think the town would want it called anything else as then there would be no control and it could all become market-based rental accommodation. Kevin McEnaney said the minutes should be clear that what was submitted was a mumbo-jumbo of everything, and was why we didn't accept the application and requested it be marked as a draft so we could speak to the attorney to see where it could possibly fit before we could even consider having a formal application come in. He said because of the attorney's advice it wasn't an application that we are denying, but we're saying we can't consider something that doesn't fit our regulations. Mr. Pagliarulo said at this point the chasm was so huge because we had an attorney who advised us emphatically if it's not sales housing but rental housing, that it's definitely not workforce housing. He said that flies in the face of the regulations which are clear that rental housing is also workforce housing. He described the attorney as not being well informed at all. Mr. Pagliarulo again asked for a written denial letter based on what the attorney said, saying that would help him tremendously if the attorney said workforce housing had to be for sale only. The board advised Mr. Pagliarulo that nowhere in his response did the attorney say that rental housing was not workforce housing, that it had to be "for sale" housing only, he merely cited "for sale" housing as being one example of workforce housing. David Patch said what had been read had been what the attorney had written. Mr. Pagliarulo asked if he could have a copy of the attorney's letter which the board declined to give him. Mr. Pagliarulo said it was public information and if the board had consulted with state-supported attorney that his tax dollars had helped pay for his services and he was entitled to a copy. The board again declined his request.

The board and Mr. Pagliarulo proceeded to engage in a further long discussion, basically repeating the earlier discussion and summarized as Mr. Pagliarulo maintaining the board was refusing to accept his application because it involved workforce housing. The board explained it had nothing to do with workforce housing, rather what he presented was incomplete and did not comply with the town's zoning ordinance. David Shedd reminded Mr. Pagliarulo that we did not have a definition in our zoning for "living units" as he had described previously, however we did have dwelling units which used residential density calculations based on a 3-bedroom dwelling, and not by gpd which only applied to commercial projects. He asked Mr. Pagliarulo what he was proposing to use as a water supply, recalling last meeting he had indicated he had all the water he needed through Mountainside. Mr. Pagliarulo said the water for the existing single-family home on the property came from Mountainside and Attitash had given permission, if needed, to tap off their water supply which was more-than sufficient to supply all his needs. Mr. Pagliarulo indicated issues such as water were "way down the road" and he wasn't going to spend time and money on it when we couldn't even get over the hurdle of whether this was workforce housing. The Chairman said the point the board was trying to make was even if we got over this first hurdle, there were still many other things which were up for discussion. The Chairman said just the density alone was a concern when Mr. Pagliarulo wanted to have state-level density which the board was saying no to. When the Chairman said he felt the state would back us up on that, Mr. Pagliarulo disagreed by saying it was the other way around and the state has provisions for relief from local regulations because nobody wants workforce housing in their backyard.

Mr. Pagliarulo asked what the board wanted him to do to provide workforce housing for foreign students who were already here when septic and water were all taken care of. David A. Patch suggested he design something which complied with the current zoning ordinance. Mr. Pagliarulo said he gets that it's the board's job to enforce the zoning but he thinks we have a disconnect with the interpretation of the zoning and said that's going to be the issue.

3. Continuation/Final Approval: Attitash Mountain Service Co., (AMSCO), Block G, Stillings Grant: File: 2013-1187. This is an application to reconvene review of a continued application to subdivide Block G into 40 residential units. Tax Map 5STLNG, Lot G00. This application has been continued indefinitely until an engineering review is completed.

4. Review and Approve Minutes: The minutes of the May 7, 2018 meeting were not ready for review.

5. Mail and Other Business:

- Mail listed on the agenda was reviewed.

With no further business, a motion to adjourn was made by Scott Grant; seconded by David A. Patch. Vote: All in favor. The meeting adjourned at 7.33 pm.

Respectfully submitted,
Barbara Bush
Recording Secretary