

**TOWN OF BARTLETT PLANNING BOARD
WORK SESSION**

November 17, 2020

Members Present: Scott Grant; David L. Patch; David Shedd; Kevin Bennett; Gus Vincent. Participating remotely were Kevin McEnaney and Barry Trudeau. **Members Absent:** None.

Also Present: Loralie Gerard of Horizons Engineering; Julia King.

1. Pledge of Allegiance: Chairman Scott Grant opened the meeting at 6:05 pm. He led all present in the Pledge of Allegiance and reviewed items on the agenda. He also advised that the Zoom connection was experiencing difficulties and members would need to call in on his cell phone if they wished to communicate with the board.

The Chairman agreed to take the agenda out of order and deal with Item 3 first, since Loralie Gerard was here to represent the applicant and provide some new information.

3. Continuation/Final Approval: RSM Bartlett Properties (Richard Girardin), 590 US Route 302. File 2020-1265. This is an application to subdivide a 13.07-acre parcel into six lots. Lots 1, 2, and 3 will be served by one driveway, while Lots 4, 5, and 6 will be served by a second driveway. A request to withdraw a previously-continued application for 7 duplexes on this property had also been received and accepted. Property identified as Tax Map 3RT302, Lot 53-R00.

Loralie Gerard presented and advised that state subdivision approval had been received and the number was added to the plan. Also added was easement information allowing the two driveways to cross over lots so that each drive provided access to three dwellings. The Chairman asked whether anything else had changed on the plan, and Ms. Gerard said it was the same as the board had previously seen. The board reviewed the updated plan and had no further questions. A motion to approve the subdivision application was made by David Shedd; seconded by David Patch. Vote: All in favor. A mylar was provided for recording which the Chairman signed after the meeting.

2. Continuation/Final Approval: BBSK Properties, LLC, 457 NH Route 16A. File: 2020-1267. Application to create a residential exclusive-use area around an existing owner-occupied residence on the Swiss Chalet property. Property identified as Tax Map 1RT16A, Lot 227-L00.

Ms. Gerard asked that this application be continued. A motion to continue to the December 7, 2020 meeting was made by David Patch; seconded by Kevin Bennett. Vote: All in favor.

4. Preliminary pre-application review: Dryjas Holdings, LLC and 17 Pingry Way Nominee Trust, Highland Road. File: 2020-1268. This is an application for a minor boundary-line adjustment conveying 842 sf of land from Tax Map 6SACOR, Lot 032HR0 to Lot 033HR0, and then conveying 483 sf from Lot 033HR0 back to Lot 032HR0.

The reason for the adjustment was to accommodate a new driveway alignment and location for Lot 033HR0 which would better use the existing traveled way. While this new alignment resulted in significantly less disturbance to the landscape, it did require a slight modification to the lot lines so that minimum driveway setback requirements were met. A plan note indicated the areas of land being exchanged are so small and are of such similar character as to have no significant or measurable effect on the density calculations. The board reviewed the plan and no major concerns were identified. The application will be formally presented at the December 7, 2020 public hearing.

5. Discussion with Julia King: Julia King was present again to discuss a proposed noise ordinance which she would like the board to support. She provided a revised ordinance based on feedback she had received from the board at the last meeting, and also incorporated feedback from the chief of police. Ms. King shared a conversation she had recently had with New Durham's compliance officer regarding their noise ordinance,

saying she had used that ordinance as an example to develop what she was submitting. Ms. King asked the officer whether their ordinance worked for him and, if it did not, what would he change. The officer's opinion was that their ordinance was too specific and he would like to see it more broadly-based. He noted a big problem in New Durham was people performing "smoke shows" and burning rubber in their vehicles. He further cited the 24/7 noise coming from trailer park generators. Ms. King indicated she found this analysis of being too specific very interesting, since some board members felt her ordinance wasn't specific enough. Ms. King said she had also spoken to Kevin McEnaney who had forwarded her a copy of the ordinance which had been marked-up by the police chief. The board was in receipt of this. Ms. King said she was in agreement with the chief's comments except for the one which stated the tenant/renter would be held responsible for any fines imposed. Ms. King said she would rather see the owner of record held responsible. David Shedd corrected Ms. King that the chief's notes did not specifically hold the renter responsible, but actually said the property owner or the subject renting or in control of the property would be responsible. David Patch said his opinion was that responsibility should be with the renter and not the property owner.

Mr. Patch said he had done some investigating himself on the law and had spoken directly to the police chief, asking him point-blank whether the state of New Hampshire had something on the books which allowed him to deal with noise situations. Mr. Patch said the chief's response was that the state absolutely did. When Mr. Patch informed the chief that he had been led to believe that the chief felt the town needed a noise ordinance, the chief said he had never made such a statement. All he had agreed to do was to help write any ordinance and provide advice, etc. In fact, he felt the state's disorderly conduct law was perfectly adequate since that held offenders responsible for their own actions. In addition, any charges resulting from their actions would be on the individual's record, whereas that was not the case if they were fined under a town ordinance as then they merely paid their money and were scott-free to leave. Being charged at the state level also meant the offender would need to return to town for their court date and if they failed to appear in court, then a bench warrant would be issued for their arrest. It was felt this would be a much greater deterrent than simply paying a fine to the town, as a mark on their record could have lasting consequences when it came to employment, etc. Ms. King said she wanted to make it clear that it was not she who had spoken the chief, it was someone else, and she was not speaking on the chief's behalf now. Her conversation had been with an officer on duty at the polling booths during the last election. Mr. Patch added that he did not believe in writing ordinances that we don't need, saying the zoning ordinance was big enough and thick enough already. He noted he was on the board which wrote the original zoning ordinance and noise was purposely not included for a reason, as it was felt the police already had adequate provisions to deal with any noise issues. Mr. Patch said not only the planning board, but many town officials participated in that decision. Ms. King said she disagreed with Mr. Patch, but would take his word on the subject. She felt a noise ordinance was needed to "close the loop" in Article IV. Mr. Patch reiterated his opposition to a noise ordinance which was subjective, and depended on one person's interpretation of what constituted unnecessary or loud noise, etc. He said sometimes things like that took on a life of their own, and often caused more and more laws to be written. He asked where does it all end?

The Chairman asked if the board had any other comments. David Shedd asked Ms. King whether she had seen the fine schedule which had been revised by the chief and asked whether she was in agreement with the amounts. Based on the facts of the incident, the suggested amounts were either a warning or a fine of \$100 for a first offence; \$250 for a second offence; and a must-appear in court summons with a \$500 to \$1,000 fine for any subsequent offences. Ms. King indicated she was fine with that, saying she was not opposed to people being educated and being reminded that they were staying in a private house in a residential neighborhood for any initial noise complaint. If the noise continued after the initial warning, then fines were appropriate. David Patch said he agreed with educating people and felt a first warning that they would be written-up for disorderly conduct if they did not quiet down was appropriate. David Shedd said he would also prefer to leave it up to the police as to whether they issued an initial warning. Kevin Bennett recalled he had called the local police once for a noise complaint when his sleep was being disturbed. He said the police responded quickly and took care of the situation, so he knows calling the police works. Kevin McEnaney joined the discussion remotely and spoke of a discussion he had with the police chief whereby it was felt enforcement should be subjective, i.e. left up to the decision of the responding officer, rather than objective which could require measurement instruments. He

retold an earlier story of police responding to his condo development and taking care of a noise complaint. David Patch said that proves the current law of disorderly conduct works, and nothing new is needed. He said had the police chief stated that a town ordinance was absolutely necessary for him to do his job, then that would be a different matter, but the chief had indicated exactly the opposite.

Noting he had discussed this at the previous meeting, David Shedd asked Julia King whether she was still inclined to take this to town meeting as a petitioned warrant article on her own, if it was not brought forward by the planning board. Ms. King indicated she would proceed on her own, if necessary. Mr. Shedd said it appeared the issues of the morning start hour and fine amounts were still pending. Ms. King asked if she could informally poll the board for feedback. The Chairman agreed, and the following opinions for the start hour were expressed: David Shedd, 6 am; Scott Grant, dusk to dawn, saying the morning start hour could influence how working folk would vote on this ordinance; Kevin Bennett, dawn to 10 pm/dusk; David Patch said he would be a hypocrite to answer after saying he was opposed to anything subjective; Kevin McEnaney was opposed to any start earlier than 7:00 am; Gus Vincent abstained. Next polled was the fine schedule. David Patch, warning first, then \$100 fine for next offence followed by \$250 for any subsequent offences; David Shedd, Kevin Bennett, Gus Vincent, and Scott Grant all a warning first, then a \$250 fine. Ms. King thanked the board for their time and efforts.

6. Review and Approve Minutes: The minutes of the November 2, 2020 minutes were reviewed. On page 1, Item 4, David Shedd noted “Julie” should read “Julia.” A motion to approve the minutes, as amended, was made by Kevin McEnaney; seconded by Gus Vincent. Vote: All in favor.

7. Mail and Other Business:

The Chairman noted he had sent an email around to members which offered suggested wording for an updated gravel pit ordinance which read: to see if the town would allow, by special exception, a one-time expansion of existing gravel pits and/or the creation of new gravel pits in the commercial/industrial zone. He cited several pits in town which owned abutting residential land, and several others which were only storing material and not doing any excavation work. David Shedd said he did not see how we could give just one type of business permission to expand, particularly when the expansion involved a commercial entity expanding into a residential area. He further noted that gravel pits were not even an allowed use under Bartlett’s zoning ordinance, but agreed several of the pits were operating under their grandfathered status. Mr. Shedd said he did not necessarily object to any expansion, but there were zoning challenges for them to do so. David Patch said the only thing we could do was to first go to the town voters and get gravel pits added to the zoning ordinance as a permitted use in a commercial area. This was necessary because the ZBA could not grant a special exception for anything which was not an allowed use under the zoning. In the case of the grandfathered pits, Mr. Patch said the non-conformity of a grandfathered non-conforming use was not supposed to increase. After further discussion, David Patch suggested the wording for any warrant article should be to see if the town will allow gravel pits as a permitted use in the zoning ordinance. It was felt this was a simple question, and once that information was known, the next step could address expansion of existing pits onto contiguous lots.

There being no other business, a motion to adjourn was made by David Shedd, seconded by Kevin Bennett. Vote: All in favor. The meeting adjourned at 7:24 pm.

Respectfully submitted,
Barbara Bush
Recording Secretary