

**TOWN OF BARTLETT PLANNING BOARD  
PUBLIC HEARING**

**September 9, 2020**

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

**Also Present:** Loralie Gerard; Rick Girardin; Sheila Duane; Alec Tarberry; Ace Tarberry; Stefan Karnopp; Roger Lemay; Norman Head; Kathleen Head (remotely). Anne Grant was also present to assist with the Zoom technology.

**1. Pledge of Allegiance:** Chairman Scott Grant opened the meeting at 6:00 pm. He reviewed the items on the agenda and led all present in the Pledge of Allegiance.

The Chairman advised we were using Zoom for the first time tonight, with four board members physically present and three attending remotely. He said the meeting was being recorded by Zoom and the recording would be available and retained on-line until such time as the minutes were approved. Once that happened, the recording would be deleted and the approved minutes would serve as the official record of the meeting. Kevin McEnaney requested that the minutes of the last meeting be approved prior to proceeding with the applications. The Chairman agreed to Mr. McEnaney's request.

**2. Review and Approve Minutes:** The minutes of the August 18, 2020 meeting were reviewed. Motion to approve the minutes, as written, made by David Patch; seconded by Kevin McEnaney. Vote: All in favor.

**3. Public Hearing: 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 (containing 1.40, 1.39, and 1.63 acres respectively) will be served by one driveway, while Lots 4, 5, and 6 (containing 1.56, 3.23, and 3.86 acres respectively) will be served by a second driveway. Tax Map 3RT302, Lot 53-R00. A request to withdraw a previously-continued application for 7 duplexes on this property was also received.

Loralie Gerard and Rick Girardin presented. First order of business was to vote to accept the applicant's request to withdraw the original application for 7 duplexes (14 units), which was submitted in 2018 and continued since then. Motion to accept the request to withdraw was made by Barry Trudeau; seconded by Kevin McEnaney. Vote: All in favor.

The Chairman noted that a PDF of this plan had been emailed to each board member prior to the hearing.

Loralie Gerard of Horizons Engineering explained the new proposal for this 13-acre property was a six-lot subdivision. The property would be divided into six separate building lots, with three lots sharing one driveway and the other three sharing a second driveway. Ms. Gerard said NHDOT approval had been granted for one of the driveways, and approval for the second one was pending. Also pending was NHDES subdivision approval, so corner monuments had not yet been set. Ms. Gerard said Soil Scientist Greg Howard had delineated the wetlands and performed HISS mapping, and his report was included with the application. She indicated she would appreciate it if the board could grant conditional approval tonight so that the state permits could be finalized. David Patch asked Ms. Gerard whether she anticipated any problems getting the second driveway approval and were there any issues with site distance. She said draft approval had been issued by the DOT and they were waiting for the state subdivision approval before finalizing. David Shedd asked whether conditional approval of the subdivision was required for the state to move forward with the second driveway approval. Ms. Gerard said yes, then final approval would include state subdivision approval being in-hand and the corner monuments being set. David Patch and David Shedd both noted that Bartlett does not usually do conditional approval, prompting the Chairman to note this was a catch-22 situation, whereby the state required local approval before they issued their permits, and the town liked state permits in-place before granting their approval. David Patch said the state didn't require town subdivision approval to issue a driveway permit. Ms. Gerard repeated that she was seeking conditional approval at the town level pending state subdivision approval and setting the corner monuments. Due to difficulties with Zoom, the off-site board members were unable to

hear the proceedings which required the Chairman to repeat to them what was being said. It was also attempted to reach them via a text box to let them know the gist of the conversations. Barry Trudeau suggested that the requested conditional approval be granted to further this application along and by next meeting, hopefully all the kinks in the Zoom equipment will have been worked out. David Shedd reiterated that the board had always been reluctant to give conditional approval and asked why conditional approval was being sought when the monuments hadn't been set. Ms. Gerard said the corners would be set and state subdivision approval obtained prior to the work session. She noted that Bartlett's regulations allowed the board to grant conditional approval provided there were no major outstanding items. Further noted was the fact that the subdivision regulations required a two-week waiting period between the public hearing and final approval, but because this public hearing was held later in the month than usual due to Labor Day and the election, there was not two weeks between now and the next regularly-scheduled work session. Ms. Gerard asked whether that requirement could be waived, but the board felt they should adhere to the two-week requirement since all other firms have had to abide by it. A short discussion about whether the applicant should be forced to wait almost three more weeks until the October public hearing resulted in a motion being made by David Patch; seconded by David Shedd that the date of the next work session be pushed forward a week to September 22. Vote: All in favor. Vicki Garland then noted that this was still one day shy of being two weeks from the public hearing and asked whether that would be a problem. It was felt one day could be waived and a motion to do that was made by Kevin McEnaney; seconded by Vicki Garland. Vote: All in favor.

After the board reviewed the plan, the Chairman asked whether there were any questions. David Patch said the 4K septic area normally did not overlap the building area. Loralie Gerard said those areas were located to avoid the steep slopes on the property and since 4,000 s.f. was more than what was needed for septic, things could be moved around so long as the septic was located within 20-ft. of the test pit. At this point the Chairman called for a motion to accept the application. Motion made by David Patch; seconded by David Shedd. Vote: All in favor. The public comment period was opened. Norman Head viewed the plan and asked how many driveway cuts there were, and how far apart they were. Rick Girardin confirmed there were two cuts and they were approximately 185-ft. apart. Mr. Head asked whether that measurement was interior centerline to interior centerline, saying he believed the state required a 200-ft. distance measured from the exterior edges of the driveway for sight distances. Mr. Girardin said the state had already looked at that and had issued a draft driveway approval. When Mr. Head said he would like to see the state regulation saying it was not exterior to exterior, Mr. Girardin promised he would get that information to Mr. Head. Mr. Head then asked about the 4K septic locations, saying his understanding was that the final plan needed to show the final locations pretty accurately to avoid having to do an as-built. Mr. Girardin reminded Mr. Head this was not a condominium or a PUD, but was six separate building lots.

Since Bartlett currently did not have a fire chief, fire department member and Jackson building inspector Kevin Bennett's advice was sought as to whether he had any concerns regarding fire issues. Mr. Bennett said since these homes were on private driveways and there was public water and hydrants available, he did not feel there would be any problems. The Chairman asked whether there were any further questions from the public. With none forthcoming, he closed the public hearing and called for a motion to continue the application to the September 22 meeting. Motion to continue made by Kevin McEnaney; seconded by David Patch. Vote: All in favor.

**4. Public Hearing: Range View Cabins, LLC, 1069 US Route 302.** File: 2020-1266. This is an application to amend the ownership structure of a previously-approved 3-unit subdivision. Currently, all three units are under one ownership and the owner is now proposing to create exclusive-use areas around each unit to enable them to be individually owned. The remaining common area land will be held in joint ownership under a homeowner's association. The reason this is before the planning board is because the Registry of Deeds will not record the legal documents changing the ownership structure until the planning board either stamps the change as "approved" or adds a note stating that planning board approval is not required. There will be no physical changes to the lot.

The Chairman read the above description of this project and noted the original subdivision had been before the board in 2016. He said the question now was whether the board wanted to grant a new approval or note that planning board approval was not necessary. Loralie Gerard asked to speak and said what the Chairman had just read was an accurate description of the project. She said even though this was only a change-of-use and there would be no physical changes to the lot, the state still required a new subdivision approval because the use was a different configuration in that it now included exclusive-use areas, a common area under a homeowner's association, and condominium documents. This new approval had been granted by the state but the Registry of Deeds required the planning board also approve it or make a note on the plan in the approval box that planning board approval was not necessary before it could be recorded. Ms. Gerard explained the different times this property had been before the board during 2016. Originally, the property had been two lots with one dwelling on one of them. These two lots were subsequently merged into one larger lot and two other dwellings were approved as a PUD under single ownership. The application was then before the board for a third time to be revised when the NHDOT required the driveway configuration be changed from two driveways to a single one. At that time, the board granted a waiver to allow three dwellings on a single driveway, since it was prior to a 2017 zoning amendment which now allows three dwellings on a drive as a matter of course.

The Chairman asked if the board had any questions and noted they had two options: whether this should be re-approved or marked that planning board approval was not required. David Shedd asked for clarification about the approval not required option. The Chairman said it could be marked "approval not required" because nothing physical had changed and the board had previously approved the subdivision. David Patch offered his opinion that because they were now creating exclusive use areas around these three dwellings that the planning board can't ignore the fact that was a change. He said he had no problem with the concept, but felt the planning board should officially approve it as opposed to saying that no approval was necessary. Mr. Patch said he did not believe there were any septic problems since the board had gone over the application pretty thoroughly in 2016. David Shedd recalled how the selectmen require a septic system and dwelling to be on the same lot and asked whether by creating exclusive use areas, were we now interfering with the possibility that the septic system has to be on the same lot as the house. David Patch said that was a good question, but since this was a PUD and not separate lots, he felt it was okay if the septic was in an exclusive-use area. Vicki Garland asked how large the exclusive-use areas were, and how close their perimeter were from the house. Ms. Gerard said the distance was approximately 40-43-ft. Ms. Garland was satisfied this amount of space represented a useable area.

David Shedd noted that may be something the board may want to look at in the future. He said whereas buildings have to be set back from property lines, are we now in a situation where people can decide where exclusive-use areas can be relative to buildings without any regulations as far as where those lines are. David Patch said as far as exclusive-use areas went, they laid out an area for someone's personal use and it was not a property boundary. Loralie Gerard explained the concept further and said the exclusive-use limits for each owner were laid out in the condominium documents. Kathleen Head spoke before the public comment period was opened and said she thought she read somewhere in the original approval that these units could never be sold except as one property. It was suggested the application be accepted so that the public hearing could be opened to allow the audience to participate in the discussion. The Chairman called for a motion to accept the application. Motion made by David Patch; seconded by Kevin Bennett. Vote: All in favor. David Shedd said he guessed the board had now gone beyond the point to be able to make the decision that planning board was not required, while acknowledging David Patch wanted the board to re-approve the subdivision. Mr. Patch reiterated his opinion that if this was a change from what was currently recorded at the Registry, then he felt the board should re-approve it. The Chairman indicated he felt we were better off re-approving it than saying no approval needed. He asked if people were in agreement with that or not. One member indicated they were. Vicki Garland indicated she would like clarification about what Kathleen Head was saying, that the original approval said the property had to stay under one ownership. Ms. Head said that was what she thought she read, but added there were a lot of places around in a similar situation where units are individually owned. She said it wasn't necessarily a bad plan.

Roger Lemay, the owner of the property, spoke and explained the history of his single ownership of the three dwellings on this property. He said the concept he was now proposing was approved by the state, and legal papers had been drawn-up to allow individual ownership. Loralie Gerard said what people would actually own would be to the interior walls of their home. The homeowner's association, as a single entity, would be the ultimate owner of the rest of the property, with each owner having exclusive use of a limited/designated area surrounding their dwelling. David Shedd asked if this property had less than 150-ft. frontage onto Route 302, would these three units still be allowed since Bartlett required 50-ft. of road frontage for each unit? Ms. Gerard said when density calculations were done for lot, they were based on the entire lot, not individual lots. This included the lot frontage, setbacks, etc.

Norman Head said if the original approval was for one ownership and it is now three owners, then that was changing the whole subdivision plan. The Chairman said that was what was before the board now and what the board was going to vote. Mr. Head disagreed, and asked how could the board vote on something that was different than originally approved without going back to create a three-lot subdivision/PUD. He said the original approval cannot be changed without the planning board doing something about it. Loralie Gerard drew Mr. Head's attention to the title on the plan, which read, "Amended 3-Unit Subdivision (PUD), Range View Cabins, LLC," so this new plan and concept was replacing the earlier version. The state had also issued a new subdivision approval dated 7/30/2020 for three 3-bedroom units and associated exclusive use area as shown on the amended plan, with the remaining area under non-buildable common land. David Shedd asked if the board would have approved this configuration had it originally come to us like this. David Patch said he assumes we would have, since it appears to meet the regulations for a PUD.

The Chairman closed the public hearing and addressed a waiver which the applicant had also submitted. The waiver was read as asking to waive Submission Requirements, Section VII.B, Preliminary Plat Requirements, 5-Existing Topography (contour lines) of the subdivision regulations. The waiver request stated due to the multiple line types shown on the plan, not showing the contour lines would allow the plan some clarity. It further noted this application was for an amendment and prior applications/plans on file for the property already showed the topography. The board had no issues with this waiver and a motion to grant was made by David Patch; seconded by David Shedd. Vote: All in favor.

The Chairman asked the board what they wanted to do about approval. David Patch noted if this was originally approved as having to remain under one ownership, he didn't see how that could be changed. Loralie Gerard noted that the homeowner's association was a single entity and owner, and the three individual owners of the units were members of that association. Vicki Garland asked whether the individual owners would need permission from the association to sell their unit. Ms. Gerard said she was not sure as she did not have a copy of the association documents with her. She said, at the end of the day, however, the association still owned everything, including the exclusive-use area, and the three owners of the buildings had to be members of that association. Via Zoom, Kevin McEnaney said in a PUD you owned the footprint of your house plus x-amount of land around it which the association did not own. Vicki Garland asked how many tax bills were being sent out for the property. Mr. Lemay said one. Ms. Gerard said there should now be four: one to each structure owner and one to the association who owned the land. Ms. Garland said, in that case, that told her this proposal was in contradiction to the original subdivision approval which seemingly said the property was to remain under a single ownership.

The secretary pulled the 2016 state subdivision approval from the old file and read a condition on it which said, "Approved for a single lot with three rental units at 3 bedrooms/units (Units 1, 2, and 3). Units to remain under single ownership." It was noted the state likely approved it that way because, at the time, the applicant wished to have ownership of all three units so that was what he had applied for. Ms. Gerard said the 2016 approval was now being amended by the current proposal of individually-owned units and the state had issued an amended subdivision approval (eSA2020073001) giving permission for that to happen. David Patch asked the secretary whether there was anything in the file which required the property to always remain under single ownership. He was told nothing was found in the permits and that a review of the old minutes did not disclose any board

discussion or directive to that effect, either. David Shedd then reviewed the plan which the board had approved in 2016 to see if contained any such restriction. None was found. David Patch said if no written record can be found saying the land had to forever remain under single ownership, then he had no problem approving this application, but he would still like to be sure. Norman Head suggested the town's tax file also be checked. David Patch asked whether the 2016 approval already created a PUD. Ms. Gerard said yes, for three rental units, but what they were wanting to do now was to change the ownership structure to allow the units to be individually-owned as opposed to being rental units. Mr. Patch noted that state subdivision approval was basically an approval for septic loading. Ms. Gerard agreed and said the septic loading would not change whether these units were individually owned or rented. They would still meet state and Bartlett regulations.

Mr. Patch noted if this was going to be approved that we couldn't do it tonight but had to wait for two weeks per the subdivision regulations. Ms. Gerard said she was going to ask for a waiver of that requirement since the units were under a P&S contract and time was of the essence. Mr. Patch said the two-week wait period was in case any questions or issues came up, as happened tonight. Ms. Gerard then asked if the board could waive one of the weeks, but it was felt the rules were in place for a reason and the board felt uncomfortable granting her request. David Shedd referred to the question he had asked earlier, which was why couldn't the board just say that planning board approval was not required. David Patch referred to his previous statement that because this was a change of use, a change of ownership, and a different concept than was previously recorded, he felt it would be good to have a vote of the planning board.

The Chairman asked what the board wanted to do. David Patch made a motion to approve the application. The motion was seconded by Vicki Garland. Vote: All in favor. Ms. Garland asked whether this was conditional approval that was being granted. The Chairman said no, that it was being approved but they still had to wait the usual two weeks. The secretary said that approval was not granted until after the two-week waiting period was up and usually happened at the following work session. She also noted that the two-weeks wait period was not a requirement of the state but of the town, which could be waived if the board wished to do so. Ms. Gerard asked if she was required to wait two weeks before the plan was signed, whether she could be guaranteed it would be mailed to the Registry the very next day since the sales agreement couldn't be finalized until the plan was recorded. Stefan Karnopp, a real estate agent involved with one of the P&S agreements, asked what the earliest was that he would know this was all set so that he could advise his client. The Chairman told him September 22 which is when he would sign the plan. A motion to continue discussion to the September 22 work session was made by David Shedd; seconded by David Patch. Vote: All in favor.

## **5. Mail and Other Business:**

- Frustration was expressed by the Zoom participants over how the Zoom audio equipment not working properly. Ways to fix the problems were discussed. The Chairman expressed appreciation to his wife for all her help tonight, but said she would not be available for all meetings. Discussed was asking the selectmen whether Mary Miller from their office could be made available. Vicki Garland felt it would be more appropriate to reach-out to Ms. Miller first to see whether she was willing to take on the task since it would be outside her regular hours. Kevin McEnaney suggested the secretary could run the equipment. The Chairman recognized this was not feasible because of her other duties and noted even the SAU9 meetings had a separate person solely to run Zoom. David Shedd felt we should ask the selectmen first whether we could approach Ms. Miller, and then make our own arrangements with her if she was agreeable.
- The Chairman advised Julia King was not able to make it tonight to speak about her short-term-rental concerns and her hope that the board would consider sponsoring a zoning amendment for next year to restrict them. The board spent a lot of time discussing this. It was suggested any private person could organize a petition warrant article with 25 signatures which would then go to a town vote whether it had the planning board's blessing or not. When it was asked whether the planning board would rather be involved, Kevin McEnaney suggested he did not think the planning board should take on that task on its own at this time and work in a vacuum, but rather should be involved as part of a multi-committee effort. He noted surrounding towns had formed committees to look into their own STR problems and he

would prefer to wait and see the recommendations coming out of those discussions since the whole situation needed a lot of thought and input. Barry Trudeau agreed, saying Conway was the “big dog” in those discussions and Bartlett probably wouldn’t want to do something much different than what they came up with, but he also felt Bartlett already had rules in place if the selectmen were willing to enforce them. Vicki Garland said the selectmen were focusing on the NH state fire laws and had put several STR owners on notice that if they rented to more than 16 people that their property had to comply with all state fire codes, including sprinklers, etc. Ms. Garland said the selectmen followed-up on these rentals, but found that while owners may follow the rules on-line, they did not necessarily do so in reality. She said if properties were rented through official sites such as Airbnb, that those sites paid room and meal taxes to the state. She asked whether that made those properties a commercial enterprise in a residential area? The board was not unwilling to listen to anyone who wanted to come to a meeting express their thoughts, but recognized the challenges of holding public hearings where a lot of people could be present during these difficult COVID-19 times. The Chairman summed up the discussion by saying at this time it did not appear the board was ready to take-on the task of putting its own zoning amendment on the ballot for next year.

- Kevin Bennett noted that six weeks ago, Fire Chief Pat Roberts resigned. He said the fire department responded to over 400 calls last year and the work load was heavy. Mr. Bennett said he also heard via the grapevine that the acting fire chief also resigned so, as of now, the town does not have anyone in charge. Vicki Garland said the acting chief did not resign; that he had told the selectmen in the beginning what his last day would be. She said the selectmen were actively looking for a replacement interim chief to handle paperwork etc., until another full-time chief can be hired through the proper application process. Mr. Bennett said if a new chief was going to be hired, it would be nice if they were a qualified EMT as well. Ms. Garland said that requirement, or a willingness to become qualified, was put in the ad. Mr. Bennett touted the advantages of having a full-time chief, adding they could even assist in the enforcement of short-term rentals. Ms. Garland agreed.
- The Chairman said he had spoken to two gravel pit owners and was hoping to conduct a site visit sometime next week with David Patch and Kevin Bennett.

There being no other business, a motion to adjourn was made by Kevin McEnaney, seconded by David Shedd. Vote: All in favor. The meeting adjourned at 8:17 pm.

Respectfully submitted,  
Barbara Bush  
Recording Secretary