

**TOWN OF BARTLETT PLANNING BOARD  
PUBLIC HEARING**

**February 1, 2021**

**Members Present:** Scott Grant; David L. Patch; Kevin Bennett; David Shedd. Participating remotely were Kevin McEnaney and Barry Trudeau. **Members Absent:** Gus Vincent.

Also present were Mark Dryjas; Burke York; Kyle Morin; Brendan Goodspeed; Atty. Jason Dennis; Karen Weigold; and George Weigold. Joining the meeting on Zoom were Erin Darrow and Norman Head.

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

**2. Public Hearing: Dryjas Holdings, LLC, Highland Road.** File: 2021-1271. This is an application to amend a previously-approved subdivision to relocate the position of Building Area #1 and show exclusive-use areas. Tax Map 6SACOR, Lot 032HR0.

Mark Dryjas presented. He explained that the area previously approved for Building Area #1 was found to be unsuitable after an old stump dump, used by previous owners, was discovered when the site was being cleared for construction. He said excavating the stumps would result in a tremendous amount of earthwork and the destruction of many old-growth trees, so a new location for the building area was sought at the other end of the property which was already flat and relatively cleared. The board reviewed a plan showing the location of the new building area. Mr. Dryjas said a new test pit had been dug which showed this location was suitable for a septic system. He said the new location was far superior than the old one, with a big advantage being that it did not look down onto a neighbor's property as the original site did.

The Chairman asked if the board had any questions. David Patch noted this type of thing was normally dealt with as an as-built and asked if anything had changed in the way of density and whether the new building location met setbacks, etc. Mr. Dryjas said nothing had changed in the way of density, setback requirements were met, and his lawyer had advised him to submit this as an amendment to an approved subdivision. The Chairman called for a motion to accept the application. Motion made by David Patch; seconded by Kevin McEnaney. Vote: All in favor. The Chairman opened the hearing for public comment which was subsequently closed when nobody spoke or offered a comment. A motion to approve the amended subdivision was made by David Patch; seconded by Kevin McEnaney. Vote: All in favor. A mylar was provided for recording which the Chairman signed after the meeting.

**3. Public Hearing: Brendan Goodspeed and Elizabeth Morin, Covered Bridge Lane.** File: 2021-1272. This is an application to subdivide an existing 1.04-acre lot into two lots containing 0.51 and 0.53 acres respectively. This lot was voluntarily merged for taxation purposes in 1981, and the applicant wishes to either undo that merger and return the lot to its original 2-lot configuration, or subdivide the lot through the subdivision process. Tax Map 2COVBR, Lot 19.

Burke York presented and noted that he had been before the board last meeting for a preliminary discussion regarding this project. He gave a brief explanation of what the applicant was proposing to do, which was to subdivide a previously-merged one-acre lot back into its pre-merged state of two half-acre lots. This subdivision had run into difficulties when density calculations found the new lots would not have enough area to comply with current town density standards for a septic design. Mr. York recalled the board had suggested he approach an abutting neighbor to see if they may be willing to sell some of their land to increase the MLAR. Mr. York said that had been done, but the neighbor was not interested in selling. Mr. York said a new test pit had been dug, the property was served by a paved town road, the lot had its own driveway curb-cut, and the Lower Bartlett Water Precinct could provide water. Mr. York provided an updated plan as well as copies of old documents including a November 1979 plan prepared by Douglas C. Burnell. This plan showed a 1.110-acre lot owned by a David Jenkins as having been subdivided in half, with half the divided lot then being conveyed to abutter Moffitt (B-1) and the other half going to abutter Lawson (B-2). This plan had been approved by the planning board in March 1980, with a hand-written notation saying the lots had been approved as "unbuildable."

The board was also provided copies of the information that the selectmen had provided to the applicant's lawyer, Hastings Malia, PA, in response to a request from Atty. Jason Dennis to restore 2COVBR, Lot 19 back to its pre-merger state per RSA 674:39-aa. The provisions of this RSA permit the restoration of previously involuntarily merged lots provided the request to unmerge was submitted to the governing body prior to December 31, 2021, and that no owner in the chain of title had previously voluntarily merged the lots. Included in the information provided by the selectmen were copies of the old tax files, along with a letter sent to the selectmen by property owner Philip C. Lawson dated November 10, 1981. This letter read: "As per your suggestion, I am requesting that the piece of property Lot B-2 abutting our house Lot A, Covered Bridge Lane be incorporated into one lot. The original Lot B was subdivided and surveyed November, 1979 by D. Burnell, Conway, NH., the 2 lots B-1 and B-2 were approved as non-building lots March 14, 1980. Lot B-2 abuts our Lot A on the south line." Based on the information contained in this letter, at this point it was the feeling of the selectboard that these lots were voluntarily merged and thus ineligible to be unmerged under the provisions of RSA 674:39-aa. Mr. Burke said a review of the tax file information provided by the selectmen, showed that Lot 18, aka B-2, had been deemed an unbuildable lot and consequently merged with Lot 19 for taxation purposes.

Mr. Burke explained the characteristics of the lot, saying the entire parcel fell within FEMA's designated special flood hazard area Zone AE, and some of the lower portions fell within the floodway. He said a viable building site, a flat plateau on the upper portion of the lot, was approximately 594-ft. in elevation, or approximately 6.5-ft. higher than the FEMA base flood elevation. He further explained how Lot 19 qualified for an approved septic design from the state based on it being served by municipal water. He said the state allows either a 50% reduction to the required lot size, or a minimum size of 20,000 s.f, whichever is larger. He provided copies of both the state and town MLAR requirements. David Patch said unfortunately Bartlett does not offer a density reduction due to municipal water. Mr. Burke understood, and said a formal request had been submitted to waive the lot size required under Bartlett's subdivision regulations. He said the uniqueness of these lots were that they were all originally much smaller and existed prior to zoning, and the configuration of the lots now being proposed was consistent with the surrounding area and neighborhood. He questioned why the lots had been deemed unbuildable in the first place, and noted the Moffit lot was now being assessed for tax purposes at \$92,000. Mr. Burke felt this was a lot of money for a half-acre unbuildable lot.

The Chairman asked if there were any further questions. David Shedd asked how many bedrooms were in the existing house. Mr. York said three. Mr. Shedd then asked whether the DES septic approval was based on the combined lots. Mr. York again said yes. Mr. Shedd said the septic approval was dated September 3, 1986, which was after zoning had come into effect, so it would appear that the approval was based on DES figures and not the town's. Mr. Shedd said he had a concern about combining a lot to get septic approval and then later try to separate off what allowed that approval to be obtained. Mr. York said on that train of thought, as far as the state was concerned the numbers represent a 4-bedroom home, which would be allowed based on the MLAR percentage figures shown on the plan. Additionally, based on the MLAR percentage figures the state would also allow a 3-bedroom home on the new lot because municipal water allowed the well radius to be taken out of the equation. David Patch reiterated that Bartlett does not allow a reduction in density due to municipal water and said the town took its responsibility to protect the groundwater very seriously. He said in all his years on the board he could not recall a waiver ever being granted to reduce MLAR.

Kevin Bennett spoke about FEMA maps and flood-designated areas and noted how property prone to flooding could potentially lose a large amount of land when the course of the river changed during storm events. He asked whether there was an elevation certificate for the existing house and whether it had flooded during heavy storms. Mr. Burke was not sure about the elevation certificate, but the property had experienced flooding over the years. Mr. Bennett said he had spoken to FEMA about the inaccurate information shown on their flood maps which would hopefully be corrected soon. Mr. Bennett felt that was something the owner should be concerned about when deciding the placement of a house, especially if in a floodplain. Mr. Burke agreed and said the existing house was a little above the flood zone and the proposed house was at a higher elevation than the existing one, but they would go before FEMA and provide a Letter of Map Amendment (LoMA) if that became necessary.

At this point the Chairman called for a motion to accept the application. Motion made by David Shedd; seconded by David Patch. Vote: All in favor. After the application was accepted, Mr. York requested a short recess. This was granted, and the applicant and his party subsequently left the room. When they returned, the meeting resumed and Atty. Jason Dennis took the floor. He gave a presentation describing the unique qualities he felt these lots enjoyed, as well as the hardship the owner would experience if the lots could not be separated. After listening, David Patch advised that issues relative to unique qualities and hardships were really not what the planning board looked at, but were more arguments for the ZBA. Atty. Dennis agreed, but said he wanted the board to hear the information before they voted on the waiver request which had been submitted to allow a reduced density on the lot. Atty. Dennis spoke of the fact that the lot had been approved as unbuildable in 1980 and wondered what the real reason for that decision was. He said planning board minutes from forty-one years ago were not able to be located. Since zoning had not yet been adopted, he asked whether an argument could be made that Mr. Lawson's decision to merge his lots may have been based on information that was not relevant at the time. He referred to the fact the abutting lot was taxed so highly, when it was part of the original lot which was subdivided in 1980 and deemed unbuildable.

The Chairman opened the public comment period. George Weigold said he was an advocate for the Saco River and spoke in opposition to this application. He said over 50% of this property was in the floodplain, as was the house itself. This generated a discussion about the difference between the floodplain and the floodway, with David Shedd noting it was important to know what the different terminology meant as building in the floodplain was allowed. Mr. Weigold asked about soil types on the lot. Mr. York spent a lot of time discussing this with Mr. Weigold and said the soil types had been determined by a soil scientist. He went over each soil type with Mr. Weigold and explained how the density calculations based on each soil had been derived. Mr. York also pointed-out the 4K area which was adequate for a septic system and noted that a septic system commonly required approximately 800 s.f. of land and the 4K area set aside was way more than what was needed. Mr. Weigold asked about the test pit location. Mr. York said it had been dug in the area of original soil, as some of the lot consisted of fill. It was wondered whether this fill area was the reason the lot had been deemed unbuildable. This discussion about floodplain and floodway issues was quite lengthy and the Chairman intervened by stating that, at the moment, the board's main issue was with the septic density. He noted the waiver request submitted by Erin Darrow of Right Angle Engineering, which all board members had been given a copy of. He called for a motion to accept the waiver request, which was made by David Shedd and seconded by Kevin Bennett. He then called for a vote to approve the waiver request which resulted in a vote of 0-6-0, or a unanimous vote to deny.

Kyle Morin said there was still a lot of information he would still like to find-out about the history of this lot, such as why it had been classified as unbuildable, and why it had been merged. David Patch said the majority of times a lot was merged was to save on taxes. The Chairman noted the letter in the tax file which discussed the difference in tax savings that merging the lots provided, which appeared to support that theory. David Shedd suggested that Norman Head be invited to the next meeting, being that he signed the plan in 1980 as secretary of the planning board and made the notation that the lots were unbuildable. Erin Darrow spoke on Zoom and said she wanted to echo the points that Mr. Morin was making in that we need more information. She said it was clear from the correspondence that Mr. Lawson merged his lots, likely for tax purposes, particularly if he was under the impression that the lots were unbuildable. She said the significance of that fact cannot be understated if it was made under an incorrect pretense as it pertained to what they were trying to do now. David Patch said it was usually the selectmen who made the determination that a lot was unbuildable. Had it been made by the planning board, then it would have been based on information provided to them showing that the lot did not meet the subdivision regulations. Mr. Kyle asked if the application could be continued to allow more time to conduct further research. The board agreed, and a motion to continue to the March 1, 2021 meeting was made by David Patch; seconded by David Shedd. Vote: All in favor.

**4. 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.

No new information had been received for this project and a motion to continue to the March 1, 2021 meeting was made by David Patch; seconded by Kevin Bennett. Vote: All in favor.

**5. Review and Approve Minutes:** The minutes of the January 19, 2021 minutes were reviewed. A motion to approve the minutes, as written, was made by David Patch; seconded by Scott Grant. Vote: 5-0-1, with David Shedd abstaining since he had not attended the meeting.

There being no other business, a motion to adjourn was made by Kevin Bennett, seconded by Kevin McEnaney. Vote: All in favor. The meeting adjourned at 7:25 pm.

Respectfully submitted,  
Barbara Bush  
Recording Secretary