

**Town of Bartlett
Zoning Board of Adjustment
Public Hearing
August 17, 2020**

Members present: Richard Plusch; Julia King; Peter Gagne; Norman Head; Doug Garland; Alternate Peter Pelletier. **Members absent:** None.

Also present: David Shedd; Martha Leich; Tim Jackson; Alison Szetela; Daren Levitt; Lynn P. Jones; Atty. John Ratigan; Shawn Bergeron; Kate Richardson; Mark Miller.

The Chairman called the meeting to order at 7:00 pm.

1. Election of Officers: A motion to re-elect Richard Plusch as Chairman was made by Norman Head; seconded by Julia King. Vote: All in favor. A motion to re-elect Norman Head as Vice-Chairman was made by Julia King; seconded by Peter Gagne. Vote: All in favor.

2. Review and Approve Minutes. The minutes of the January 27, 2020 meeting were reviewed. Motion to approve the minutes, as written, was made by Julia King; seconded by Norman Head. Vote: 3-0-2 with Richard Plusch and Doug Garland abstaining since they had not attended the meeting.

3. Public Hearing - File 2020-09:

Applicant:	White Mountain Trading Post (Tim Jackson)
Location:	15 Town Hall Road
Bartlett Tax Map:	Tax Map 1RT16A, Lot 195L02
Purpose:	Request for a Special Exception to allow the former Hartmann Railroad Museum buildings to be converted into four separate businesses.
Zoning Ordinance Section:	Article XVIII, Section D-1(g)

The Chairman reviewed the application by saying the applicant was seeking a special exception to approve the subject property as a shopping center so as to allow four businesses to operate in the two existing buildings which formerly operated as the Hartmann Railroad Museum. Tim Jackson and Alison Szetela presented and explained what was being proposed. Julia King asked what type of businesses would occupy the buildings and was told they would be a brewing company, a climber's co-op, hot tub/stove shop, and a water treatment office. There were no physical changes planned for the property, except for a new sign. The Chairman asked the applicants whether they were asking for a shopping center or a mall. Peter Gagne noted that a shopping center did not limit how many businesses could be on the lot. The Chairman said the applicant was only asking for four businesses to be allowed, and asked them whether that was an oversight on their part. Ms. Szetela said they only wanted four at this time. Doug Garland explained the zoning definitions of a shopping center and a shopping mall, and how each was different from the other. The Chairman noted shopping centers and malls were also defined by a size limit, which prompted Doug Garland to ask what size the two buildings were. Mr. Jackson said they were 8,000 sf each, which fell well-within the size limits. It was determined there were no parking issues associated with these new businesses, since 88 parking spaces already existed on the property. The Chairman then opened the public comment period which he subsequently closed when no comments were forthcoming. The board then deliberated and voted on the criteria which had to be met before a special exception could be granted, as follows:

1. The site is an appropriate location for the proposed use: Vote taken: 5 yes (unanimous).
2. A preponderance of evidence is found that property values will not be reduced due to incompatible land use by such a use: Vote taken: 5 yes (unanimous).
3. No traffic hazard will be created: Vote taken: 5 yes (unanimous).
4. No nuisance or other hazard is involved: Vote taken: 5 yes (unanimous).
5. Adequate and appropriate facilities will be provided for the proper operation of the proposed use: Vote taken: 5 yes (unanimous).

6. There is adequate area for safe and sanitary sewage disposal according to state regulations: Vote taken: 5 yes (unanimous).
7. Operations in connection with such a use shall not violate the provisions of Article IV of this ordinance: Vote taken: 5 yes (unanimous).

Based on the above vote, the Chairman called for a motion to grant a special exception to allow the former Hartmann Railroad Museum property to be considered a shopping center, and to allow four businesses to operate from the existing buildings. Motion made by Doug Garland; seconded by Julia King. Vote: All in favor. The selectmen will be advised of the board's decision.

Shawn Bergeron who was waiting to present his two applications, asked the Chairman if the agenda items could be taken out-of-order and requested the board hear his appeal for a variance for the construction of a handicap ramp first. The Chairman agreed to Mr. Bergeron's request. Before presenting, Mr. Bergeron recalled he had been before the board previously for this property. At that time, he said he had been surprised to find that the town had been represented by the town's attorney without giving Mr. Bergeron the courtesy of a heads-up that legal counsel would be present. He said he believed that same gentleman was here this evening and asked for confirmation that the selectmen had once again asked legal counsel to come-in and speak against this application. When Doug Garland said he wasn't sure what difference it would make, Mr. Bergeron said if he was faced with new evidence tonight presented by town legal counsel, which he should have been provided with earlier, it could change his procedural aspect. The Chairman asked whether the selectmen were represented by an attorney tonight, and Atty. John Ratigan confirmed they were. Mr. Bergeron said in that case, he would respectfully ask whether Atty. Ratigan was here in opposition to both Fram applications, or one or the other. Atty. Ratigan advised the selectmen had no opposition towards the handicap ramp. The Chairman said the board would proceed to hear the ramp case.

4. Public Hearing – File: 2020-12

Applicant: Bergeron Technical Services LLC on behalf of Fram Real Estate Investments.
Location: 13 NH Route 16A
Bartlett Tax Map: Tax Map 1RT16A, Lot 6L00
Purpose: An appeal for a Variance to allow the construction of a handicap ramp when setback requirements cannot be met.
Zoning Ordinance Section: Article XI, Section A.

Shawn Bergeron presented and introduced project manager, Kate Richardson. Ms. Richardson said the ramp had been designed to be ADA-compliant, which required it to be at least 4-ft. wide with a 5-ft.-wide accessibility landing around the door entrance. She explained the ramp had been pushed-out slightly from the building to avoid the drip edge of the roof and said a Variance had been requested because the ramp could not comply with the front setback requirements from Route 16A. Ms. Richardson said that this ramp would serve a medical facility and, as such, it was mandated by the State. The Chairman asked if there were plans to cover the ramp. Ms. Richardson said no. The Chairman continued by saying that the ramp could become nasty with ice and snow in the winter and would require salt be put down. Ms. Richardson agreed it would need to be shoveled. When Mr. Bergeron said the State does not require handicap ramps to be covered, the Chairman said he felt the applicant would perhaps want to, anyway. He wondered whether the board could add that requirement as a condition of approval. Mr. Bergeron said the ramp had been designed to minimize the impact to the front buffer area, but if the board would like to see it covered, then he would certainly pass that information along to the property owner. He said the Diabetes Center may also like to see it covered to help with maintenance issues. The Chairman asked whether the State had any regulations regarding ramp coverings. Mr. Bergeron said they did not.

Doug Garland indicated if the ramp was going to be covered, he would like to see it moved back against the building and the extra space gained by doing so be converted into greenspace with some plantings along the front of the property. Ms. Richardson said it would be tight, but she would do the best she could to facilitate these plantings. Julia King asked whether vehicles would be able to drive right up to the end of the ramp. Ms. Richardson said yes. The Chairman said another consideration to take into account if the board was going to require these extra conditions was how long the Diabetes Center's lease was for. Daren Levitt advised they had a 5-year lease. He acknowledged the board's concern about winter maintenance of the ramp. He said they intended to keep it shoveled and clean, but noted the Center did not have a large number of wheelchair patients. He said they were always aware when such a patient had an appointment and they would ensure the ramp was shoveled and sanded for them. Doug Garland said he was sure that other people would use the ramp as well.

The Chairman asked if the board had any further questions. Julia King asked whether the new configuration for the ramp met ADA requirements. Kate Richardson said yes. The Chairman asked the board members whether they felt it should be required that the ramp be covered or not, or whether letting them solve the ice and snow problems themselves would be more equitable. Peter Pelletier said he did not feel it should be a requirement of approval, citing many handicap ramps in the area which were not covered. Doug Garland would be happy to see a little more greenspace along the front. Mr. Bergeron said the building owner, Brian Fram, was not present and he should probably have some input on this suggestion. He said if the Diabetes Center would really like to see the ramp covered that would likely carry some weight with Mr. Fram. After further discussion, he suggested the ramp be approved with a covering and if Mr. Fram had a strong objection to that, that they would come back to the ZBA and seek an amended approval. The board agreed with this compromise.

At this point the Chairman opened the hearing to public comment. Administrative Assistant Lynn Jones said she had a question about the proposed plantings along the front of the property, noting they would be close to the road and the plow vehicles. She said she wouldn't like to see them have to be re-planted every year. Shawn Bergeron said they would be approximately 35-ft. from the center of the road. The Chairman asked if there were any further comments. With none, the public comment period was closed and the board deliberated and voted on the five criteria which must be met before a variance can be granted, as follows:

- 1) Granting the variance will not be contrary to the public interest. Vote: 5 agree, unanimous.
- 2) Owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship. Vote: 5 agree, unanimous.
- 3) The spirit of the ordinance is observed. Vote: 5 agree, unanimous.
- 4) Granting the variance would do substantial justice. Vote: 5 agree, unanimous.
- 5) The value of surrounding properties will not be diminished. Vote: 5 agree, unanimous.

Based on the above vote, the Chairman said he would entertain a motion to grant the variance for the construction of a handicap ramp as shown on the diagram provided, with the following conditions of approval:

- The ramp will be moved back closer towards the building.
- The ramp will be covered.
- The space gained along the front of the property by moving the ramp back will be treated as greenspace and planted accordingly.

Motion was made by Peter Pelletier; seconded by Doug Garland. Vote: All in favor. The selectmen will be informed of the board's decision.

Public Hearing – File: 2020-10

Applicant: Bergeron Technical Services LLC on behalf of Fram Real Estate Investments.
Location: 13 NH Route 16A
Bartlett Tax Map: Tax Map 1RT16A, Lot 6L00
Purpose: An appeal for a Special Exception and a Variance to convert two of the three existing offices in the two-story section of the building into residential units when minimum land area requirements cannot be met but the property is served by municipal water and sewage.
Zoning Ordinance Sections: Article XVIII, Section D, 1, (I) (Special Exception) and Article VI, Section H (Variance).

Shawn Bergeron presented. He asked whether town counsel was intending to introduce any written material to the board tonight which he (Mr. Bergeron) had not been privy to. The Chairman asked Atty. Ratigan that question, and Atty. Ratigan answered in the affirmative. The Chairman suggested it would be a good idea if all the written material was presented at this time. Also before the board was a memo received from the selectmen today which expressed their strong opposition to the variance being requested because it is not in conformance with the town’s zoning ordinance, specifically Article VI-H as it pertains to the minimum land area requirements (MLAR). The selectmen’s memo stated since the situation of a lot being served by precinct water and sewer is expressly considered in this Article, it was clear that the authors of the zoning ordinance were fully aware that such a situation might occur and that deviation from the MLAR should not be allowed even if water/sewer were available. The memo went on to say the purpose of having a minimum land area requirement not only served the purpose of protecting the environment, but also promoted health and welfare and protected the rural character of the town. Also noted was the fact that this lot was approximately 0.4-acres and could not come close to supporting what is there now were it not for being grandfathered, and to now make it worse by allowing multiple dwelling units would certainly be contrary to the intent of the zoning ordinance. The selectmen identified twelve other properties within the same area which were also served by municipal water/sewer, and their contention was that this particular lot was not unique and thus should not receive any special consideration.

Atty. Ratigan noted when he was last before the board for this application, he had presented a letter dated October 8, 2019 which basically said that when a conflict exists between two ordinances, the later, more recently-adopted statute will control. This was especially so when the later ordinance deals with the subject matter in a specific way and the earlier enactment deals with it in a general fashion. Atty. Ratigan said, based on that interpretation, a Special Exception under Article XVIII, Section D, 1 (I) of the zoning ordinance was unavailable and the ZBA lacked the authority to grant one. Atty. Ratigan supplied the board with a copy of the aforementioned letter and said nothing had changed since the last application, which had been withdrawn, which would alter his findings. He reiterated the information provided by the selectmen in their memo that this lot was very small and its grandfathered status was the only thing which allowed it to have the development it currently enjoyed. Furthermore, the lot was not different nor unique since there were twelve other lots in the vicinity which were also served by off-site water/sewage. Shawn Bergeron interjected to say that what they were asking for in this new application was different than the last one, in that they were now asking for a variance against the zoning provision that minimum land area requirements shall not be reduced because of community and/or off-site water/sewage His application last year had requested a special exception. Mr. Bergeron requested he be given a copy of the selectmen’s memo, noting it was now part of the public record. The Chairman agreed, and Mr. Bergeron was provided with a copy, along with a copy of the October 8, 2019 letter from town counsel.

Mr. Bergeron addressed the board saying he appreciated the board’s efforts dealing with this situation and he further appreciated the approval of the handicap ramp. Mr. Bergeron said at this point he would like to request a continuance of this application to a further date to review the information he had just been provided. The Chairman agreed to this request and a discussion ensued as to an appropriate date to continue the meeting to since it needed to be announced tonight to avoid abutter renotification, etc. Doug Garland indicated he would

like to see the board adhere to a regular meeting schedule whether there were applications pending or not. Monday, September 14 was a suggested date but Alternate Peter Pelletier indicated he was not available then. Norman Head advised he would need to recuse himself and without an alternate we would not have a full board. Tuesday, September 15 conflicted with the planning board work session so a date of Wednesday, September 16 was agreed upon. With that, the Chairman called for a motion to continue this hearing to September 16, 2020 at 7:00 pm. Motion was made by Julie King; seconded by Peter Pelletier. Vote: All in favor. Mr. Bergeron thanked the board for their time.

Julia King advised planning board chairman and school board member Scott Grant had offered his services as an alternate.

Before he departed, Atty. Ratigan said he had just come across a letter which he had written on January 27, 2020. This was the same day the board had met to vote to accept the applicant's request to withdraw the previous application, so technically the letter was part of the record for the last application. Since the board had not previously seen the letter, Atty. Ratigan provided a copy now. He said the letter was in response to a previous question from the board regarding which zoning district the applicant's property was located in. Atty. Ratigan advised the selectmen believed the subject property was in the Town Commercial District because it fell within the boundaries of the TCD as defined in Article III, C.1 of the zoning ordinance in that it included land which fronted onto Route 302 and/or 16; had indirect access within 400 road feet, on an existing street, to Route 302 and/or 16; fronts on that existing street, and is unable, or for other reasons including safety, to access directly to Route 302 and/or 16. Mr. Bergeron was also provided a copy of this letter.

With no further discussion, the meeting adjourned at 7:43 pm.

Respectfully submitted,
Barbara Bush
Recording Secretary