

ATKINSON ZONING BOARD OF ADJUSTMENT

21 Academy Avenue

Atkinson, New Hampshire 03811

Public Hearing Meeting Town Hall

Wednesday, October 14, 2009

Present: Frank Polito, Chairman; Hank Riehl, Vice-Chairman; Sandy Carter;
Glen Saba;

Chairman Polito called the meeting to order at about 7:05 P.M. :

Approval of Minutes:

Board reviewed the minutes of September 9, 2009 and the following changes were made:

Delete the first line "Board reviewed the minutes of July 28, 2009"

Page 3, first motion, change "minutes" to "meeting".

The Board confirmed that the square footage of the footprint in the Raczka was 2168 feet.

Mr. Saba made a motion to accept the minutes as amended. Mr. Carter seconded and they were unanimously approved.

The Board discussed OEP excerpts on clarification of Alternate Board members, updated on the public hearing process and the time for minutes to be available to the public.

Correspondence

Incoming

Building Inspector, Robert Jones to T. Pignatiello re: 23 Main Street, Map 5, Lot 9 compliance.

E-mail from Patricia Goodridge dated 9/12/09 re: 8 Valcat Lane occupancy.

Recorded Documents re: William Grimes, Lisheen Drive property: Deed Restriction; ZBA Variance Extension letter; ZBA Variance approval letter of 7/15/09; ZBA Minutes of 7/9/09; Variance Plan D-36065.

Dennis Spurling dated 9/16/09 to Robert Jones re: 23 Main Street, Map 5, Lot 9.

Selectmen dated 9/15/09 re: Limit of budget to year end.

Selectmen to Mr & Mr. Osborn, 8 Valcat Lane, Map 22, Lot 47 dated 9/9/09 re: Occupancy.

Letter from Margaret Osborn to Selectmen dated 9/18/09 re: 8 Valcat Lane, Map 22, Lot 47 occupancy.

Attorney Tony Soltani, letter dated 9/18/09 re: 8 Valcat Lane.

State of NH, Dept. of Environmental Services dated 9/22/09 re: 4 Rocky Point Lane.

ZBA Budget printout dated 9/30/09.

Attorney Kalman to Attorney Soltani dated 9/29/09 re: 8 Valcat Lane.

Town Administrator memo dated 9/30/09 re: 2009 Operating Budget.

E-mail from Patricia Goodridge dated 10/6/09 re: Testimony on Osborn, 8 Valcat Lane.

Selectmen to Malborn Realty Trust, Daniel & Maggie Osborn re: Cease & Desist.

Outgoing

Ronald David dated 9/10/09 re: Home Business Renewal, 73 East Road, Map 19, Lot 5.

Dr. Joseph Guischart dated 9/10/09 re: Home Business Renewal 6 Jericho Road, Map 2, Lot 12.

Dr. Charles White dated 9/10/09 re: Home Business Renewal, 29 Island Pond Road, Map 17, Lot 45.

Chris Mastriano dated 9/11/09 re: Exempt Home Business, 5 Twin Oaks Drive, Map 6, Lot 71.

There was a discussion by the Board regarding this application and the determination by the Board at the last hearing that this was exempt. They agreed that there should be a formal vote. The Board agreed this was a strictly wholesale operation and the consensus of the Board was that it complied with local ordinances. Mr. Carter made a motion to certify to the State that this was a wholesale dealer that complied with local ordinances. Mr. Riehl seconded the motion and it was unanimously approved.

Nancy Raczka dated 9/28/09 re: Wetland Variance, 47 Boulder Cove Road, Map 23, Lot 79.

Kenneth Dobrov, dated 9/28/09 re: Sideline Variance, 3 Valcat Lane Map 22, Lot 48

George McElroy dated 9/28/09 re: Special Exception/Accessory Living Unit, 80 Providence Hill Raod, Map 6, Lot 6.

ZBA Legal Notice for meeting of 10/14/09.

Philip Consentino dated 9/11/09 re: Home Business Renewal, 140 Main Street, Map 13, Lot 23.

Public Hearings – 7:45 P.M.

Michael Zedalis request for Variance from Article 410:8 of the Zoning Ordinance to permit construction of a 12'x38' deck, 64' from prime wetlands (36' variance) as opposed to the required undisturbed buffer area of at least 100' on property located at 4 East Road, Map 10, Lot 5, TR2 Zone.

Abutters list was read with the following present: Michael Zedalis

Mr. Zedalis said he wanted to build a 12 x 38 deck across part of an existing driveway. The Board reviewed pictures. There is an odd shaped deck in the back in the shape of a triangle with a three season porch, which existed when he bought the property. The existing driveway extends approximately 26 feet beyond the deck. Mr. Polito read the letter from Mr. Jones. This property was originally owned by Mr. Swanton. Mr. Jones explained that the deck in the back is also unpermitted. He made a site visit and told the carpenters the deck was unpermitted and that there would be a Variance needed. Mr. Polito said the back structure would also need to be permitted. Mr. Dziechowski explained this was a prime wetland and as such would need a waiver from the State DES for construction within the 100 foot buffer. Mr. Carter thought it might not be relevant for the back deck because it was built prior to the adoption of the 100 foot buffer. The Board was not sure how that would be reviewed. It would not have needed approval from DES but would

have still required a Variance from the Town. Mr. Polito read a letter from the Conservation Commission which did not recommend the approval of the request. Mr. Polito said there were two issues. One is what is proposed and the other is dealing with what is there and not permitted. Mr. Zedalis said he bought the property three years ago and all of the back deck including the three season porch was there. Mr. Kirsch said the house was approved as a 30 x 32 foot structure without decks. Mr. Polito said his understanding was the variance could not be granted on a prime wetland because it is under the jurisdiction of the State. Mr. Zedalis would have to get an approval from the DES and then would have to seek relief from the Board for the variance. Mr. Saba asked if the driveway was staying there and it was. Mr. Saba said he believed the deck would not further impact anything because the driveway already exists. Mr. Polito said in terms of the spirit of the ordinance, it is a deck on top of a non permeable surface. Mr. Carter agreed. Mr. Polito thought this was a reasonable case. The Board agreed there were unique circumstances for this property and it wasn't just an expansion out. The Board agreed this should go before the State first, because any relief granted by the Board would be moot if not given a waiver by DES. Mr. Polito suggested to Mr. Zedalis that he should have a continuance in order to apply to the State for the waiver.

Mr. Carter made a motion to continue to the next scheduled hearing in November. Mr. Riehl seconded and it was unanimously approved.

Public Hearings – 7:30 P.M.

Daniel and Margaret Osborn request for Special Exception as specified in Article VII, Section 700:1 of the Zoning Ordinance for statutory relief to modify condition of previous Variance granted 6/13/07 on property located at 8 Valcat Lane, Map 22, Lot 47, RR3 Zone.

The applicant had faxed a request for a continuance. Mr. Polito asked the Board if they wanted to grant the continuance. Mr. Carter said he did not have a problem continuing because it was the first request. Mr. Polito said the request for continuance did not specify any reason and did not know if there was just cause to continue. ***Mr. Carter made a motion to continue the hearing to the next scheduled hearing in November. Mr. Riehl seconded and it was passed with a vote of 3 -1. Mr. Polito dissented.***

Public Hearings – 8:15 P.M.

Timothy Dziechowski request for Special Exception per Zoning Article IV, Section 490:1 to allow a 33% reduction in frontage to create a 5.7A lot with 134' frontage on property located at 109 Maple Avenue, Map 18, Lot 71, RR2 Zone.

Abutters list was read with the following present:

Mr. Dziechowski; David Pancoast; Arthur Richert; Kevin Hatch from Cornerstone Survey

Kevin Hatch gave the Board a plan. Mr. Dziechowski said that he was not 100% sure about the lot lines and that he may want to change the lot line a little so that the back parcel and the conservation land would always be accessible to him. He did not think he wanted to have an easement. He only saw the plan late in the day and is not sure if there might be some changes.

Mr. Polito said this would be contingent upon a couple of things. One, it would have an expiration date if it were not exercised. The other condition would be that the Planning Board subdivision review process takes place satisfactorily and that gets the burden off of the ZBA that it meets zoning. This is not a variance. This is a Special Exception and the Board is blind to everything else except consideration for the reduction of the frontage. Mr. Carter read the requirements of what the Board is allowed to do and Mr. Polito reiterated that by Law all the Board does is a finding of fact that the applicant either meets the conditions and the Board must grant the request or the conditions are not met and it is denied.

The Board went through the conditions and determined that the applicant's proposal meets the percentage of reduction. The smaller lot meets the frontage requirement and the larger lot meets it at the building line as required. Mr. Carter did not believe the Board could look at this plan and grant something that may not stay the same. He did not believe the Board could deal with unknowns. Mr. Polito thought this was a valid point.

Mr. Hatch said the frontage would not change, only the lot line. Mr. Polito said the point is the lot is affected at the building line. The plan becomes part of the process and approval and if it does not match what eventually becomes of the lot, it could cause confusion for future owners or for Mr. Dziechowski. Mr. Hatch showed the Board the changes Mr. Dziechowski was contemplating. The Board agreed they seemed like reasonable requests, but needed it on the plan submitted as part of the application. Mr. Hatch said the change was only going to be about 20 feet in width and thought the Board could act on the request. Mr. Polito asked the Board for a consensus that this plan or the proposed minor change would meet the requirements of the Special Exception. There was a consensus of the Board that this was met.

Mr. Polito thought the Planning Board could look at this and give some indication that it met the subdivision requirements which were a variable piece and then come before the ZBA. Mr. Hatch said the Planning Board told them to come before the ZBA first. Mr. Hatch said the plan he needs to submit to the Planning Board will be rejected if it does not meet zoning.

Mr. Polito asked Ms. Killam if the applicant had an open application before the ZBA, with the understanding the Board is waiting on a decision from the Planning Board, would that hold the applicant up. Ms. Killam said there is not a complete application before them for action unless it meets zoning. Mr. Polito said the relief in this case is pretty straight forward and spelled out in the zoning. Mr. Carter said they do not have the correct plan before them and Mr. Dziechowski agreed. He said he preferred not to go further until the proper plan was before the Board. Mr. Hatch said he cannot get definitive feedback from the Planning Board. He asked for a continuance.

Mr. Carter made a motion to continue to the next hearing scheduled in November, Mr. Riehl seconded and it was unanimously approved.

Motion to adjourn was made and seconded. Mr. Polito adjourned the hearing at 8:40 P.M.

Respectfully Submitted _____

Minutes transcribed from tape Rebecca Russo

The Board reviewed the minutes of October 14, 2009. Mr. Saba made a motion to accept the minutes as submitted. Mr. Carter seconded the motion and they were approved. Ms. Miner abstained.

APPROVED _____ *11/10/09* _____