

ATKINSON ZONING BOARD OF ADJUSTMENT

21 Academy Avenue

Atkinson, New Hampshire 03811

Public Hearing Meeting Town Hall

Thursday, February 19, 2009

Present: Sandy Carter, Acting Chairman; Hank Riehl, Vice-Chairman; Susan Miner;

Alternates: Margaret Osborn; Sam Zannini

Mr. Sanford called the meeting to order at 7:45 P.M.

Approval of minutes – January 14, 2009

The following corrections/additions were made:

Page 2; change "Reihl" to "Riehl"

Mr. Zannini made a motion to accept the minutes as corrected. Mr. Riehl seconded and the motion was approved. Ms. Miner was not present.

Correspondence

Incoming

Memo from James Kirsch to Selectmen dated 1/20/09 re: John Mason, Notice of Violation.

Letter from Attorney William Mason to Selectmen dated 1/22/09 re: John Mason, Violation of Atkinson Building Codes Section 300.

Letter from Attorney William Mason dated 1/27/09 re: 4 Rocky Point Lane, Map 22, Lot 31.

ZBA Budget printout dated 1/31/09.

Letter to Attorney William Mason from Attorney Sumner Kalman dated 1/29/09 re: John Mason, Violation of Atkinson Building Code Ordinance.

Letter from Attorney William Mason dated 2/10/09 re: 4 Rocky Point Lane, Map 22, Lot 31.

Lagasse Crane Service, Inc. – Application for Home Business Renewal for 40 Academy Avenue, Map 14, Lot 56.

Outgoing

John Mason dated 1/23/09 re: Zoning Board Variance Denial for 4 Rocky Point Ln, Map 22, Lot 31.

ZBA Legal Notice for public hearing of 2/19/2009.

Mr. Craig Laurence dated 2/9/09 re: Second Notice for Home Business Renewal.

Mr. Eugene Lagasse dated 2/9/09 re: Notice for Home Business Renewal for Lagasse Crane Services, Inc. 40 Academy Avenue, Map 14, Lot 56.

Henry Corey dated 2/9/09 re: 2nd Notice for Home Business Renewal for United wholesalers of Atkinson, LLC, 16 Coventry Road, Map 14, Lot 84-7.

PUBLIC HEARINGS: 8:00 P.M.

Giles Gagnon request for Variance from Article IV, Section 410:8 of the Zoning Ordinance to permit construction of an addition to existing building 68' from wetland (32' variance) as opposed to the required 100' on property located at 12 Industrial Way, Map 16, Lot 50, CI Zone.

Abutter's list was read with the following present: James Lavelle Associates, representing Mr. Gagnon

Mr. Lavelle stated the applicant would like to add a 50' addition to the existing building. There is a small wetland to the rear of the building. This wetland does not go anywhere and there is no entrance or exit. There is very little value. He believed the wetland was made from a bulldozer depression. He stated that he had met with the Conservation Commission over a month or so ago but he did not have anything from them. The Board did not receive a letter from the conservation Commission. There will be additional impermeable surfaces added with the extension of paved area in the back of the building, but it will be no closer to the wetland than what is already on the site. The area that the addition will be built on is already paved.

Mr. Lavelle suggested a Site Walk. The Board agreed they should probably look at the site and will request input from the Conservation Commission. The applicant agreed to continue the hearing until next month, so that the Board could conduct a site walk, and provide an opportunity for input from the Conservation Commission.

Ms. Miner made a motion to continue the hearing to the next regularly scheduled meeting in March. Mr. Riehl seconded and the motion passed by unanimous vote. If the weather does not permit a site walk in March the hearing will be continued to the April meeting.

PUBLIC HEARINGS: 8:25 P.M.

John Mason, Jr. request for Variances from Article IV, Sections 410:8 & 400:4 to allow a 10'6 1/2" x 24'9" addition to remain 5'2" & 11'2" from sideline (9'10" & 3'8"variances)as opposed to the required 15' and 30' from wetland (70' variance) as opposed to the required 100'. Also request Special Exception for conversion of seasonal use to primary/year round occupancy on property located at 4 Rocky Point Lane, Map 22, Lot 31, RR3 Zone.

Abutter's list was read with the following present:

Attorney William Mason (no relation), representing John Mason; Big Island Pond Corp.

The Board discussed with Attorney Mason that they had reviewed the RSA's with respect to a member's recusal. It was the Board's opinion as expressed in a consensus vote that based on the RSA's there was no reason for Mrs. Osborn to recuse herself from this hearing. The Board asked Mrs. Osborn if she wished to recuse herself from this hearing and she declined. Attorney Mason felt if a Board member felt strongly enough to recuse themselves at the original hearing, it might be better to continue that stance.

Mr. Carter explained that it is the policy of the Board and in their regulations that in order to affirm an action it requires three votes. Therefore, if a vote is split evenly as it could be with a four person board, in effect it would be a vote against the applicant. Attorney Mason said when they have a hearing he would like to have a full board. Mr. Carter said that was always the objective, but there were no guarantees that would happen. The Board cannot automatically give the applicant, lacking a full Board, the opportunity to continue a hearing. Mr. Carter said he was sensitive to what Attorney Mason was saying and asked if he wished to have Mrs. Osborn step off the Board. Mr. Mason asked that she recuse herself. Mr. Carter agreed to do this and Mrs. Osborn recused herself from this hearing. Attorney Mason said he would like the Board to have additional information, some of which was spelled out in his

correspondence to the Board. He was only recently retained by Mr. Mason. Attorney Mason said there are certain things that have to be satisfied for the State and the Town. Attorney Mason said that after speaking with the engineers and the soils scientists, it was recommended to Mr. Mason that the issues with the State should be addressed first, even though it is the more expensive route to go. The advice of the professionals was that whatever the State required him to do or allowed him to do or what mitigations were necessary, it would be important to the ZBA. The State would give some finality that would be helpful with the ZBA in approving a variance. Taking this advice, the applicant met with the State and the process has been ongoing. They have an April 6th deadline to resolve the issue with the State. If the State comes back and says the applicant cannot do anything, and they restore it to the original footprint, they might not need to come before the Board at all. He is not trying to drag anything out but they chose to go before the State first, based on the advice of the professionals that were hired. Mr. Carter believed the Board could be blind to the issues with regard to the State violations and could deal with the Town's requirements requiring a variance. In his opinion, the issues are separable. There is enough information available, relative to the structure, to see if it fits the criteria needed to grant a variance. In the interest of expediency, someone needs to move forward. There is no persuasive argument why it would be necessary to further delay the actions of the Board. There was a consensus of the Board that there does not need to be any additional delays and the Board could move forward in the determinations. Mr. Riehl said the State would have no interest in the lot line situation or the special exception for conversion from seasonal to year round. There may be some outcome from the states' determination that would be germane to the wetland setback. Mr. Carter stated that the zoning requirements from the town, in some regards, are more stringent than those of the States'. Attorney Mason believed the State did have an interest and had an issue with regard to the conversion of seasonal to year round with respect to expanded space.

Mr. Carter stated it was the opinion of the Board that this hearing was duly noticed and duly called and the applicant has been advised by the Town's Attorney that the Board has sufficient information and could proceed in taking action on the application. Attorney Mason said there was not a full Board. Mr. Carter reiterated that Attorney Mason had the option of accepting a five member Board tonight, which included Mrs. Osborn or proceed with the four members. It is not an option to have it continued under the RSA's because there is not a full Board. Attorney Mason claimed he did not waive his right to have a hearing before a full Board. Mr. Carter said there was no legal right requiring a five member board. Attorney Mason believed he did. Attorney Mason said in the absence of that he would withdraw his application because there is not a full board. Mr. Carter wanted Attorney Mason to know if he withdrew his application it would mean there is not application for a variance on the table in Atkinson and that might impact other issues he is having with the Town, Selectmen, Code Enforcement and the Courts. Attorney Mason understood. He came before the Board to try and straighten it out as he was not involved from the beginning.

Mr. Riehl made a motion to withdraw the application without comment. Mr. Zannini seconded the motion and it was unanimously approved.

Motion to adjourn was made and seconded. Mr. Carter adjourned the hearing at 9:00 P.M.

Respectfully Submitted _____

Minutes transcribed from tape Rebecca Russo

Approval of Minutes – February 19, 2009

The following corrections/additions were made:

Page 2, first paragraph, capitalize "Conservation".

Page 4, in the motion, after "motion to" insert "accept the applicant's request"

Mrs. Osborn made a motion to accept the minutes as corrected. Ms. Miner seconded and the motion was approved.