

ATKINSON ZONING BOARD OF ADJUSTMENT

21 Academy Avenue

Atkinson, New Hampshire 03811

Public Hearing Meeting Town Hall

Wednesday, May 13 2009

Present: Hank Riehl, Vice Chairman; Sandy Carter; Susan Miner; William Friel

Alternates: Sam Zannini; Glenn Saba

Mr. Carter called the meeting to order at 7:35 P.M.

Approval of Minutes – April 15, 2009

The following corrections/additions were made:

Page 6, halfway through, sentence begins with "said", after "Mr. Saba asked if there" change "were" to "was".

Page 12, 6th line, after short, add "list of permitted uses" and delete "use"

Mr. Riehl made a motion to accept the minutes. Ms. Miner seconded and the motion was approved.

Correspondence

Incoming

Sumner Kalman dated 4/20/09 re: Wolters v. Town of Atkinson, Town of Atkinson Planning Board 'Assented to Motion to Stay'.

Memo to Selectmen from S. Galvin dated 4/27/09 re: Medical Leave.

ZBA Budget printout.

Attorney Kalman dated 5/5/09 re: Wolters, et al v. Town of Atkinson, Town of Atkinson Planning Board – Decision 'Motion to Stay'.

Authorization letter from Mason re: Variance Request – 4 rocky Point Lane.

Outgoing

Mr. & Mrs. Richard Haines dated 4/23/09 re: Equitable Waiver – Extended Family Unit, 6 Indian Ridge Rd, Map 5, Lot 54.

Mr. Gilles Gagnon, dated 4/23/09 re: 12 Industrial Way, Map 16, Lot 50 Wetland Variance.

Keith Wolters dated 4/23/09 re: Appeal of Planning Board Decision on Loren Corp/P.J. Murphy Transporation, 16 Industrial Way, Map 16, Lot 59.

Reorganize:

Mr. Carter nominated Mr. Polito for Chairman, Mr. Friel seconded and it was unanimous. Mr. Friel nominated Mr. Riehl for Vice Chairman, Ms Miner seconded and it was unanimous.

Mr. Saba was the alternate for voting purposes.

CONSIDERATION OF MOTION FOR REHEARING

Pursuant to RSA 677:2 and 677:3 for Richard and Patricia Haines, 6 Indian Ridge Road, Map 5 Lot 54.

Mr. Carter reviewed the criteria under which the Board could grant a rehearing:

There would have to be new information that was not available to the applicant at the time of the original hearing.

The Board made an error of law.

Mr. Carter stated that based on the request, there was no allegation that there was new information, but the allegation was that the Board had made an error in the law.

The Board reviewed the request and based on the discussions that took place during the hearing and the information that was presented they reached a consensus that the Board did not make an error in the law. The issue before them was a request of an equitable waiver for a use. The Board stated there were claims in the appeal that they did not agree with. The Board disagreed with the allegation that in-law apartments were allowed before 1995 as well as other items stated in the request.

Mr. Riehl made a motion to deny the request for rehearing based on the fact that there was no new information presented to the Board that was not available at the time of the original hearing and that there was no error of law. Ms. Miner seconded the motion and it was unanimous.

Mr. Friel recused himself and Mr. Zannini voted

CONSIDERATION OF MOTION FOR REHEARING

Pursuant to RSA 677:2 In Re: Administrative Appeal for Keith Wolters of a Planning Board Site Plan Approval for P.J. Murphy Transportation, Inc. for Land Located at 16 Industrial Way in the CI Zone.

Mr. Carter stated that based on the request, there was no allegation that there was new information, but the allegation was that the Board had made an error in the law.

Mr. Carter did not believe the Board made an error in law. Mr. Riehl and Ms. Miner both believed that the trigger for the start of the appeal process was the Planning Board's decision. The Board agreed there may have been other opportunities for the applicant to file an appeal, but there was a consensus that the Planning Board's decision was when the appeal process would have started. Mr. Riehl and Ms. Miner both believed this was a trucking/transportation use because it ran 24/7 and the original application to the Planning board was for a Trucking Terminal. The Board had taken into consideration the 1982 Agreement. Mr. Carter stated the narrow issue was whether they made an error in law and did not think there was one, even though the Board had disagreed among themselves on whether the proposed use of the property complied with Zoning Regulations or not. Ms. Miner claimed there were no discussions during the hearing regarding the legality of the prior use of the property . They had discussed whether the proposal fit permitted use within the zone. There was a consensus of the Board that this matter was discussed at length and the decision made stands on its merit.

Ms. Miner made a motion to deny the request for rehearing based on the fact that there was no new information presented to the Board that was not available at the time of the original hearing and that there was no error of law.

Mr. Riehl seconded the motion and it was unanimous

PUBLIC HEARING: 8:30 pm

John Mason, Jr. request for Variances from Article IV, Sections 410:8 & 400:4 to allow a sideline setback of 5.2 feet (approx. 10' Variance) as opposed to required 15 feet for addition to remain and a wetland setback of 30' (70' variance) as opposed to the required 100'. Also a request for a 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.

Abutters list was read with the following present:

Attorney Mason representing John Mason; John Mason; Big Island Pond Association

The Board determined there were two requests to be dealt with in this hearing. There was a request for a Special Exception and a request for a Variance. Attorney Mason explained that they could not move forward with the request for a Special Exception until they meet other criteria and resolved issues with the State. They requested to move forward with the request for a Variance only at this meeting and continue the special exception request to the next meeting .

The applicant gave the Board a packet of information. Mr., Saba was concerned that there were no dimensions on the plan for the addition, the house or the distance to the water. Attorney Mason stated the citation received only made reference to distance to the side lot line. Mr. Carter stated that just because the Town said it was 30' does not mean that is what it is. It is the responsibility of the applicant to determine exactly what the correct dimension is and be sure that is what the Variance is asking for. Attorney Mason suggested a site walk be taken. He would have the engineer flag the site. Mr. Riehl thought they had good pictures of the site. Mr. Mason said they had cleaned up the property considerably. Ms. Miner wanted to know if the impact to the wetlands was one of the issues they would be concerned with. Mr. Carter stated that it would and also the intensification of use would be a concern. There are concerns that are shared with DES too. Attorney Mason said that Gove Environmental is working with the DES on those issues. He had hoped there would be some resolutions before tonight to shed some light and help in the determination. Mr. Carter stated that when issues like this come before the Board, the Board must look at the application as if no structure had been already added. The Board is doing its job when it is blind to the construction that is illegal. Even though the applicant bought the property with the enclosed porch and deck already built, there is no permit and they were never legal. This needs to be treated as new construction and does not have rights because part of it was there when it was purchased. Mr. Carter stated that this was never a pre-existing non conforming use because it has never had legal standing. Ms. Miner questioned if some parts of it were pre-existing. Mr. Riehl asked why the applicant was not putting the addition in the back toward the street. Attorney Mason said that was the location of the proposed septic system. Attorney Mason showed the Board the new plan for the proposed septic system. The plan is dated December of 2008 and has not been approved because of the issues with the DES. It has been reviewed by the Town. This plan moves the system further away from the lake. Mr. Mason has hired an engineer and is working on the other issues, but they need to deal with the sideline setbacks and distance to the water first.

Attorney Mason requested that a site walk be conducted so the Board could see the property and the addition which has already been constructed. He wanted the Board to be able to see why this was the only location for the addition and where the proposed septic would be installed. He requested a continuance for one month to allow for the site walk.

Mr. Carter did not think it was necessary for the Board to conduct a site walk but agreed that if the applicant was asking for one he thought the Board should extend the courtesy and comply. Mr. Carter explained to the applicant that not all of the members might be able to make the site walk and there was no guarantee that the same members would be at the next hearing or that there would be a five member Board. The applicant understood and still requested a site-walk.

Based on a consensus the Board agreed they would conduct a site-walk on May 27, 2009.

Mr. Riehl made a motion to continue to the next regularly scheduled hearing on June 10 2009. Ms. Miner seconded

the motion and it was unanimously approved.

Motion to adjourn was made and seconded. Mr. Carter adjourned the hearing at 9:40 P.M.

Respectfully Submitted _____

Minutes transcribed from tape Rebecca Russo

Minutes of May 13, 2009 meeting were approved June 10, 2009