

ATKINSON ZONING BOARD OF ADJUSTMENT

21 Academy Avenue

Atkinson, New Hampshire 03811

Public Hearing Meeting Town Hall

Wednesday, September 9, 2009

Present: Frank Polito, Chairman;(arrived at 8:30 PM) Hank Riehl, Vice-Chairman; Sandy Carter ; Susan Miner

Alternates: Sam Zannini, Jr.

Vice Chairman, Hank Riehl called the meeting to order at about 7:00 :

Approval of Minutes

Board reviewed minutes of July 8, 2009 and made the following change:

Page 1, Add 'Sue Miner' as member present at the meeting.

Motion to approve the minutes as amended was made, seconded and approved.

Board reviewed minutes of July 28, 2009

Board reviewed minutes of July 28, 2009 and made the following changes:

Page 1, Remove 'Approval of Minutes 7/28/09'.

Page 3, third line add 'a' between word 'whether' and 'second'

End of Line 4, after word 'it' add 'had'.

End of Line 6, delete 'to the Board' and add 'by the applicant'.

Third paragraph, third to last sentence remove 'that was presented' after word 'hearing'.

Corrections were noted but approval could not be made without Mr. Glenn Saba. Minutes will be revisited at the next meeting of October 14.

Correspondence

Incoming

KLC Land Planning & Consulting dated 7/8/09 re: Grimes Variance, request for extension of approval.

KLC Land Planning & Consulting dated 3/10/09 re: Grimes Variance, revised 'draft' variance plan.

Attorney Sumner Kalman dated 8/17/09 re: P.J. Murphy Transportation Inc. v. Town of Atkinson Assent to Intervene.

Selectmen memo dated 8/20/09 re: Energy Efficiency Workshop meeting.

Robert Jones memo to Conservation Commission memo dated 8/25/09 re: Walter Budzyna, 15 Hemlock Heights Road, Map 22, Lot 9-10 notice of violation.

Planning Board to T. Pignatiello dated 8/26/09 re: 23 Main Street, Map 5, Lot 9 Approval for Minor Site Plan.

Building Inspector Robert Jones discussed the Planning Board letter with the board and noted that he would write a response letter.

Robert Jones memo to Conservation Commission dated 8/25/09 re: notice of violation.

ZBA Budget printout dated 8/31/09.

Attorney Sumner Kalman dated 8/31/09 re: Wolters et al v. Town of Atkinson Motion to Intervene.

Shirley Galvin to Selectmen dated 9/2/09 re: Notice of Retirement.

Robert Jones to Michael Zedalis dated 9/3/09 re: Denial of Building Permit.

Attorney Sumner Kalman dated 9/2/09 re: P.J. Murphy Transportation v. Town of Atkinson , Filing of Town of Atkinson's Answer and Certified Record.

Philip Consentino, 140 Main Street, Map 13, Lot 23 dated 7/15/09 re: Home Business Renewal Application.

Board reviewed Mr. Consentino's Home Business renewal application dated 7/15/09. Motion was made, seconded to approve the Renewal.

Joseph Guischar, DVM, 6 Jericho Road, Map 2, Lot 12 dated 7/14/09 re: Home Business Renewal Application.

Mr. Guischar's Home Business renewal application dated 7/14/09 was reviewed. Motion to approve the Home Business renewal application was made, seconded and approved.

Dr. Charles White, DMD, 29 Island Pond Road, Map 17, Lot 45 dated 7/14/09 re: Home Business Renewal Application.

Dr. White's Home Business renewal application dated 7/14/09 was reviewed. Motion to approve the Home Business renewal application was made, seconded and approved.

Do following two lines belong in Incoming Correspondence??

Planning Board Legal Notice for meeting of 8/19/09.

Selectmen Clerk to Chairman Frank Polito dated 8/6/09 re: ZBA appointments.

Chris Mastriano, 5 Twin Oaks Drive, Map 6, Lot 71 dated 7/21/09 re: Home Business Application for 'C & J Wholesale'.

Board reviewed Mr. Mastriano's application for a Home Business Application dated 7/21/09. Motion to approve the application was made , seconded and approved.

Ronald David, 73 East Road, Map 19, Lot 5 dated 8/10/09 re: Home Business Renewal Application.

Board reviewed Mr. David's Home Business renewal application. Motion to approval the renewal was made, seconded and approved.

Outgoing

KLC Land Planning dated 7/15/09 re: 2 Lisheen Drive, Map 15, Lot 5 re: Extension to Variance.

John Mason dated 7/15/09 re: 4 Rocky Point Lane, Map 22, Lot 31 Notice of withdrawal for SE/Conversion and Denial for Variance.

Attorney James Troisi dated 7/22/09 re: Haines, 6 Indian Ridge Road, Map 5, Lot 54 notice of ZBA hearing for Rehearing Request, Variance and Administrative Appeal.

Attorney James Troisi dated 8/4/09 re: Haines, 6 Indian Ridge Road, Map 5, Lot 54 Denial of Rehearing.

ZBA Legal Notice for meeting of 9/9/09.

The Board discussed the starting time of the minutes. Mr. Carter made a motion that the meetings would start at 7:00 p.m. and the public hearings at 7:30 p.m. and that the agenda and public notice should reflect that. Ms. Miner seconded and it was unanimous.

Discussion/Review

KLC Planning for William Grimes, 2 Lisheen Drive, Map 15, Lot 5 – Review of Final Plan and documents. **Mr. Riehl deferred the hearing because KLC was not present.**

Public Hearings:

Nancy Raczka request for Variance from Zoning Article IV, Section 410:8 to allow construction of a replacement dwelling w/deck 50.8' from Big Island Pond (existing dwelling is 25' from Pond). Located at 47 Boulder Cove Road, Map 23, Lot 79, RR3 Zone.

Abutters list was read with the following present:

James Lavelle Associates; Nancy Raczka Revocable Trust

Tim Lavelle explained they had an existing dwelling 25' from the water. The proposal is to remove that building and build another in its place. The property is 3.3 acres. There is a State approved septic system. There is an existing garage on the property making it 50.8 feet from the pond and the proposed dwelling would be constructed and attached to the garage. The driveway will be repaved with a pervious pavement and there is an application before the State. The dwelling cannot be located any further back because of the contour of the property and the existing septic system. The sideline setbacks are already met. There are no endangered species. Ms. Miner asked what the square footage of the existing dwelling and the proposed dwelling. Mr. Lavelle said the existing footprint was 1105 square feet and the proposed is 2168 square feet, which includes the deck, but does not include the existing garage. The shed will remain, but the concrete patio is being removed and that was 171 square feet. He explained there are concrete walks which total 271 square feet that will be reduced to 43 square feet. Ms. Miner wanted to know what portion of the land was impermeable. The preconstruction impervious area is 4,056 square feet and the post construction will be 2,790 square feet. This is because of the removal of existing walkways and pavement of driveway. The bedroom count is not changing. The existing septic was built in 1999 and will be sufficient for this proposal. The existing impervious area is 24.5% of the lot and the proposed is 16.9%. Mr. Carter said that it is favorable that the impermeable surfaces are being moved further back from the lake. Mr. Lavelle said there are also dry wells proposed to accept the runoff from the roof. It is not even required by the State if you are under 20% impermeable surface, but they are doing it anyway. Mr. Riehl asked if the other area was currently grassy. Mr. Lavelle said there is not thick grass, but there are grassy areas, with trees, etc. There will be a dredge and fill permit. Mr. Carter believed all of this sounded pleasing especially to DES. Big Island Pond said the applicant has done a great job and taken into consideration the keeping of the integrity of the lake. The Board did not have any other questions. Mr. Carter said 410:8 was the zoning to address this issue.

The Board reviewed the criteria: This is an area variance

The Board reviewed the application. Mr. Riehl agreed they are greatly reducing the impervious surface.

Mr. Carter said the sum total of the actions involved reduce any impact on the watershed. The Board agreed. Mr. Riehl asked what the shed was for and what the intent of it would be. Ms. Raczka said it was an 8 x 8 shed that stored life vests, rakes and oars. There are no windows and it is clearly storage. ***There was a consensus of the Board that this was met.***

Ms. Miner agreed with Mr. Carter's previous statement regarding the reduction of impervious surfaces. Mr. Riehl agreed. ***There was a consensus of the Board that this was met.***

A.) Mr. Carter said it would be impractical or impossible to construct a dwelling on the existing lot that would be able to meet the requirements and be of a usable size. ***There was a consensus of the Board that this was met.***

B.) ***There was a consensus of the Board that this was met.***

The runoff to the lake is significantly reduced. There are drywells, etc. ***There was a consensus of the Board that this was met.***

Mr. Carter said that in addition to what the application stated, the proposal is reducing any impact on the lake. ***There was a consensus of the Board that this was met.***

Mr. Carter made motion to approve the request for a Variance based on the above referenced, approximately 50.8 feet based on all of the conditions necessary for granting the Variance have been met. Conditional upon the applicant's receipt of approval from DES regarding the Shoreline Protection Act. Mr. Zannini seconded and it was unanimously approved.

Mr. & Mrs. George McElroy request for Special Exception as allowed in Zoning Article IV, Section 460 to allow alteration of an existing dwelling to accommodate an Extended Family Accessory Living Unit at property located at 80 Providence Hill Road, Map 6, Lot 6, RR2 Zone.

Abutters list was read with the following present: George & Alicia McElroy

Mr. McElroy said the proposal would be the conversion of the garage. There would be a shared bathroom, family room and laundry. There is a septic design that was submitted to the State two weeks ago and they have not received anything back as of yet. The in-law is for his mother. Mr. Riehl confirmed he is not looking to add onto the home. Mr. Carter asked if the bathroom on the plan was existing and it was. The Board reviewed the floor plans. The proposal was approximately 515 square feet. The applicant has submitted the septic plan for the current system and believes it will be sufficient. Mr. Jones confirmed that another design would be necessary to have in case of failure for the present system and it would have to be for four ½ bedrooms.

The Board reviewed the criteria under Section 460:2:

This is met

It is in a single family dwelling, it is met.

Will be met once the deed is recorded. No condominium

The applicants are the owners.

This is met.

The appearance is of a single family residence. The egress is where the current garage doors are. This is met.

There is convenient and direct access. This is met.

Approximately 515 square feet and is a studio style. This is met.

Will be met during construction.

Will be met once approval is granted by the State. This will be a condition of the approval.

The applicant's mother will be occupying the unit. This is met.

Mr. Carter made a motion to approve the request for a Special Exception based on the above referenced with conditions that the deed be recorded and the receipt of an approved septic plan meeting the conditions of the ordinance. Mr. Zannini seconded and it was unanimously approved.

Mr. Polito joined the hearing.

Kenneth Debrov request for Variance from Zoning Article V, Section 530 to amend Special Exception approval of 8/13/2008 to allow entry deck and stairs 11.6' (variance of 3.4') from sideline as opposed to the required 15'. Located at 3 Valcat, Map 22, Lot 48, RR3 Zone.

Abutters list was read with the following present:

James Lavelle Associates; Big Island Pond Corp.

Mr. Carter asked what the original granting of the Special Exception was for. Mr. Debrov said it was to convert the dwelling from seasonal to year round and the construction of the dwelling. Mr. Riehl did not really know what was being asked. Mr. Polito asked if the previous minutes were available. Mr. Riehl read the letter sent from the Town of Atkinson to Mr. Debrov regarding the Special Exception and approval. The original action was to construct the dwelling. Mr. Debrov said they did not take into consideration the stairs and they were not asked for at the time of the granting of the Special Exception. Mr. Jones said the stairs were not a part of the original building plans and when he got the foundation certification, stairs are not a part of it so it was approved. When he went to do the building inspection the stairs were there and were noted to be in violation. The Board reviewed the minutes from the original approval. The minutes were very short and there was nothing that raised any concerns. Mr. Riehl thought this was just an oversight. Mr. Carter asked the Board for a consensus that the Variance request was only for the stairs and was not to the terms and conditions of the original Special Exception granted. The Board agreed and concurred this must have been an oversight. The Board reviewed the plans and discussed whether this could be a request for an equitable waiver under the guidelines. This stairway was included on the original plan but it did not fit into the footprint. Mr. Riehl believed the Board should review it under the Variance request, because that is what the applicant had asked for and they did not think it met the criteria for the Equitable Waiver. Mr. Riehl asked if the stairway could be built in another location. The Board discussed the options. The applicant did not believe it was possible because of the grade. Mr. Polito said the issue was that it was built incorrectly. The Board had to treat this as if the building was not built yet and as if it were a new application. Mr. Polito asked if the Board might want a site walk. Mr. Carter said he believed he could make a decision based on the application and did not think a site walk was necessary. Mr. Polito asked about possible conditions on an approval, such as limiting the stairway to egress with no future expansion of any kind. The goal is going to be the spirit and intent of the ordinance. Mr. Debrov said this was in keeping with the neighborhood. The stairs are pressure treated wood. The Board discussed the grading and whether it could be filled 3 – 3 ½ feet and landscaping material could be used. Mr. Riehl said they could have either the wood steps or the graded landscape. Mr. Carter did not believe it was feasible to change the interior layout of the dwelling at this point. The Board reviewed the rest of the plans. Mr. Polito asked Mr. Debrov what the measurements were. He did not have them tonight. He believed the stairs and deck was 4 x 8 +/-.

The Board reviewed the criteria:

Mr. Polito said if the size was limited to 4x8 and only for egress, it would meet the definition and coincide with the application. Mr. Zannini was familiar with the lot and agreed that the adjacent lots were not impacted. **There was a consensus this was met.**

Ms. Miner said if there were a sidewalk all along the side of the house the impervious area would be greatly enlarged. Mr. Polito cited the Malachi case. Mr. Carter said the since the deck was wood, it allowed water to flow. **There was a consensus this was met.**

A.) This is an area variance. The Board agreed this is a narrow lot that slopes down. Mr. Polito said another important piece would be because of the slope it would require enough fill to be intrusive and have a greater impact than the wood steps. **There was a consensus this was met.**

B.) The alternate means would be more intrusive. **There was a consensus this was met.**

Mr. Polito said if this was not granted, what benefit is gained by the abutters or the Town. This does not have environmental or safety concerns. The rest of the structure meets the zoning. **There was a consensus this was met.**

Mr. Polito said they are not encumbering the adjacent house on one side and there is a driveway in between the other house. They are not encumbering future development and the sideline encroachment is minimal. There are all sorts of alternatives that don't require a variance but would have a greater impact to the Town and the Public. Mr. Carter believed this proposal best served the public interest and the spirit of the ordinance. **There was a consensus this was met.**

Mr. Polito made a motion to approve the request for a Variance on the above referenced to allow for an entry platform, railings and stairs to be located 11.4' +/- from the southwest sideline with the restriction that the combination of the platform and stairs for the entry be 4 feet in width and 8 feet in length, (+/-), having met the five criteria. Ms. Miner seconded the motion and it was unanimously approved.

Discussion/Review

KLC Planning for William Grimes, 2 Lisheen Drive, Map 15, Lot 5 – Review of Final Plan and documents.

KLC was still not present. Mr. Polito said he was supposed to call Kevin regarding the outstanding issue and that he had not had a chance to do that. Mr. Riehl said the Board needed to go over the plan and review the Deed restrictions. Mr. Polito said he would get in touch with Kevin.

Motion to adjourn was made and seconded. Mr. Riehl adjourned the hearing at 9:20 _____ P.M.

Respectfully Submitted _____

Minutes transcribed from tape Rebecca Russo

Approval of Minutes: - October 14, 2009

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.

Motion to approve the minutes was made by Mr. Saba, seconded by Mr. Carter and approved.

Approved _____ 10/14/2009 _____