

ATKINSON ZONING BOARD OF ADJUSTMENT
21 Academy Avenue
Atkinson, New Hampshire 03811

Public Hearing Meeting Town Hall
Wednesday November 10, 2010

Present: Hank Riehl, Chairman; Glenn Saba; Robert Waldron, Sandy Carter

Mr. Riehl called the meeting to order at 7:30 p.m.

Correspondence

Incoming

- 1) Budget/Expenditures through 10/31/2010
- 2) Zoning Amendment Calendar from RPC
- 3) Town and City November/December issue

Outgoing: None

Approval of Minutes of October 13, 2010.

The following additions/corrections were made
change "Glen" to "Glenn". Mr. Zannini is the "alternate"
Incoming, No. 2, change "vated" to "voted"
page 4, 4th paragraph change "exception" to "exceptions"

Mr. Saba made a motion to accept the minutes as amended. Mr. Waldron seconded and they were approved. (Mr. Saba, Mr. Waldron and Mr. Riehl voting)

PUBLIC HEARINGS: 7:30 P.M. - Continued from October 13, 2010:

David Royce, request for Special Exception as specified in Zoning Ordinance Article IV, Section 460:1 and 2 to permit Accessory Family Living Unit in residence at 4 Sawmill Road, Map 8 Lot 64 in the TR2 Zone.

Based on the applicant's request for a continuance, Mr. Carter made a motion to approve a continuance to the next regularly scheduled hearing. Mr. Saba seconded and it was unanimously approved.

PUBLIC HEARINGS: 7:30 P.M. - Continued from October 13, 2010:

Matthew R. Paquin, submission of an Application for a Special Exception under Article IV, Section 460:2 to allow the use of an extended family accessory living unit at property located at 6 Indian Ridge Road, Map 5 Lot 54 in the TR2 Zone.

Based on the applicant's request for a continuance, Mr. Saba made a motion to approve a continuance to the next regularly scheduled hearing. Mr. Carter seconded and it was unanimously approved.

PUBLIC HEARING: 8:15 p.m.:

Dube Plus Construction, (Todd Wallace) for Robert and Kelly Hawkes, submission of an Application for a Variance from Article IV Section 410:8 to allow the construction of an addition to their residence 88 feet from edge of wetlands (12 foot variance). Also Application for a Special Exception as specified in Zoning Ordinance Article IV, Section 460:1 and 2 to permit Extended Family Accessory Living Unit at 113 Maple Avenue, Map 18 Lot 71-2 in the RR2 Zone.

The list of abutters was read with the following present:

Robert Hawkes; Dube Construction; Steven Jacobs

The Board will deal with the variance request first.

Mr. Dube explained that he hired the services of Peter Schauer to delineate the wetlands and the results of those services resulted in the applicant's request to be reduced from a 12 foot variance request to an eight foot variance request and is shown on the plot plan survey provided. The proposed construction would encroach a little under 8 feet. The Board reviewed the pictures provided. Mr. Riehl read a letter from the Conservation Commission, which is incorporated by reference. The Conservation Commission stated that this was a low level wetland and not of a high value. The Conservation Commission wanted to be sure that erosion control measures were in place during construction because of the steep decline where the addition is to be built.

Mr. Riehl read the application and the Board reviewed the criteria:

1. The Board agreed this was met as stated.
2. There is minimum relief being requested. The Board agreed this was met as stated.
3. Mr. Carter believed the injustice to the applicant, if this were not passed, would be far greater than the justice to the Town. The Board agreed this was met as stated.
4. The Board agreed this was met as stated.
5. The Board agreed this was met as stated.

Mr. Saba made a motion to approve the request for a variance of 8' +/-, as stated above, based on all of the criteria having been met. Mr. Carter seconded the motion and it was unanimously approved.

The Board discussed the Special Exception.

Mr. Dube explained that the home is owned by the Hawkes. They are proposing to construct an in-law unit for Mrs. Hawkes' parents. The proposed in-law unit is 720 square feet. The Board reviewed the floor plan of the proposed dwelling. There was a

living/dining/kitchen area, a master bedroom, bathroom and laundry area. They are adding an additional bay to the existing garage. There is also a common mudroom area which will have stairs leading to the full basement under the in-law apartment. All of the occupants will have access through the common area.

Mr. Jacobs (abutter) thought it was pretty obvious by looking at the plan that the in-law was completely separate from the common area and the new basement area was not attached to the current basement. He asked if the new basement should be counted as in-law space. The board agreed that the basement space was being represented by the applicant as common space and did not have to have access from the existing basement. The stairs to this area are accessed through the common mudroom area and not through the in-law apartment. The applicant explained that the grade of the house made it impossible to connect from one area to the other. The only other entrance into the in-law was from the garage. Mr. Saba reiterated Mr. Jacobs that the basement was accessed through the common area. Mr. Jacobs said with the addition of one door this could be self-contained. His concern was that he might end up living next to a rental property, which he did not want to happen. He did not think that the proposed addition met the spirit of the ordinance in that he felt the living unit was wholly separate. He is not concerned with what the Hawkes are doing but his concern is with future owners. Mr. Dube thought there were triggers to avoid that. He said this had to be recorded by a deed addendum. Mr. Riehl stated that there does need to be a deed addendum listing the occupants by name. If those occupants no longer occupy that space and another family member wants to occupy the process has to be repeated again. The risk of this becoming a rental is the same as any other unit in Town. There are mechanisms in place to avoid that but in a case where it happens the Code Enforcement Officer could be notified and appropriate action would be taken. Mr. Riehl asked Mr. Dube if he had a floor plan of the existing home to see where this proposed in-law connected. Mr. Dube stated there was an existing breezeway/living area. He had a photo of that existing area that depicted a fireplace and he showed the Board where the wall would be broken through to access the in-law. Mr. Saba asked if the door was necessary or could it just be an open entry way into the in-law. This might address the abutter's concerns. Mr. Dube explained the door was for safety purposes for the two young children living in the house. The in-law is at the end of the house away from the kitchen and out of the eyeshot of the parents. Mr. Carter stated that there are representations being made by the applicant that are part of the record. He is not implying that nothing would ever go wrong, but the intent of this provision of the ordinance is to have in-laws accommodated. He did not think a door, whether it existed or not, would provide any measure of protection against someone trying to illegally rent out an in-law space. Mr. Jacobs asked if this is a typical layout for an in-law because he did not think it was really integrated in its design. Mr. Riehl stated he did not think this was atypical and that the Board had seen many like this. They are looking to provide some privacy for the in-laws to have their own kitchen and living facility but there is clear and open access to the rest of the home. This is not inconsistent with other requests. Ms. Killam stated that the special exception does not carry with the land and that the owners could not sell this house with the an approved in-law unit. A subsequent owner would have to come before the Board and have a special exception approved again, by meeting all of the criteria. Mr. Jacobs asked if the basement area should be counted in the square footage for the in-law. Mr. Riehl said it was represented

as unfinished and common space, so it would not be counted in the square footage for the in-law area.

- a) The Board agreed this was met
- b) The Board agreed this was met
- c) The Board agreed this will be met by deed addendum
- d) The Hawkes own the property. The Board agreed this was met
- e) The Board agreed this was met
- f) The Board agreed this was met
- g) The Board agreed this was met
- h) The Board agreed this was met
- i) This will be met as constructed
- j) The septic plan has been submitted to the State and they are awaiting approval. Mr. Carter said if this were new construction the applicant would not be able to install a 3 bedroom septic system for a 3 bedroom plus an in-law. They do not know what condition the current system is in. Ms. Killam thought if they could demonstrate it could accommodate the addition they would not have to install it. Mr. Saba agreed that even if it were approved at one time, it does not meet the current load requirements with an in-law added. After much discussion the Board agreed this system would need to be installed to meet this criterion. Mr. Riehl thought the criterion was clear in that it must meet WS400 and that it must be adequate to accommodate. The Board has no authority to change any of the criteria. The Board did not feel that the current three bedroom system which is 30 years old would be sufficient to handle the addition of an in-law with added bedroom and kitchen.
- k) James and Lynn Fisher will be occupying the in-law and are the parents of Mrs. Hawkes. The Board agreed this was met

Mr. Waldron made a motion to approve the request as stated above based on all of the criterion having been met or will be met. This is conditioned upon the State approval of the septic system and the installation of the system before occupancy. There must also be a deed addendum recorded for the occupants. Mr. Saba seconded and it was unanimously approved.

Motion to adjourn was made and seconded. Mr. Riehl adjourned the hearing at 8:50 p.m.

Respectfully Submitted

Minutes transcribed from tape

Rebecca Russo