

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

**Public Hearing Meeting Town Hall**  
**Wednesday June 8, 2011**

Present: Hank Riehl; Chairman; Glenn Saba; Sandy Carter, Sam Zannini

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

**Correspondence:**

Incoming:

Outgoing: None

**Approval of Minutes of April, 2011**

Page 3, second paragraph change "NH Dpt" to "NH Dept"

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

**Approval of Minutes of May, 2011**

Page 1, 1<sup>st</sup> paragraph, 1<sup>st</sup> sentence, after "and" change "there" to "that"

Last sentence change "this criterion" to "these criteria".

Under J, change "criteria" to "criterion".

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

**PUBLIC HEARINGS: 7:35 PM**

Richard Deangelis, Application for a Variance from Article IV Section 410 to allow a deck attached to an existing dwelling 15 ft 2 inches from the water (84 feet and 10 inch variance) at 15 Chase Island Road, Map 22, Lot 15, RR3 Zone.

Abutters list was read with the following present:

Paul Hollogan; Baker Living Trust; Big Island Pond Corp/Noreen Mercier

Mr. Deangelis explained that the deck was built without the benefit of a permit. The deck comes out 15 feet from the house. The closest point the deck is 15.2 feet to the water. Mr. Riehl explained that normally when an applicant comes in for this kind of request they would have gone to the State first to get approval because it falls within the State's 50' buffer. The Board

thought they could go through the application first where this was already built. Mr. Riehl explained that they would need to review all of the criteria first. Mr. Riehl asked that the applicant walk them through the application and provide any photos they might have. Mr. Deangelis showed the Board where the deck was in reference to the lake and the Board reviewed photographs. The deck was built in November by Mr. Deangelis and it has not been inspected yet. Mr. Riehl stated that they do have an after-the-fact application that the building inspector denied.

Mr. Zannini brought up the fact that the State allows up to a 12 foot deck without a variance. Mr. Riehl read a letter from the Conservation Commission which supported this and thought they did not have a problem with the deck but they thought that DES might because of the extra three feet. The Conservation thought that DES would only be forgiving if there were a pre-existing structure in the same location but otherwise the applicant would have a tough time with the extra square footage. The Conservation Commission could not recommend the variance without approval from DES first. There was some discussion amongst the Board members on whether the 12 feet could go towards the water. Mr. Riehl said that would be a DES issue and that they had their own set of criteria to be met. Mrs. Deangelis said when she contacted the DES they told her that 12 feet was allowed, but the extra 3 feet could be a problem and would have to be approved by the ZBA and then come to the DES for a waiver.

David Hollogan stated that this open deck had no impact on the lake and that it was better than sitting on the grass. The houses in this area are close together. Noreen Mercier indicated that Big Island Pond's focus was on shoreline protection and the quality of the lake and is concerned with the runoff of water off the deck towards the lake. Mr. Deangelis said he built the deck with a slight pitch so the water goes off the side onto the grass. The deck is made of pressure treated wood with PVC.

Mr. Zannini was concerned with the comments of the Conservation Commission. Mr. Carter said the Board needed to look at this as if nothing had already been built. They should not take into consideration that it was already there at 15 feet because it would not be fair to all of the other applicants who come in for the variances before they build. Mr. Riehl urged the Board not to get hung up on the DES regulations, because it was not their concern. Mr. Carter thought the experts were the DES in these matters and did not think he was comfortable acting on this application before they knew what direction the DES would go in. He would be much more comfortable having DES hear this first. Mr. Saba agreed. Mr. Riehl stated that the Board would entertain a continuance for this hearing so that the applicant could go to DES first. The Board concurred that they should let DES hear this first so that it gives the Board some guidance.

***Motion to continue the hearing to the next regularly scheduled hearing so that the applicant could go to DES was made by Mr. Carter, seconded by Mr. Zannini and unanimously approved.***

### **PUBLIC HEARINGS: 8:00 PM**

Michael Saviano, Application for Variance from Article V Section 510 to permit 3 dwelling units on one lot where 4 dwelling units currently exist. Also Application for Special Exception under Article VII Section 700:1 and 2A, on property located at 33 Boulder Cove Road, Map 20 Lot 12 in the RR3 Zone.

Mr. Riehl stated that he was not going to open a public hearing on this matter until the Board was sure they could accept and deal with the request at this hearing. There is lawsuit filed and scheduled between the Town and Mr. Saviano that deals with the status, configuration and use of one of the buildings in question with tonight's application. The Court hearing is currently scheduled for December or January. There is an active Court proceeding in a higher venue than the ZBA dealing with the status and disposition of one of the structures. This application is quite similar to some events that occurred in the 2005 timeframe, where in essence a matter was brought before the Zoning Board that was also being litigated and the Zoning Board refused to hear the second application until the Court proceedings ran their course. That decision by the Zoning Board at the time was challenged and upheld by the Superior Court and Supreme Court. Based on that precedent Mr. Riehl wanted the Board's consensus regarding the fact that there is a question that is sitting in Superior Court on the disposition of what is referred to as "workshop/garage". This application is asking the Board to act on this same structure tonight. This matter is in two venues and Mr. Riehl did not think it was proper to proceed. Mr. Saba agreed the Board could not act on this application.

Attorney Morgan, representing Mr. Saviano took the position that Mr. Saviano has an absolute right to apply for a Special Exception. Sue Killam suggested that he may also submit a request for a Variance on the theory that the Special Exception criteria may not apply; however it appears that what he owns is a consolidated 4 lot parcel. Mr. Riehl stopped Attorney Morgan and said he was getting into the merits of what he wanted to get on the table. Mr. Riehl wanted to make it clear that this was not on the table. Attorney Morgan said they were asking for a Special Exception to permit the reduction of the lot that has 4 non conforming buildings, pre-existing, prior to zoning, to be reduced and moved so that the non-conforming use on this existing lot is effectively lessened. They are not asking for the ZBA to rule on the status of the building. Mr. Saba said that Attorney Morgan has referred to them as structures but the application refers to them as dwelling units. Attorney Morgan said that one of them is a year round home and the three others have always been camp units that are dwellings, but not year round. Mr. Riehl reiterated again that these were merits of what is and is not a building. There is a long history where the Town has asserted that the lot is entitled to one dwelling. This "garage/workshop" is being challenged in a higher venue and he is not comfortable with accepting this for a hearing as it is too much of a duplication. Mr. Carter agreed and so did the rest of the Board. The Board's consensus was that the status of that building is germane to a rational decision relative to any application including a Special Exception. Mr. Saviano claimed that Sue Killam spoke with

Attorney Kalman and then told Mr. Saviano to apply for a Special Exception. Sue Killam stated she attempted to speak with Attorney Kalman and was not successful in reaching him. Since they were not sure what application he should submit he chose to submit both. Ms. Killam spoke with Attorney Kalman after the fact and not before the applications were submitted. Mr. Riehl asked Attorney Morgan to confirm that the status of the “garage/workshop” was at issue in the Court case. Attorney Morgan confirmed that it was. Mr. Riehl asked the Board if they thought the application should be accepted. The Board agreed they could not until the Court case was decided.

***Mr. Carter made a motion to deny the request as stated based on the fact that there is ongoing litigation as to the status of one of the buildings on the property. Mr. Zannini seconded and it was unanimously approved.***

***Motion was made and seconded to adjourn the hearing. Mr. Riehl adjourned the hearing at 8:20 p.m.***

***Respectfully Submitted***

***Minutes transcribed from tape***

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***Rebecca Russo***