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

Public Hearing Meeting Town Hall
Wednesday July 13, 2011

Present: Hank Riehl; Chairman; Glenn Saba; Sandy Carter

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

Correspondence:
Incoming: None

Outgoing: None

Approval of Minutes of June 8, 2011 – The Board reviewed the minutes and amendments were made.

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

Discussion:

Motion for Rehearing pursuant to RSA 677:2, Michael Saviano regarding Zoning Board's prior refusal to hear Mr. Saviano's application for Variance from Article IV Section 510 to permit 3 dwelling units on one lot where the applicant asserts 4 dwelling units currently exist, and 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.

The Board discussed the request for a rehearing. The Board first discussed whether, since there had really been no hearing on the Variance and Special Exception applications the prior month, the rehearing request was valid. The Board concluded that the rehearing request was valid in that it asked for a review of prior Board action, even though that action was an unusual decision NOT to hear the two applications.

Mr. Riehl then reviewed the essence of the last Board action; which was refusal to hear the Variance and Special Exception applications as the dwelling-unit status of the garage/workshop structure was already being litigated on the Superior Court docket scheduled to be heard in December or January. The Board felt Mr. Saviano's Variance and Special Exception applications amount to essentially the same question being asked in two different venues. The Board reviewed a similar situation between the town and the applicant in 2005-2006 when the Board at that time refused to hear an application whose essence was also being litigated in a higher court. That refusal was challenged in court and the Board's refusal to hear a duplicate request was upheld.

The Board then considered the rehearing request itself. The Board observed that much of that request for rehearing outlined the applicant's opinion on the merits of why the garage/workshop structure should have dwelling unit status rather than presenting argument for a rehearing. Mr. Carter said the only conditions in which a rehearing could be granted are if there were an error of law or there was substantially new information that was not available to the applicant at the original hearing. Mr. Carter believed there was no new evidence presented in the rehearing request and stated he felt the Board did not make an error in law. Mr. Saba stated he also felt the Board was correct when it ruled they could not hear this case in June based on the fact there is a Superior Court case pending to address the same question of the garage/workshop structure's status as a dwelling.

Mr. Riehl presented and reviewed some documents, including the court's final decision, detailing the 2005-2006 proceedings when the Board also refused to hear a new application whose core question was also already being litigated in a higher venue. That decision was appealed in the courts and the Board's refusal was upheld as being correct.

Mr. Carter made a motion to deny the request for a rehearing based on the fact that the Board did not believe they made an error in the law when refusing to hear the case and no new information (that was unavailable in June 2011) was presented in the rehearing request. Mr. Saba seconded and the vote to deny the rehearing was unanimous.

Public Hearings– Continued from June 8, 2011: 7:40 P.M.
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.

The applicant had requested a continuance as they are still working with the NH DES.

Mr. Carter made a motion to continue the hearing to the next regular scheduled hearing. Mr. Saba seconded and it was unanimously approved.

Public Hearing: 7:42 P.M.
Peter Krysko, Application for Special Exception per Article IV Section 460 to allow Extended Family Accessory Living Unit at 20 Amberwood, Map 19 Lot 6-6, RR2 Zone

Abutters List was read with the following present:
Mr. Kyrsko

Mr. Kyrsko explained that he had purchased the house with the accessory unit already completed by the previous owner and had the proper permits. When Mr. Kyrsko bought the house he made some changes to the bedroom area obtaining all of the necessary permits. It was approved by the Building Inspector and the Electrical Inspector. A new approved septic system was installed. Mr. Kyrsko will be living in the unit and his daughter and her family will occupy the main dwelling.

The Board reviewed the application and Special Exception criterion:

a. The Board agreed unanimously this was met as stated
b. The Board agreed unanimously this was met as stated
c. The Board agreed unanimously this will be met with the recording of the Deed Addendum.
d. The Board agreed unanimously this was met as stated
e. The Board agreed unanimously this was met as stated

f. The Board agreed unanimously this was met as stated
g. The Board agreed unanimously this was met as stated
h. The Board agreed unanimously this was met as stated
i. The Board agreed unanimously this was met as stated based on the letter from Code Enforcement and Building Department. The Unit conforms in all manners and there is only one bedroom.
j. The Board agreed unanimously this was met as stated
k. The Board agreed unanimously this was met as stated

Mr. Carter made a motion to grant the request for a Special Exception based on all of the criteria having been met. Mr. Saba seconded and it was unanimously approved.

Public Hearing: 8:10 P.M.
Todd Wallace, Dube Plus Construction, for D.J Lowell Trust, Application for Special Exception Per Article IV Section 460 to allow Extended Family Accessory Living Unit at 15 Woodlawn Ave, Map 13 Lot 50 in the RR2 Zone.

Abutters List was read with the following present:
Todd Wallace of Dube Construction, Anthony Lowell

Mr. Wallace explained that they intended on building an addition to the existing dwelling that would consist of a three car garage (under) and the accessory living unit would be over the garage. The Board reviewed some sketches that were presented. There was a set of stairs leading from the accessory living unit to the first floor where access to the existing dwelling is provided. The Board questioned whether this would meet the definition of direct access. Mr. Wallace explained that the proposed addition was on the side of the house which had the master bedroom. Because of the different elevations it was impractical, if not impossible to have access between the accessory unit and the master bedroom of the existing dwelling. The addition could only be located on this side of the house. The accessory unit will not be at the same floor height as the second story of the existing unit.

Mr. Saba said he got a measurement of approximately 864 square feet of living space from the provided drawings, which did not comply with the town's 750 square foot limit. Mr. Carter confirmed it was over the allowance and Mr. Riehl concurred.

Mr. Riehl asked about the septic plan and Mr. Wallace responded that they chose to come before the Board first to seek approval before money was spent on the septic system. Mr. Lowell was confused about the septic process and thought Mr. Riehl was suggesting that a new septic needed to be installed before they could even apply for the Special Exception. Mr. Riehl clarified that it did not need to be installed prior to being approved, but for tentative approval the Board usually wanted to see a state-approved septic design meeting the increased load imposed by the accessory living unit. Final approval for an accessory unit would be contingent upon an installed septic meeting the increased load requirements.

Mr. Wallace asked for suggestions because of the stairs and the access. The Board reached consensus that the proposed stairs should be included within the accessory unit space calculations as their sole purpose is to access ~~as part of~~ the accessory living unit; they serve no common space.

Upon further discussion, Mr. Wallace confirmed there was an error in area calculations and the unit as presented exceeded the town's 750 square foot limit. Mr. Wallace asked for a continuance to revise the

application. Mr. Riehl suggested they informally look at the rest of the Special Exception criteria just to see if they thought there would be any other glitches. Though no formal votes were taken on the criteria, it was felt the application as presented did not appear to have other issues beyond the common space, square footage and the septic system issues.

Mr. Carter made a motion to continue the hearing based on the applicant's request. Mr. Saba seconded and it was unanimously approved.

Motion was made and seconded to adjourn the hearing. Mr. Riehl adjourned the hearing at 8:35 p.m.

Respectfully Submitted _____

Minutes transcribed from tape ***Rebecca Russo***