

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

**Public Hearing Meeting Town Hall
Wednesday January 26, 2011**

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

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

Incoming

- 1) Budget/Expenditures through 12-31-10

Outgoing:

Approval of Minutes of December 8, 2010.

PUBLIC HEARINGS: 7:30 P.M.

Continued from December 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.

Chairman Riehl read a letter dated 1/25/11 from David Royce requesting a continuance. Jim Kirsch explained from the audience that the Fire Department is requesting egress windows be added, and Mr. Royce is awaiting delivery of the window units.

Mr. Carter made a motion to continue the hearing to the next scheduled meeting date of February 9, 2011. Motion seconded by Mr. Saba. No further discussion, motion approved unanimously.

Rehearing, continued from December 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.

List of Abutters was read with none present. Applicant represented by Mr. Richard Paquin. Chairman Riehl read a letter from Bob Jones, Building Inspector. The letter states that all inspections required by the building department and the fire department have been conducted and that Mr. Jones is prepared to issue a certificate of occupancy for the accessory living unit

once the ZBA approves the Special Exception being sought. There were no comments or questions from the members or audience.

Mr. Saba made a motion to grant the Special Exception to Article IV Section 460:2 for the Extended Family Accessory Living Unit at 6 Indian Ridge, Map 5 Lot 54 as submitted by the Paquins, based on the fact that all conditions have been met. Mr. Waldron seconded the motion and it was unanimously approved. Chairman Riehl noted the 30 day appeal period.

Continued from December 2010:

Lavelle Associates representing Gordon Allen, Executor for the Estate of Justis Allen, request for Special Exception as specified in the Zoning Ordinance Article VII, Section 700:2 to allow Conversion from Seasonal to Year-round/Primary use. Also, Application for a Variance to replace the existing dwelling (which is 10 feet from the water) with a new dwelling and deck that is 22.5 feet from Big Island Pond (77.5 ft variance), on property located at 37 Boulder Cove Road, Map 23, Lot 75, RR3 Zone.

Chairman Riehl opened the hearing and read the list of abutters; Lavelle Associates and Ralph Menier in attendance.

Mr. Riehl explained that there were issues at the December hearing which caused this case to be deferred, regarding DES Shoreland Permit and Septic approval, as well as the ZBA looking for more information regarding the floor plan and living space proposed.

Tim Lavelle presented a letter from the Conservation Commission indicating they felt the plan resulted in less impactful use of the land than what is there today and urging ZBA approval. He continued with a discussion of square footage, and presented plans which show all views of the proposed structure. He stated that the basement/foundation is 1270 square feet, and it has the potential to be finished space. He stated the main floor is 1536 square feet of living space, and the top floor is 785 square feet of living space. He explained that the attic area is not living space due to the pitch of the roof, although it could be accessed as storage. He said that the 785 SF includes the "bonus room" but not the attic storage.

Mr. Carter asked if the main floor calculation DOES NOT include the garage? Mr. Lavelle responded, "Right."

Mr. Saba asked to view the septic plan and approval documents.

Mr. Riehl asked for the total potential living area.

Mr. Lavelle stated, "1720 plus 1536 plus 785 equals 3591, or 2321 without the basement." He continued to request that if the ZBA is going to make a square footage condition to please express it as a maximum, because Mr. Menier may want to build the home smaller. He went on to note that the total footprint, including garage and decks is 2448 square feet.

Mr. Saba, after reviewing the septic documents asked about the flow rate of the system. Mr. Lavelle stated it is 300 gallons per day, using an innovative technology instead of traditional stone and pipe. Mr. Riehl commented he is having trouble reconciling a 2 bedroom home with 3 bathrooms. Mr. Saba pointed out the system is sized for 2 bedrooms. Mr. Riehl continued to

point out that the bonus room and study could potentially be converted to bedrooms, and he is not comfortable with that. Mr. Menier stated that he is looking into using geothermal heat, and he doesn't plan to heat the bonus room. Discussion continued on the number of bathrooms and their locations. Mr. Lavelle said the architect planned a first floor master bedroom with his and hers baths, and an additional first floor half bath for guests. The third full bath is planned for the second floor. Mr. Carter noted that a bath with incidental use, as for guests, doesn't put load on the system 7x24. Mr. Riehl reiterated his concerns about 3500+/- square feet with 2 bedrooms and 3 ½ baths, questioning what happens "down the road" if the septic gets overloaded and fails. Mr. Carter responded that he is not bothered by the extra baths on the first floor because there are no other bedrooms there, and nothing planned in the basement.

Mr. Riehl changed the topic to the "impervious surface," noting that the existing conditions show 900 square feet impervious. Mr. Lavelle stated that the new roofs are designed to have gutters directed to dry wells, and that the driveway is a pervious pavement that allows water to drain through it, and that there is a net reduction in impervious surface. He went on to emphasize that the house is intended as a 2 bedroom and should be restricted as such due to the size of the lot; Mr. Menier intends to build as shown.

Chairman Riehl asked for comments, then clarified the procedure to consider the Special Exception for conversion first, then the Variance. He reviewed page Z 63, Section 700:2, with 3 criteria for Special Exception for conversion to year-round. A) Review by Health Officer, as evidenced by signature on Septic plan. "Met" by unanimous show of hands. B) Compliance with WS Section 300: "Met" by unanimous show of hands. C) Consent by NHWSPC, "Met" by unanimous show of hands.

Mr. Carter made motion to approve the application for Special Exception under Section 700:2 to allow conversion from seasonal to year-round for 35 Boulder Cove, Map 23 Lot 75 based on the fact the Board has found all conditions met. Motion seconded by Mr. Saba, and unanimously approved by the Board.

The Board continued with consideration of the Variance to allow the new structure 22.5 feet from Big Island Pond. Glen Saba pointed out that the Notice didn't specify Article IV Section 410:8 regarding buffer zones. Mr. Riehl made note of the fact that the applicant had applied using a form that was outdated; he called for 15 minute recess of this hearing to allow applicant to place their application information into the new format. Mr. Carter moved for recess, Mr. Waldron seconded, and the Board voted unanimously to recess from this hearing at 8:25 PM. The applicants went out to rewrite their application. The Board utilized the time to review minutes from the December meeting.

The hearing was reconvened at 8:40 PM. Mr. Riehl continued the discussion of the 5 variance criteria.

- 1)Not contrary to the public interest: "Met" by unanimous show of hands.
- 2)Spirit of the ordinance is observed: (Mr. Saba noted the decrease of impervious surface and stormwater treatment.) "Met" by unanimous show of hands.
- 3)Granting of variance would do substantial justice: (Mr. Riehl and Mr. Carter make note of the greater good done by improving the existing conditions) "Met" by unanimous show of hands.
- 4)Surrounding property values not diminished: "Met" by unanimous show of hands.

5a)Denial would result in hardship because no fair and substantial relationship exists between the public purpose of the ordinance and the specific application of that provision to the property: “Met” by unanimous show of hands, and

5b)Denial would result in hardship because the proposed use is a reasonable one: “Met” by unanimous show of hands.

Discussion continued about carefully and specifically setting conditions.

Mr. Saba made a motion to grant the variance under Article IV Section 410:8 a and b to allow a 77.5 foot variance to permit construction of a 2 bedroom replacement dwelling and deck 22.5 feet from Big Island Pond per the submitted site and house plans, septic approval and Shoreland Permit, not to exceed proposed footprint (2448 square feet) and not to exceed potential living space (3591 square feet) and enclosed envelope, and with the stipulation that the Building Permit not be issued until all existing structures have been razed and removed, at 35 Boulder Cove, Map 23 Lot 75. Motion seconded by Mr. Carter. Motion to grant variance approved unanimously. Chairman Riehl made note of the 30 day appeal period.

Chairman Riehl closed the public hearing at 9:15 PM.

The Board had additional discussion to suggest to the Planning Board that the wording of Section 700:2 be amended to make the criteria finite, removing the phrase, “Not be limited to..”

The Board continued with the review of the December 8, 2010 minutes. ***Mr. Carter made the motion to approve the minutes as amended. Motion seconded by Mr. Saba; 3 members voted to approve the minutes as amended. Mr. Waldron abstained due to the fact that he had not attended the December meeting.***

Mr. Saba made the motion to adjourn the meeting, seconded by Mr. Waldron. Voted unanimously to adjourn at 9:40 PM.

Respectfully submitted,

Susan Killam, transcribed from notes taken at the meeting.