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

Public Hearing Meeting Town Hall
Wednesday March 9, 2011

Present: Hank Riehl, Chairman; Glenn Saba; Robert Waldron, Sam Zannini

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

Correspondence:
Incoming: e-mail from Sandra Fuhs, 3-7-11
Town and City February 2011

Outgoing: None

Approval of Minutes of February 9, 2011.

Public Hearing: continued from February 9, 2011 - 7:3O P.M
David Royce, request for Special Exception as specified in Zoning Ordinance Article IV, Section 460:1and 2 to permit Accessory Family Living Unit in residence at 4 Sawmill Road, Map 8 Lot 64 in the TR2 Zone.

The abutters list was read the following present:
David Royce

This application was heard in the fall. The board had reviewed several of the criteria. Mr. Riehl explained that the applicant had to ask for a continuance in order to get the septic system approved. According to the minutes from October 2010 the board just needs to validate D, I,& J of the conditions necessary to meet the special exception. Mr. Joyce explained that he brought everything up to code and had some minor issues which were taken care of. The other issue was with the septic system which has been approved by the State. The board reviewed the State approved septic plans. Mr. Riehl asked if the septic system had been installed. Mr. Joyce responded that it had not. Mr. Saba confirmed that the plan was approved by the State. Mr. Saba's concern was that the board was trying to go in a different direction and wanted the approved septic systems to be installed. Mr. Saba asked Mr. Joyce what he was planning on doing. Mr. Joyce explained the current septic system had been inspected and was working fine. Financially, he cannot afford to install a new septic system at this time. If he has to install a new system he will look into but does not think he can take on that financial responsibility at this time. Ms. Killam questioned whether or not the applicant should be required to install a new septic system. Mr. Riehl explained that at the last hearing they took a literal look at the requirements and determined that the septic systems must be installed. Mr. Riehl said that the

requirements of J do not require that a plan be on file but rather state that a septic system must be adequate. He believes that the definition of adequate for septic systems is that it must meet the requirements today. He knows that in the past the Board has allowed plans to be on file but after reviewing the conditions the Board had agreed that there was no leeway and in order to meet the condition the septic system now would have to be installed. Mr. Riehl said he is now leaning to a more literal interpretation. Mr. Joyce asked if his other option was to remove the bedroom. He explained that the in-law was for his father who was only there for three or four months of the year and that it was not worth it to install a new septic system for this short amount of time. If he removed the bedroom he would revert back to the original three-bedroom home. Mr. Riehl explained that if the Board were to deny the application he would have to decommission the additional bedroom. Mr. Waldron wondered if the building department would be looking to also decommission the kitchen area. Mr. Zannini explained that he took a different position and that there have been other applicants before the Board that were not required to install a new septic system. Mr. Zannini believed it was appropriate for the Board to have a State approved septic plan on file and that was sufficient. This approach is common in a lot of towns. If the system is a good working system it is too much of a burden to expect an applicant to replace the septic system. Mr. Saba agreed with Mr. Riehl. Mr. Saba also stated the requirements do not indicate that you only need an approved septic plan on file but rather it says that you must have an adequate system. He believes there is no gray area in this requirement and the literal interpretation requires the installation of a new septic system to meet the added load. Mr. Waldron wanted clarification that this was a compliance issue and that the unit was already completed prior to getting approval. Mr. Riehl said that it was completed prior to approval and that Mr. Joyce brought it into compliance and is seeking to get the approval. Mr. Waldron wanted to know if the board had the authority to grant the special exception with the condition that the septic system be installed within a specific amount of time, based on the fact that the unit was already built. Mr. Riehl believed the board had no flex and could not waiver on that condition. The board discussed the other two criteria. Mr. Joyce presented the board with certificates of compliance for the code issues. The board agreed that criteria I was met. The board did not agree that the conditions for J were met. Mr. Joyce said that if he had known this four months ago he would not have spent $4,000.00 upgrading and bringing everything into compliance. He would have taken a different path and figured something else out.

Mr. Saba made a motion to deny the application based on the criteria of J not having been met. Mr. Waldron seconded the motion and it was approved. Mr. Zannini opposed.

Ms. Killam asked if the applicant was to get a letter from a certified septic engineer and it was determined that the septic system was adequate would that meet the criteria. Mr. Saba said it would not because the State defines what is adequate and the requirements regarding flow for an accessory living unit are different. Flow is determined by the number of bedrooms and the flow for a one bedroom accessory living unit is counted higher.

Public Hearing: Continued from February 9, 2011

2) Lavelle Associates representing Sandra Fuhs, Application for a Variance from Article IV Section 410:8 to allow an addition to an existing dwelling 66 feet from the water (34 foot variance) and for a proposed covered porch to be 20.5 feet from the water (79.5 foot variance) and a Variance from Article V Section 530 to allow the addition to be 7.5 feet from the side lot

line and for the proposed deck to be 2.12 feet from the side lot line, at 35 Boulder Cove Road, Map 23, Lot 74, RR3 Zone.

Abutters list was read with the following present;
Attorney Morgan; Mr. Saviano; Mr. Saviano Jr.; Tim Lavelle from Lavelle Associates; Sandra Fuhs

Mr. Riehl said there were requests for variances for frontage to the lake and also for the side lot line. Attorney Morgan who represents Mr. Saviano was present along with three of the board members for a site walk. Tim Lavelle presented the board with the Shoreline protection approval for the proposal. He also gave the board a copy of a letter from Mr. Allen who was one of the abutters. Mr. Allen was in support of the proposal. Mr. Riehl clarified for the record that Mr. Allen was the abutter who was affected by the 2 foot variance. Mr. Lavelle explained that during the site walk they took a good look at the hill where Mr. Saviano's property was. He presented the board with a revised set of plans in which the size of the house had been decreased slightly, and reconfigured the covered porch. Sheet two of the plans show the proposal to move the proposed addition 15 feet from Mr. Saviano's lot line. There is also a 2 foot jog on the existing structure which exists at 8.15 feet from Mr. Saviano's property. They are proposing to remove that to increase the distance of the setback to 10.65 feet on the existing structure. They slid the proposed addition over a little bit and therefore do not need that sideline setback relief. They are removing that portion of the variance request. The septic system remains unaffected. They will be putting in geo-textiles on the driveway to avoid accidental septic crushing. Other than that the impervious area remains the same and the area of temporary impact will all be the same. Mr. Lavelle will notify the State and request approval for the amended plan. The last sheet of the plans provided shows the grading area. The area that Mr. Saviano was concerned with has no grading issues at all. Mr. Riehl asked about the telephone pole that was discussed last month. Mr. Lavelle said that they now have some other options and the proposal is shown on sheet two. No additional trees need to be removed. This plan will take a little more fill and a little more time but will be better overall. Mr. Riehl's recollection was that the board did hear from the Conservation Commission regarding this proposal and did not oppose it. Mr. Lavelle reiterated that they are starting out with a 30% impervious area and are reducing it to 24% by removal of the existing driveway and the use of impervious pavement. There will be dry wells for roof runoff and gutters. Most of the large area that is now driveway will be loamed and seeded with clover cover to help with runoff. Mr. Saba asked how much of the house floor plan had changed. Mr. Lavelle Stated they have not submitted a new plan because they did not have time to have Mr. Silverwatch redraw it. Mr. Saba asked about the height of the building and Mr. Lavelle contended that it will meet all of the building codes. The roofline will be 6 to 7 feet above the current height but due to the fact that a good portion of the area around the structure, will be filled in, the house will be going up but the height of the structure won't be going any taller except for a portion at the lake. Mr. Riehl wanted to summarize the separate issues. He asked Mr. Lavelle if there were any changes on the side lot line request of 2 feet. Mr. Lavelle indicated there were no changes and that the structure already existed 2 feet from the sideline. In terms of setback to Mr. Saviano's property line the addition has been shifted and therefore requires no variance on that side. Mr. Lavelle agreed that there was no longer a request for a variance on that sideline setback. Mr. Riehl asked the board if there were any other questions or clarifications

needed before he opened it up to public input. Mr. Riehl asked about the existing camp on Mr. Saviano's property that crosses over the property line onto Ms. Fuhs property. He asked if there were any restrictions on that property and Mr. Lavelle did not believe there were any. Mr. Riehl asked if it were a livable property and Mr. Saba responded that at this time the roof was collapsed due to the snow load.

Attorney Morgan said that he understood there was a revised plan submitted but that neither he nor his clients had seen this plan and could not say whether Mr. Saviano would be in favor of this new proposal. Although he listened to the dialogue and heard about changes made that may be consistent with his clients concerns they really could not address the issues without seeing the plan. Attorney Morgan wanted to correct some of what he perceived to be confusing information regarding this district. This property is a significantly undersized lot by today's zoning requirements. It is not clear from the plan what the actual lot size is and what appears to be less than 2/10 of an acre. This is a 3-acre zoning district which requires 250 feet of frontage, a front lot setback of 70 feet and a rear yard setback of 75 feet. In addition the side lot setbacks are 100 feet in total which makes the setback on each side 50 feet. There is an allowance to allow encroachment up to 30 feet on one side but the other side would have to be 70 feet. He believes the 15 foot side line suggested or proposed is in conflict with the zoning requirements. He is not sure that the application sets forth the request for anything other than the sideline setback and it does not request a waiver for the frontage. The frontage is not on the lake side but rather the road side which is a private road. Based on the rendition shown this building may also conflict with the requirements for the height of a building in this district, which are two stories or 35 feet tall. This structure appears to be three stories at least on one side. Attorney Morgan believed if there were an amended proposal it may benefit from a new application that is consistent with providing actual notice of what the variance request was now as opposed to what it was when it was noticed. He understood it was common to make some adjustments during a hearing but thought this should be re-noticed with a new application. He also believed that the Conservation Commission based their support on the previously submitted plan should review the amended plans. He stated that the letter from the Conservation Commission suggests the size of the existing structure was approximately 1334 square feet and the proposed structure was 3048 square feet. Based on rough calculations his client’s math calculates the structure at 4000 square feet. Mr. Lavelle said that square footage is immaterial for the basis of lot coverage. Mr. Waldron asked Attorney Morgan if he built a two story house with a basement would he consider that basement another story. Attorney Morgan responded that he was just going by the rendition of the proposed structure. Attorney Morgan said the rendition does not look like a two-story colonial with a basement. Mr. Waldron suggested the applicant had said the basement would be unfinished. Attorney Morgan said that looking at the rendition it appeared there were three stories at least on the Lake side. The bottom level had sliding glass doors and not a cellar door. Again, Mr. Waldron asked Attorney Morgan if he had asked for a two-story colonial to be built would he expect that a basement be put underneath and inquired if Attorney Morgan thought a basement should count as a story. Attorney Morgan claimed that was what the rendition suggested.

Mr. Riehl asked Attorney Morgan to synopsize what his concerns and issues were and the Board would address them one by one. Attorney Morgan said he understood an amended plan had been submitted and that neither he nor his client had seen it or had the opportunity to review it.

Without an opportunity to view it he believes there is an issue with the notice given. He thinks it would be unrealistic for his client to know exactly what his position should be when he has not seen the plans and has not had sufficient time to review them. Mr. Riehl said that it was common to sometimes get plans the same night as the hearing. Sometimes things get changed and the changes that were made were in response to Mr. Saviano's concerns which were brought up at the last hearing, last month. It was unfortunate that Attorney Morgan was not provided with plans a little earlier but sometimes these things happen. There was notice that went out last month and Mr. Saviano was aware that there was a continuance to this hearing. He is not aware of any legal obligation to provide plans earlier. Attorney Morgan stated that although it was not uncommon to make some changes to an application, given the complexity of what appears to have been changed it would have been more suitable to have been given notice with an application that is consistent with the variance requests now. Mr. Saba said that according to his notes from the last hearing the major concerns that Attorney Morgan raised were the grading issues, the elimination of a buffer between Mr. Saviano's property, the affect of construction on the stone wall and the fear that it would be compromised and the driveway location. Mr. Saba asked attorney Morgan if he would like to see the plan. Attorney Morgan said that at some point he and his client would want to see the proposed plan. Mr. Riehl asked if it would be fruitful to take a 15 to 30 minute break so that he could review the plan with the applicant and his client. Attorney Morgan said that he would certainly like the opportunity so they could have a more meaningful review of the changes. Mr. Saba was still confused by Attorney Morgan’s concerns as the proposed plan addressed issues that were raised by him last month. This amended plan asked for less relief than what was proposed last month and was now meeting the sideline setback to Mr. Saviano's property. The shift of the proposed addition has minimized the request. Mr. Waldron claimed the applicant had pretty much done what Mr. Saviano had wanted by shifting the garage addition. Attorney Morgan said that he did not know if that were the case because they had not seen the plans. Mr. Lavelle wanted to clarify that they were not reducing the request for a variance to the side lot line but were withdrawing the request altogether. They are now meeting the 15 foot required setback. There are no longer any issues on that sideline. Attorney Morgan contended that the sideline setback was 30 feet. Mr. Lavelle explained that in the Town of Atkinson on a previous lot of record you are required to meet the setback at the time the lot was created. The zoning requirements are 15 feet on each sideline, 15 feet in the back and 30 feet in the front. The board granted a 15 to 30 minute recess so that Attorney Morgan could review the proposed plans with his clients and the applicant.

The hearing resumed and Mr. Lavelle said the abutter had the opportunity to review the plans. Mr. Lavelle said that on page Z12 of the zoning ordinances it addressed the setbacks of substandard lots which date back to 1982. Ms. Killam said that also pertinent was section 400:4. Mr. Riehl read section 400:4 which confirmed that the sideline setbacks for this lot were 15 feet. The board was satisfied that 15 foot setbacks were the operative criteria for this lot. Attorney Morgan stated that he and his client were able to review the plans and agree that the plan addresses to a large extent Mr. Saviano's concerns. He still has some overall issues with the zoning encroachments in general but would be willing to totally support the proposal if the driveway was in conformance with the way he wanted it to be accessed from the road. He would be in support if the driveway was away from his access and came in from the other side. Attorney Morgan presented the board with a summary of the concerns of his clients. He also gave the board a copy of a letter from a real estate broker claiming that this proposal would

impact the value of his home in a negative way. Mr. Riehl read the letter into the record. Mr. Riehl confirmed with Attorney Morgan that this letter was prepared in response to the original plans presented last month and not the revised plan. Attorney Morgan confirmed but reiterated that his client still had concerns regarding the compliance of the zoning and hardship with this proposal. Mr. Riehl stepped through the letter provided by Attorney Morgan outlining the concerns of the proposal. The board did not feel there was anything in the letter that the board was not addressing and did not need any additional findings of fact.

The board discussed whether the proposal was a complete tear down and rebuild or was it a renovation of the existing structure and an addition? Mr. Lavelle said that this might be a raising of the structure to put a foundation underneath but the building will not be razed. The foundation has issues which included water in the basement. Whether it was a rebuild or renovation it would remain on the existing footprint. Mr. Lavelle did not believe that it will be it would be torn down. This issue seemed murky to the Board because they wondered if there were only an addition being built onto the existing structure would a variance be required. They questioned whether this was considered a rebuild or a renovation and whether it made a difference to the variance request. Mr. Lavelle explained that they are still within 100 feet of the wetlands and would still require a variance. Mr. Riehl asked for Ms. Killam input and if she had any insight on how this would be handled. Ms. Killam believed that as long as the existing structure, whether repaired altered or replaced remained on the existing footprint they only needed to deal with the new addition and its relationship to the sideline setback and wetland setback. Mr. Riehl agreed and thought the applicant was not 100% sure of what they would find until they got into the construction process and therefore could not assess at this time if they needed more than just a renovation of the existing structure. There was a consensus of the board that as long as the existing structure whether renovated or rebuilt remained on the existing footprint the variances were related to the addition only. Mr. Lavelle confirmed that the only change to the existing footprint would be the removal of the 2 foot jog on the side which abuts Mr. Saviano's property. Mr. Lavelle stated again that the applicant did not plan to tear down the existing structure and rebuild it. The intention was to lift the existing structure and pour a foundation under it. The second floor is being built to match the addition. The first floor exterior walls will not be removed. Ms. Fuhs also confirmed the State approved the plan because the existing footprint would not be changed.

There was a motion made and unanimously supported by the board that the plans as provided indicated the existing structure whether repaired, altered, or rebuilt would remain on the original footprint and therefore there was no side lot line variance to the Saviano property needed.

Mr. Riehl said the Board is left with two variance requests. There was a variance request for setbacks to the lake and a variance request for the setback to the sideline of Mr. Allen. The board agreed that the original request for variance to the Saviano property was no longer necessary and was off the table.

The board agreed to deal with the other side lot line variance first. Mr. Riehl recapped that the existing structures’ corner is 2.12 feet from the side lot line. There was a letter by Mr. Allen in support of this proposal.

Attorney Morgan wanted to be clear that the position addressed in his letter was that this proposal did not meet the hardship criteria and had not been appropriately addressed.

The board reviewed the criteria and the application for the side lot line variance:

1. Mr. Lavelle said that there are many properties in this area that were closer to the water and closer than 15 feet to the side lot line than this property. ***There was a consensus of the board that based on the discussions this criterion had been met***.
2. The Board agreed there was no further encroachment. ***There was a consensus of the board that based on the discussions this criterion had been met.***
3. ***There was a consensus of the board that based on the discussions this criterion had been met.***
4. Although there was a letter presented to the Board from a real estate broker, the Board did not feel this proposal would negatively impact the value of Mr. Saviano's property. ***There was a consensus of the board that based on the discussions this criterion had been met.***
5. A.) ***There was a consensus of the board that based on the discussions this criterion had been met.***
   B.) ***There was a consensus of the board that based on the discussions this criterion had been met.***

Mr. Zannini made a motion to approve the request for a Variance as stated above and shown on plans submitted March 9, 2011, based on all of the criterion having been met. Mr. Waldron seconded and it was unanimously approved.

The board reviewed the criteria and the application for the variance to wetland:

1. The proposal offered greater protection of the lake by using storm water managment. ***There was a consensus of the board that based on the discussions this criterion had been met***.
2. The Board agreed there the protection of lake and the impervious area were important. ***There was a consensus of the board that based on the discussions this criterion had been met.***
3. The proposal is further from the lake and with the updated drainage there will be greater protection to the lake. ***There was a consensus of the board that based on the discussions this criterion had been met.***
4. Although there was a letter presented to the Board from a real estate broker, the Board did not feel this proposal would negatively impact the value of Mr. Saviano's property. ***There was a consensus of the board that based on the discussions this criterion had been met.***
5. A.) The Board agreed that to do nothing would be an injustice. ***There was a consensus of the board that based on the discussions this criterion had been met.***
   B.) ***There was a consensus of the board that based on the discussions this criterion had been met.***

Mr. Saba made a motion to approve the request for a Variance as stated for the covered porch and the proposed garage/addition per the plans submitted March 9, 2011and based on all of the criterion having been met. Mr. Zannini seconded and it was unanimously approved. This is subject to a revised approval/amendment from the State for the Shoreline Protection.

Hearing was adjourned at 10:10 p.m

Respectfully Submitted _____

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