

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

**Public Hearing Meeting Town Hall
Wednesday, May 14, 2014**

Present: Glen Saba, Chair, Sam Zannini, Vice Chair, Dave Farris

Call to Order: Chairman Saba called the meeting to order at 7:30 PM.

Correspondence:

Approval of Minutes: February 12, 2014, April 9, 2014

Public Hearing– 7:30 P.M.

1) Lavelle Associates for AROD Realty Group, LLC, Application for Variance from Article V Sections 530-e and f, footnote #7, (rear yard minimum where CI Zone abuts RR3 Zone) on properties located at 15, 17, 19 Industrial Way, Map 16 Lots 16, 55 and 56 in the CI Zone. Continued.

Tim Lavelle, Lavelle Associates representing AROD Group came before the Zoning Board of Adjustment.

Mr. Saba informed the applicant that only three Board members were present and if there is a it must be unanimous. The Board agreed to continue the meeting.

Mr. Lavelle explained that he is proposing to reduce the rear buffer from 150 feet to 50 feet. The buffer would be the same as the other properties in the C/I Zone. The property does not abut any residences in the rear. The property is abutted by Atkinson Town Land in the rear. It is zoned residential because it is conservation land.

Mr. Saba read the abutters list.

Abutters List:

Shawn and Melissa Finnerin - present; Rick Schafer; Town of Atkinson- present; AROD Realty Group, LLC - present; MEM Realty Group LLC; Brian and Sharon Castle; Talosin LLC; Gagnon Realty Trust; Atkinson Properties, LLC; Richard and Karen Flamingo; Ruby Holdings, LLC; Daniel Messuri; and, Edward and Sandra Tomasi - present.

Mr. Saba reviewed what occurred at the last meeting.

Mr. Lavelle explained that Lot 48 to the North and the next three lots have 50 foot buffers. Mr. Lavelle showed the Board the other properties on the map. The applicant does not wish to reduce the buffer to the south or on the sideline; only the buffer to the rear of the property.

The Board discussed where the lot line would be in relation to the Finnerin property. The lots for which a variance is requested abut the Finnerin property at one point and the buffer at the point is greater than 150 feet. Mr. Saba explained that with the land swap to the access road, the buffer between the property and the Finnerin property would increase to 200 feet. Mr. Dziechowski, Conservation Commission Chairman explained that there would be traffic on the access road but it would be very light.

The buffer regulations were enacted after most of the properties in the area were built.

Mr. Lavelle explained that the applicant has not decided on a use for the property as yet.

Sue Killam, Chairperson of the Planning Board, informed the Zoning Board of Adjustment, that allowing an access road to conservation land would not change the size of the buffer between the property in question which is located in the commercial industrial zone and the residential property it abuts.

Mr. Dziechowski explained the history of the commercial industrial zone. The development started in 1982. There was a lawsuit to allow the lots. At the time there was no zoning. Zoning was established in 1985. The 150 foot setback regulation was not established until the mid 1990's. Many of the properties on Industrial Way do not meet the 150 foot buffer requirement to residential land. On the extreme eastern end of Industrial Way there is a parcel with a 115 foot variance. The official Town zoning map shows that the zone line narrows as you proceed down Industrial Way, so the properties on the extreme end, near the cul de sac are at a disadvantage because they are 150 feet from the zone line effectively denying productive use of the land.

Mr. Zannini asked Mr. Lavelle several questions about the other properties on Industrial Way and if they complied with the current zoning regulations. Mr. Lavelle explained that there is no room on the lots in question for parking lots, swales and other issues without a variance in the buffer zone. Mr. Lavelle explained that the building and buffer zone would be consistent with the other buildings on the left side of Industrial Way which were built prior to zoning. It is only the properties on the left side that do not have a 150 foot buffer to the residential zone in Atkinson. The properties on the right side of Industrial Way abut the Town line, and the buffer to residential property is greater than 150 feet.

Mr. Saba allowed Ms. Finnerin to speak.

Ms. Finnerin stated that the other lots do not abut residential land.

Mr. Dziechowski explained that there are three lots on Industrial Way. They were approved before the Commercial Industrial zone was established. The third lot was approved before the 150 foot buffer restrictions were enacted. The applicant is asking for a variance that is less than prior variances.

Ms. Tomasi stated that the lots in question were purchased after the zoning regulations were established. Also, no one lives on the conservation land twenty-four hours a day so they are not as concerned.

Mr. Lavelle pointed out that the Tomasi property was on the other side of the Marshall land approximately 800 feet from the applicant's property.

Mr. Saba asked if there were more questions. There were none.

Mr. Saba asked Mr. Lavelle to go through the application step by step according to the five variance criteria of RSA 674:33 .

1) Granting a variance would not be contrary to public interest. The RR3 land which abuts these lots belongs to the Town and will remain undeveloped. The 150 foot buffer will be achieved by the undeveloped land.

2) The spirit of the ordinance is observed because there is a 50 foot buffer between the property and the conservation land which is zoned residential. The Marshall land will act as the 100 foot buffer to the residences behind the commercial industrial zone.

3) Granting the variance will do substantial justice because it will allow full productive use of the lots as originally intended and allow the applicant the same use as the rest of the properties on Industrial Drive.

4) The variance can be granted without diminishing the value of abutting properties. The abutting property is owned by the Town Conservation Commission, is undeveloped land and is open space. Open space will not be infringed upon.

5) Owing to special conditions of the property that distinguish it from other properties in the area; denial of a variance would result in an unnecessary hardship. The purpose of the proposed setback is to allow a large buffer between commercial/industrial use and residential use. The abutting property is residential but it is not a residential use, it is open space. The proposed use is reasonable because it would allow full use of the lots as originally intended and allow for them to be developed in the same manner as the remaining lots.

Chairman Saba requested a vote.

1) *Granting the variance would not be contrary to public interest.*

Discussion: The applicant must show there will be no harm to public interest. Mr. Saba looked up the duties of the Board. Variances are allowed to prevent ordinances from becoming confiscatory or unduly oppressive as applied to individual properties uniquely situated. Chairman Saba asked if there was any discussion on one. There was none.

Vote: The three members of the Atkinson Zoning Board of Adjustment present, Chairman Glen Saba, Vice Chairman Sam Zannini and Member Dave Ferris, agreed that granting the variance would not be contrary to the public interest based on the application and the discussions as presented.

2) *The spirit of the ordinance is observed.*

Discussion: Mr. Saba explained that in general, provisions must promote the health, safety and welfare of the community. The Board has to consider the welfare of the community as a whole. The commercial/Industrial zone in Atkinson is very limited. There is a 150 foot buffer required to protect the residences. Mr. Saba does not believe that the buffer to the part abutting residential property is less than 150 feet because it abuts Town land which is zoned residential but is used for conservation. If the Town land is included, the buffer is 700 to 800 feet. Mr. Zannini stated that it is a permitted use consistent with the commercial industrial zone.

Vote: The three members of the Atkinson Zoning Board of Adjustment present, Chairman Glen Saba, Vice Chairman Sam Zannini and Member Dave Ferris, agreed that the spirit of the Ordinance would be observed by granting the variance based on the application and the discussions as presented.

3) *Substantial justice will be done if the variance is granted.*

Discussion: This condition requires the request to be evaluated in light of the goals of the ordinance. Mr. Saba said once again that he is thinking of the size of the commercial industrial zone. Mr. Zannini pointed out that any use would have to go to the Planning Board.

Vote: The three members of the Atkinson Zoning Board of Adjustment present, Chairman Glen Saba, Vice Chairman Sam Zannini and Member Dave Ferris, agreed that granting the variance would be substantial justice based on the application and the discussions as presented.

4) *The values of surrounding properties will not be diminished.*

Discussion: Mr. Saba stated that the Board must consider the effect on residential

Vote: The three members of the Atkinson Zoning Board of Adjustment present, Chairman Glen Saba, Vice Chairman Sam Zannini and Member Dave Ferris, agreed that the values of surrounding properties will not be diminished based on the application and the discussions as presented.

5) *Denial of the variance would result in unnecessary hardship to the owner.*

Owing to special conditions of the property that distinguish it from other properties, denial would result in unnecessary hardship:

A) No fair and substantial relationship exists between the general public purpose provision of the ordinance and specific application to the property.

Discussion: The purpose of the ordinance is to protect the privacy and property owners rights to their property. Because the property abuts conservation land the 150 feet buffer required by the ordinance has more than been maintained.

The three members of the Atkinson Zoning Board of Adjustment present, Chairman Glen Saba, Vice Chairman Sam Zannini and Member Dave Ferris, agreed that the provisions of 5 (A) of the ordinance, no fair and substantial relationship exists between the general public purpose provision of the ordinance and specific application to the property based on the application and the discussions as presented.

B) The proposed use is a reasonable one.

This condition is met because of the special conditions of the property including an analysis of the effect on neighboring property and community zoning in general.

Discussion: The biggest special condition is that the relief sought is to Town owned land and the Conservation Commission is 100% for it. Mr. Zannini stated that the property is in the commercial/industrial zone, it will be used for commercial/industrial purposes and the zoning ordinance

came in a decade later. Mr. Saba stated that the Board must weigh if the relief will affect the people they are protecting. Mr. Farris remarked pointed out the only abutting residence on the map and there is more than a 150 foot buffer from the properties located at 15, 17, 19 Industrial Way, Map 16 Lots 16, 55 and 56.

Vote: The three members of the Atkinson Zoning Board of Adjustment present, Chairman Glen Saba, Vice Chairman Sam Zannini and Member Dave Ferris, agreed that the provisions of 5 (B) of the ordinance, the proposed use is a reasonable one, based on the application and the discussions as presented.

Chairman Saba requested a motion.

Vice Chairman Zannini made a motion to approve the application by Lavelle Associates for AROD LLC, Application for Variance from Article V Sections 530-e and not f, footnote #7, (rear yard minimum where CI Zone abuts RR3 Zone) on properties located at 15, 17, 19 Industrial Way, Map 16 Lots 16, 55 and 56 in the CI Zone to grant relief of 100 feet to the rear setback making the buffer 50 feet rather than 150 feet. Mr. Farris seconded the motion. All members of the Board present, Chairman Saba, Vice Chairman Zannini and Member Dave Ferris voted in favor. Vote: 3/0.

New/Old Business:

Chairman Saba asked if there was any other business. There was none. Chairman Saba requested a motion to adjourn.

Mr. Sam Zannini made a motion to adjourn the Wednesday, May 14, 2014 meeting of the Atkinson Zoning Board of Adjustment. Mr. David Farris seconded the motion. All members present voted in favor to adjourn. Vote: 3/0.

Next Regular Zoning Board Meeting scheduled June 11, 2014.