

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

**Public Hearing Meeting Town Hall**  
**Wednesday, August 13, 2014**

Members Present

Glenn Saba, Chair  
Sam Zannini, Vice Chair  
Dick Paquin  
David Farris  
Shane Keating

Others Present

Tim Lavelle, Lavelle Associates  
Gail Spellman

**Workshop - 7:00 PM**

Call to Order: Chair Saba called the meeting to order at 7:07 PM.

Approval of Minutes: April 9, 2014 and June 11, 2014

April 9, 2014 Minutes:

- Glenn Saba should be Glenn Saba
- Second Page - paragraph 3, Sandra Paquin should be Sandra Tomassi
- Second Page - second to last paragraph, add "After due deliberation..."
- Third Page - first paragraph continued from page 2; The sentence states, "The question is could a building that is" should state "The question is, could a building that is 100 feet plus or minus on this four acre parcel be feasible. the changed to this and possible changed to feasible."

**Vice Chairman Sam Zannini made a Motion to accept the minutes of the April 9, 2014 meeting of the Town of Atkinson Zoning Board of Adjustment. Member Dick Paquin seconded the Motion. All members present at the April 9, 2014 meeting, Chairman Glenn Saba, Vice Chairman Sam Zannini and Member Dick Paquin, voted in favor. Vote: 3/0.**

June 11, 2014 Minutes:

- First Page and throughout - Glen Saba should be Glenn Saba
- First Page - Zoning Board Administrator and Planning Board Administrator should be Planning and Zoning Administrator
- Page 2, second to last paragraph add "due to the extensive length of the list of abutters"
- Page 3, first paragraph - the closest property is the gravel operation - add in Salem, New Hampshire

- Page 4, second paragraph - Zoning Regulation Z0:3 should be Zoning Ordinance Definition Section 300 A5.

**Member Dick Paquin made a Motion to accept the minutes of the June 11, 2014 meeting of the Atkinson Board of Adjustment as Amended. Vice Chairman Sam Zannini seconded the motion. The three members present at the meeting, Vice Chairman Sam Zannini, Member Dick Paquin and Chairman Glenn Saba voted in favor. Vote: 3/0.**

Correspondence: none

**Public Hearing – 7:30 P.M.**

**1) Lavelle Associates, for John Milone, Sr. application for a Variance from Article V Section 530-d footnote #3 to allow parking in the front of the building closer than 75 feet from the Right of Way (Island Pond Road) and a Variance from Article V Section 530-f footnote #7, to allow the addition of a deck and stairs to be built within the 150 foot buffer to an adjacent Residential property, on property located at 56 Island Pond Road, Map 20 Lot 2 in the CI and CP Zones.**

Abutters List: John V. Malone, Sr., Rockingham Realty LLC, Waterwheel Estate, Christine Cornelius - present, Southern New Hampshire Commons, Q&D Realty Trust, Susan Sandon, and Lavelle Associates - present

Timothy Lavelle for James Lavelle Associates came before the Board. Mr. Lavelle explained that the property is in the commercial industrial zone and in the commercial professional zone and abuts the rural residential zone. The building is in the buffer to the residential zone. The building existed before the zone lines were created. The applicant is requesting two variances. The first variance is for parking in front of the building. When parking is in front of the building, it should be no closer than 75 feet from the right of way. The parking line comes to a point that is closer than 75 feet to the building. However, the building is 99 and a half feet from the pavement. There is over 80 feet from the front property line. This is due to the fact that Island Pond Road has been moved several times. The Town maintains a right of way. There will be no parking in the 150 foot buffer from the residential property. Mr. Lavelle has spoken to Ms. Cornelius and the Planning Board.

This is a two story building with an existing door to the outside on the second floor on the east side of the building. This portion of the building is part of an old barn. For the second variance, the applicant is requesting to add a small deck where the door is, giving an egress in case of emergencies. It is over an existing concrete pad and oil tank. It would not protrude further than the existing pavement. Mr. Saba asked if the door would be used daily and if parking would occur where the door is. Mr. Lavelle replied that the applicant is putting up no parking signs on that side of the building. The applicant bought the building with a number of issues. Things have gotten better. There is no industrial activity involved in the site plan. The applicant has cleaned the property up.

Mr. Saba opened the discussion to the public.

Christine Cornelius came before the Board. She explained that in the past, there was a deck on the second floor where the door is, but it had to be moved and made so that no one could go out there. All the business was to be oriented to the west side, rather than the east because the east abuts residential property. Ms. Cornelius passed out photos of the properties. The property behind the site is an historic property. The pond once had mills on it. The house was built in 1834. The applicant property used to be the barn for Ms. Cornelius' property. The pond narrows toward the dam. The dam and mills are considered an archeological site. Ms. Cornelius is very interested in protecting the site. Mr. Saba asked Ms. Cornelius if the applicant had concurred with what was requested last year. Ms. Cornelius replied that she does not believe the screening was put in. Ms. Cornelius passed out the historical trails map and some information on the house. Ms. Cornelius pointed out the location of the pond, the dam and her property on the map. Mr. Saba asked Ms. Cornelius if the statement that under the proposed deck there are structures is correct. Ms. Cornelius replied that there was never supposed to be openings on that side of the building. There were garage doors, but they were blocked by panels. Sound travels right through to Ms. Cornelius' property. The only structure under the proposed deck is a concrete ramp. Mr. Farris asked about the second story door. Mr. Lavelle replied that it is a sliding door. There is a railing so it is safe, but it is a doorway to nowhere. There used to be a deck, but it was taken off. Mr. Lavelle showed the location of the door on the plan. Mr. Saba asked about the row of arborvitae on the plan. Mr. Lavelle stated that it was part of the site plan process he would have to defer to Ms. Cornelius, who had stated that no screening had been put in. The arborvitae are part of a previously approved proposal. Mr. Lavelle explained that there is a concrete ramp shown on the plan and an oil tank under the area of the proposed deck. He does not have a good picture.

Ms. Cornelius has pictures of what was supposed to be there but did not bring them to the meeting. Ms. Cornelius showed the Board where the wooden panels on the first floor were. Mr. Saba pointed out that the garage door and the wooden panels were not part of the application. Ms. Cornelius asked about the garage doors Mr. Saba replied that the Board had no way of knowing. Ms. Cornelius reiterated that the deck would bring business where it is not supposed to be. Mr. Zannini asked how big the proposed deck would be. Mr. Lavelle explained that the proposed deck would be eight feet by twelve feet plus the stairs which would make it eight feet by sixteen feet. Mr. Saba asked how much relief to the residential buffer the applicant was requesting. Mr. Lavelle explained he did not have that number and estimated that the distance from the zone line and the property would be 105 feet rather than 150 feet. Mr. Zannini asked how far the property line would be from the abutter's dwelling. Ms. Cornelius responded that she does not know and believes that the distance from her house to the pond is 30 to 40 feet. Mr. Lavelle agreed that the distance from Ms. Cornelius' house and the dam is 30-40 feet. Vice Chairman Zannini asked about water. Mr. Lavelle explained that there is no wetlands relief requested or needed, the setback is achieved. Mr. Saba asked Ms. Killam if it would be up to the Planning Board to make the decision on the day to day operation. Ms. Killam explained that the Planning Board regulates the site plan which includes a statement of intent and the hours of operation. Mr. Lavelle did state that he would be going before the Planning Board again. Mr. Lavelle explained to Mr. Saba that he was referring to the concrete ramp, which is an existing structure. Ms. Cornelius interjected that the concrete

ramp was not supposed to have been installed, it was allowed to remain, but was not supposed to be used. Mr. Lavelle believes the concrete ramp was built about 10 to 15 years ago. Mr. Lavelle admits there were many changes to the property without approval previously including the parking and front and the door on the second floor.

Chairman Saba stated that he would first request a vote for a variance for the deck and then the Board would vote on a variance for the setback to the parking. Mr. Saba stated that he believed that there were a portion of the barn that was not within the 150 foot buffer. Mr. Lavelle stated that that was correct.

Chairman Saba asked if there were other 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 for the deck would not be contrary to the public interest. The proposed deck and stairs will not be any closer to the rural residential zone than the existing building, concrete and pavement.

2) The spirit of the ordinance is observed. The deck and stairs will provide safe egress and ingress to the existing second story of the building.

3) Granting the variance will do substantial justice. It will allow full productive use of the second floor which is necessitated by allowing another safety egress.

4) The values of surrounding properties will not be diminished. The proposed deck and stairs will be no closer than the existing pavement and concrete. Other distances such as parking would be maintained.

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

A) No fair and substantial relationship exists between the general public purpose provision of the ordinance and specific application to the property. The building existed prior to the creation of the existing zones and associated buffers.

B) The proposed use is a reasonable one. The deck and stairs are needed for safety for secondary egress from the second floor.

Discussion: There is currently a stairway inside. There is an existing door. If the door is opened from the inside, there is a safety feature to keep someone from falling out. There is no deck or anywhere to step out and stand. There is no secondary egress from the second floor. Ms. Cornelius explained that when a deck was there before, people would use it and she could hear everything. It is an addition and will affect her property. The second floor is currently not being used except to store some equipment there. The applicant would like to rent the rest of the building out.

David Farris asked if the door could be moved to the Route 111 side, which is the back of the building. Mr. Lavelle replied that he could not answer that at present. The second floor covers about two thirds of the present building. The newer section does not have the second floor. Ms. Cornelius stated that she has been on the second floor, and it is useful only for storage because of the slant.

Mr. Saba asked if there were other questions. There were none. Chairman Saba closed the public hearing and requested a vote.

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

Discussion: Mr. Paquin stated that the deck would definitely be closer to the rural residential property, and the concrete pad should not count. Mr. Farris pointed out that there was some structure around the oil tank and asked the dimensions. Mr. Lavelle explained that that area is roughly 10 x 6. It is shown on the plan.

**Vote: Chairman Glenn Saba, Member Dick Paquin, Member Dick Farris and Member Shane Keating voted against granting the variance to criteria one. Vice Chairman Sam Zannini voted in favor. Vote: 1/4.**

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

Discussion: Mr. Paquin stated that the second floor is not being used so a safe egress is not necessary. Mr. Saba does not believe the spirit of the ordinance is being observed because it was not clearly stated that there were no alternatives. Mr. Farris does not believe that the spirit of the ordinance is the safety of a secondary exit on the second floor.

**Vote: Vice Chairman Sam Zannini voted to grant the variance under number 2. Chairman Glenn Saba, Member Dick Paquin, Member Shane Keating and Member Dave Farris voted no. Vote: 1/4.**

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

Discussion: Mr. Saba explained that this is any loss that will not be outweighed by benefit to the general public and the applicant did not present any alternatives. The abutter objects also.

**Vote: Chairman Glenn Saba, Member Dick Paquin and Member Robert Robicsek voted against granting the variance to number 3. Vice Chairman Sam Zannini voted yes. Vote: 1/4.**

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

Discussion: The burden is on the applicant to prove. Mr. Saba stated the property already encroaches the 150 foot buffer line. Since the property line directly abuts the property, the testimony of the abutter must be weighed. There is no proof that any of the provisions, such

as the screening have been installed. Mr. Paquin does not feel the value of the surrounding properties will be diminished because of the deck.

**Vote: Vice Chairman Sam Zannini, Member Dick Paquin and Member Dave Farris, voted in favor of granting the variance to number 4. Chairman Glenn Saba and Member Shane Keating voted no. Vote: 3/2.**

***5) Owing to the special conditions of the property that distinguish it from other properties to this area, denial of the variance would result in unnecessary hardship to the owner.***

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

Discussion: Mr. Saba feels that the abutter stated her opinion and the applicant has not proposed other alternatives. Mr. Zannini agrees.

**Vote: Chairman Glenn Saba, Vice Chairman Sam Zannini, Member Dick Paquin Member Dave Farris and Member Shane Keating all agreed that the 5A has not been met. Vote: 0/5.**

***B) The proposed use is a reasonable one.***

Discussion: It is reasonable, but the location does not make sense.

**Vote: The provisions of 5 (B) of the ordinance, the proposed use is a reasonable one, have been met based on the application and the discussions as presented. Chairman Glenn Saba, Vice Chairman Sam Zannini, Member Dick Paquin and Member Dave Farris agreed and Member Dick Paquin opposed. Vote: 4/1.**

Chairman Saba requested a motion.

**Vice Chairman Sam Zannini made a motion to deny the application for a Variance from Article V Section 530-f footnote #7, to allow the addition of a deck and stairs to be built within the 150 foot buffer to an adjacent Residential property, on property located at 56 Island Pond Road, Map 20 Lot 2 in the CI and CP Zones based on four of the criteria failing. The motion was seconded by Member Dick Paquin. Chairman Glenn Saba, Vice Chairman Sam Zannini, Member Dick Paquin, Member Dave Farris and Member Shane Keating all vote against allowing the variance. Vote 0/5.**

There is a thirty day appeal.

**The second variance requested is for a Variance from Article V Section 530-d footnote #3 to allow parking in the front of the building closer than 75 feet from the Right of Way (Island Pond Road).**

Abutters List: John V. Malone, Sr., Rockingham Realty LLC, Waterwheel Estate, Christine Cornelius - present, Southern New Hampshire Commons, Q&D Realty Trust, Susan Sandon, and Lavelle Associates - present

Mr. Saba opened the hearing to public discussion.

Discussion: Christine Cornelius requested to speak. She stated that something should be put up that will prevent people from parking along the side. As long as the parking is not within the 150 feet, it is okay, but there should be some definition. Mr. Lavelle stated that there will be no parking signs painted there, Mr. Lavelle will have to go to the Planning Board to amend the site plan. Mr. Lavelle agreed to paint a line where the 150 foot buffer is located. He informed the Board that there is plenty of room for fire apparatus from the last parking spot. It is almost 30 feet to the pavement.

Mr. Saba requested that Mr. Lavelle go through the criteria for allowing the variance.

1) Granting a variance would not be contrary to the public interest. The property line is a great distance from the traveled roadway.

2) The spirit of the ordinance is observed. The existing building is 99 feet from the existing pavement.

3) Granting the variance will do substantial justice. It will allow the applicant full use of the commercial property outside the 150 foot buffer.

4) The values of surrounding properties will not be diminished. It is a commercial building in the commercial zone.

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

A) No fair and substantial relationship exists between the general public purpose provision of the ordinance and specific application to the property. The applicant believes that the general purpose of the provision is not to have parking crowded onto traveled ways, the building is 99 feet from the pavement.

B) The proposed use is a reasonable one. The proposed parking is well away from the traveled way.

Mr. Saba asked for questions and closed public hearing.

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

Discussion: None.

**Vote: Chairman Glenn Saba, Member Dick Paquin, Member Dick Farris and Member Shane Keating and Vice Chairman Sam Zannini voted that the first criteria had been met. Vote: 5/0.**

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

Discussion: Mr. Saba agreed that it is over 75 feet from pavement.

**Vote: Chairman Glenn Saba, Vice Chairman Sam Zannini, Member Dick Paquin, Member Shane Keating and Member Dave Farris agreed the second criteria was met. Vote: 5/0.**

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

Discussion: The loss is not outweighed by gain to the general public. There is a business across the street that has the same privilege.

**Vote: Chairman Glenn Saba, Member Dick Paquin and Member Shane Keating and Vice Chairman Sam Zannini voted the criteria for substantial justice were met. Vote: 5/0.**

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

Discussion: Mr. Saba sees no reason surrounding properties would be diminished. The residential abutter has no objections.

**Vote: Chairman Glenn Saba, Vice Chairman Sam Zannini, Member Shane Keating Member Dick Paquin and Member Dave Farris, voted the criteria were met. Vote: 5/0.**

***5) Owing to the special conditions of the property that distinguish it from other properties to this area, denial of the variance would result in unnecessary hardship to the owner.***

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

Discussion: Member Dick Paquin stated that the special conditions of the property are the property line juts out from the road and then back in. On the other side, as a hardship, granting the easement would give 3 to 4 additional parking spaces, when there are enough spaces on the lot already. The Board discussed how many parking spaces are enough. Dave Farris explained the applicant is trying to rent out part of the building. Mr. Saba informed the Board that the rule is Mr. Saba requested the Board to decide whether a strict application of the ordinance would advance the purpose of the ordinance, which is to keep parking 75 feet from the right of way. The Board agreed.

**Vote: Chairman Glenn Saba, Vice Chairman Sam Zannini, Member Dick Paquin, Member Dave Farris and Member Shane Keating all in favor that the criteria were met. Vote: 5/0.**

***B) The proposed use is a reasonable one.***

Discussion: None.

**Vote:** The provisions of 5 (B) of the ordinance, the proposed use is a reasonable one, have been met based on the application and the discussions as presented. Chairman Glenn Saba, Vice Chairman Sam Zannini, Member Dick Paquin and Member Shane Keating and Member Dave Farris agreed. **Vote: 5/0.**

Chairman Glenn Saba requested a motion:

**Member Shane Keating made a motion to approve the application for Variance from Article V Section 530-d footnote #3 to allow parking in the front of the building closer than 75 feet from the Right of Way (Island Pond Road), on property located at 56 Island Pond Road, Map 20, Lot 2 in the CI/CP zones with a provision that parking areas and no parking areas are clearly marked.**

Discussion: There was a question as to the dimensions of the parking spaces. Mr. Lavelle explained that the spaces are drawn to scale at 10x20. The rule is the setback to the structure has to be 75 feet to allow for parking in the front. It is not a setback to the parking, it is a setback to the structure. The Board agreed to add "per the plan" to the motion language.

**Member Shane Keating made an amended motion to approve the Variance from Article V Section 530-d footnote #3 to allow parking in the front of the building closer than 75 feet from the Right of Way (Island Pond Road) on property located at 56 Island Pond Road, Map 20, Lot 2 in the CI/CP zones with a provision that parking areas and no parking areas are clearly marked per the plan. Vice Chairman Sam Keating seconded the Motion. Chairman Glenn Saba, Vice Chairman Sam Zannini, Member Dick Paquin, Member Dave Farris and Member Shane Keating all voted in favor. Vote: 5/0.**

There is a 30 day appeal.

Chairman Saba gave a 5 minute recess.

Chairman Saba opened the second public hearing.

**2)Gail Spellman for Rosanne and Michael Cronin, application for Special Exception under Article VII Section 700:2 to allow conversion of a seasonal home to year-round status on property located at 3 Palmer Road, Map 22 Lot 85 in the RR 3 Zone.**

Abutters List: Michael Mullaney, Nicole Anderson, Dorothy Goldstein - present, Michael Cronin - present, Darrel Condin and Michael Morin

Mr. Saba requested that Ms. Spellman come before the Board. She lives at 18 Hemlock Heights Road, which is next to 3 Palmer Road. She would like to purchase 3 Palmer Road,

and make it a year round residence, right now it is seasonal. Mr. Saba explained that the applicant has to meet all the criteria. Ms. Spellman believes she meets all criteria.

Ms. Spellman explained that nothing needs to be done to make the residence year round. The current residents have already made it a year round property, just the paperwork has not been done. The septic is installed and the well is shared between 18 Hemlock and 3 Palmer Road. All the easements are in place. There is a heating system, a well and a septic system.

Mr. Saba informed the Board that Page Z-67 of the Atkinson Zoning Regulation talks about the special exception and Page 68 Section 700:2 discusses the procedures for making a seasonal property year round. Ms. Spellman has had a review from the health officer. The septic system is installed and the DES approval for construction, installation and operation is included in the packet. Ms. Spellman has spoken to the health officer and showed him her paperwork. She does not have anything in writing from the health officer. Mr. Zannini explained that the health officer reviews it at the local level and then it is sent to the state. The DES has approved the septic for operation.

Chairman Saba requested a vote on the criteria for variance from Section 700:1e - Special Exception shall be granted by the Zoning Board of Adjustment providing the following criteria are met for the nonconforming use.

1) There is no diminution of the value of the surrounding properties.

Discussion: none

**Vote: Chairman Saba, Vice Chairman Zannini, Member Dick Paquin, Member Dave Farris and Member Shane Keating all voted in favor. Vote: 5/0.**

2) The variance would be of benefit to the public interest.

Discussion: The Board agreed that having people in the homes year round is a benefit.

**Vote: Chairman Saba, Vice Chairman Zannini, Member Dick Paquin, Member Dave Farris and Member Shane Keating all voted in favor. Vote: 5/0.**

3) The variance would result in substantial justice being done.

Discussion: none

**Vote: Chairman Saba, Vice Chairman Zannini, Member Dick Paquin, Member Dave Farris and Member Shane Keating all voted in favor. Vote: 5/0.**

4) The variance would comply with Section WS300 of Atkinson water supply and sewage disposal regulations.

Discussion: The approvals are in the packet. The well is on the plan. The applicant explained that there is an easement document because it was granted when the house was raised.

**Vote: Chairman Saba, Vice Chairman Zannini, Member Dick Paquin, Member Dave Farris and Member Shane Keating all voted in favor. Vote: 5/0.**

Chairman Saba requested a vote on the Gail Spellman for Rosanne and Michael Cronin, application for Special Exception under Article VII Section 700:2 to allow conversion of a seasonal home to year-round status on property located at 3 Palmer Road, Map 22 Lot 85 in the RR 3 Zone.

**Vote: Chairman Saba, Vice Chairman Zannini, Member Dick Paquin, Member Dave Farris and Member Shane Keating all voted in favor of the Gail Spellman for Rosanne and Michael Cronin, application for Special Exception under Article VII Section 700:2 to allow conversion of a seasonal home to year-round status on property located at 3 Palmer Road, Map 22 Lot 85 in the RR 3 Zone. Vote: 5/0.**

There is a 30 day appeal. Approval will be sent to her by the Zoning and Planning Administrator.

Other Business: Chairman Saba asked if there was any other business. There was none.

Chairman Saba requested a motion to adjourn.

**Vice Chairman Sam Zannini made a motion to adjourn the Wednesday, August 13, 2014 meeting of the Atkinson Zoning Board of Adjustment. Member Shane Keating seconded the motion. All members present voted in favor. Vote: 5/0.**