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

Public Hearing Meeting Town Hall
Wednesday, February 12, 2014

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

Call to Order: Chairperson Saba called the meeting to order.

Correspondence: not reviewed

Approval of Minutes: December 11, 2013 -

Public Hearing– 7:30 P.M.

1) Benchmark Engineering, Inc. for Stephen and Meredith Moore Trust, application for Variance from Article IV Section 400:4 to allow placement of expanded garage to be 21 feet from the Right of Way (Summit Drive) instead of the required 30 feet, and from Article IV Section 410:8, to be within the 100 foot wetland setback, and from Article V Section 530 (yard minimums) on property located at 1 Sunset Drive, Map 8 Lot 12 in the TR2 Zone.

Joseph Maynard, representing the applicant, appeared before the Board. Mr. Maynard reviewed the application. This is a corner lot at the corner of Sunset and Summit Drive. There is an existing three bedroom home, built in the '60's, with an existing onsite well and septic. There are some group 5 soils associated with a culvert along the westerly lot line. There are a number of existing encroachments, there is a deck on the rear of the house, the existing house sits 40 feet from the wetland. The existing garage sits 33 and a half feet from the wetland. The septic system sits about 55 feet from the edge of the wetland. The existing garage is very small, it is only about 20 feet wide. The owners would like to raze the existing garage and construct a new one with a breezeway connecting the house. The setbacks for the house will stay the same, the garage setbacks will be extended about 12 feet in the back, making the setback about 21 feet to the wetland. Because of where the house sits, the rear corner of the addition will be 38 and a half feet to the right of way. There are some caveats, lots created prior to zoning technically require a 30 foot setback. The rear setback would meet that set back, there would still be a 50 foot setback to the nearest abutting property.

Mr. Saba read the letter from the Conservation Commission into the record. The letter states that the Conservation Commission has reviewed the application. The Commission discussed run off control issues due to the increase in non-permeable structure and the applicant agreed to comply. Given the fact that there are many existing properties in the subdivision that are far less in compliance and the variance requested is so small, The Conservation Commission voted unanimously to recommend granting the variance.

Abutters List: Chairman Saba read the abutters list.

Steven and Merideth Moore - present

Since the garage is a slab structure, the setback to the septic is only five feet. The septic is a mounded system which will be blended in. Mr.Boyan asked what the requested relief is. Mr. Maynard replied that he reviewed the existing setbacks. The garage is currently 70 feet from the wetland. The relief requested is 70 feet to the wetland with 100 feet required; and to the street a setback is either 30 feet or 50 feet, the applicant is requesting a 21 foot variance of setback to the street.

The Board reviewed the site plan. The existing home was built before zoning regulations.

Chairman Saba opened the meeting to public participation. No one requested to speak. Chairman Saba closed the meeting to public participation.

The Board asked about drainage. The applicant discussed drainage with the Conservation Commission and agreed to gutter the addition and run downspouts into a dry well. There is an existing gable roof. The applicant is planning to raise the roof on the dwelling as well as to expand the garage. The application is requesting an expanded garage and does not mention expanded living space. Mr. Maynard explained that the plans were submitted with the application and are part of it. The applicant is removing a bedroom and expanding the space above for a master suite. The house will still have 3 bedrooms which is what the septic is permitted for.

The applicant is seeking relief first for the setback to the wetland buffer and second for the front setback. A third is a reduction of the required lot size. Mr. Maynard explained that technically a portion of the ordinance, Section 400:4 on Page Z15 of the Zoning Regulations speaks to existing lots. It talks about frontage right of way as well as side and rear setbacks. Mr. Maynard read that section. Section 530 states that setbacks have to be 50 feet all the way around. The issue is, does the Board want to look at the request under Section 400:4 for existing lots or Section 530. On the application, relief from Section 530 in the TR2 Zone is requested. The Board discussed taking the application under consideration under Article IV, Section 400:4. The Board generally agreed it can take the application under consideration under Article IV, Section 400:4.

Chairman Saba stated that there are now two reliefs before the Board and the Board should take one at a time. The first is Article IV, Section 400:4 where they are required to have a 30 foot setback and the site plan only has 21 feet, and they are seeking a 9 foot relief.

Chairman Saba requested to review the application. Mr. Maynard again summarized the facts supporting the request. Granting the variance would not be contrary to the public interest because, first, there is an existing house dating from 1961. This addition increases the size of the garage currently on the lot. Second, the application is in compliance with the spirit of the ordinance because they are looking for dimensional variance to add the garage, this addition is further from the wetland, the difference is the setback to the street, all other requirements are met. Third, garages are allowed in the district, it is similar to other homes in the area, the home currently has a very small garage now and the proposal will allow a more usable garage. Four, the value of surrounding properties will not be diminished, the proposed addition will be of the same style as existing homes. Five, denial of the variance would cause unnecessary hardship because no fair and substantial relationship exists between the existing ordinance and the proposal because there is an existing home, the location of the home and onsite septic limit placement. The setback proposed 21 feet to the right of way and will leave the 40 feet from the

pavement. The proposal is reasonable because the addition as proposed will be further from the wetlands than the existing home; the side and rear setbacks will remain 50 feet and will be met; and the corner is still approximately 40 feet from the edge of the pavement. The abutting homes are roughly the same as the home in the application, except this is a corner lot so the lot is not as deep. The pavement line and right of way line are shown in the plan.

Chairman Saba requested the Zoning Board act on relief Article IV, Section 400:4, requires 30 feet from the right of way, the application is requesting 21 feet.

1) Granting the variance would not be contrary to the public interest. The Board agreed unanimously that this was met based on the application and the discussions as presented.

2) The spirit of the ordinance is observed. There are no complaints from abutters, it will remain a three bedroom home. The Board agreed unanimously that this was met based on the application and the discussions as presented.

3) Granting a variance would do substantial injustice The Board agreed unanimously that this was met based on the application and the discussions as presented.

4) for the following reasons the values of the surrounding properties will not be diminished. It will be a nicer looking house. The Board agreed unanimously that this was met based on the application and the discussions as presented.

5) Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance 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. The location of the driveway in relation to the corner is good. There is a buffer between the driveway and the right of way. There is no addition to the curb cut, so no driveway permit is required. The Board agreed unanimously that this was met based on the application and the discussions as presented.

B) The proposed use is a reasonable one The Board agreed unanimously that this was met based on the application and the discussions as presented.

Chairman Saba requested a motion.

Sam made a motion to approve a nine foot variance plus or minus to the right of way from the Article 4, Section 400:4 to allow the expanded garage at One Sunset Drive, Map 8, Lot 12, seconded by Dick, The Zoning Board of Adjustment voted all in favor. Vote: 4/0.

The next variance to be discussed is the setback from the wetland. Once again, this is Article IV, Section 410:8. The applicant is requesting a 30 foot variance.

1) Granting the variance would not be contrary to the public interest if granted: There is a letter from the Conservation Commission. The Board agreed unanimously that this was met based on the application and the discussions as presented.

The spirit of the ordinance is observed. The Board agreed unanimously that this was met based on the application and the discussions as presented.

3) Granting the variance would do substantial justice. There is no gain to the general public for a denial. The Board agreed unanimously that this was met based on the application and the discussions as presented..

4) Values of the surrounding properties will not be diminished. The Board agreed unanimously that this was met based on the application and the discussions as presented.

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

A) No fair and substantial relationship exists between the general public purpose of the ordinance provision and specific application to the property. The Board agreed unanimously that this was met based on the application and the discussions as presented.

B) The proposed use is a reasonable one. It is a two car garage and a residential use. The Board agreed unanimously that this was met based on the application and the discussions as presented.

Chairman Saba requested a motion.

Dick made a motion to approve a 30 foot plus or minus variance to allow the proposed garage to be built approximately 70 feet from the wetlands which is relief from Article 4 Section 410:8 at One Sunset Drive, Map 8, Lot 12. It is our understanding based on testimony of the applicant that it will remain a 3 bedroom house. The Building Department will enforce the water runoff. Mediation as discussed by the applicant is installed; specifically gutters and a dry well for water runoff. Seconded by Shane. The Zoning Board of Adjustment voted all in favor to approve the motion. Vote: 4/0

2)John Feuer, Trustee for 138 Realty Trust, application for Special Exception under Article VII Section 700:1a to allow Expansion of Nonconforming Use, to replace and expand existing storage building on property located at 136 Main Street, Map 13 Lot 25 in the RR 2 Zone.

Mr. John Feuer, 136 Main Street, owner of Feuer Lumber Company appeared before the Board with supporting documentation to propose replacing an existing building storage building on his site with a larger, more up to date one. Mr. Feuer introduced some site plans drawn in 1995 to the Board. Mr. Feuer pointed out the building he is requesting to replace on the plan. He is proposing a new, larger building in a slightly different location. Two other buildings will be removed. The building will be 41 feet from the property line. It does not include the setback from the road. The Board discussed the required set back. Mr. Feuer believes the required setback is 25 feet. He is not asking for a variance. The property is in Zone RR2. The Board questioned if the setback should be 70 feet. Ms. Killam explained that it is not adjacent to the front lot line, it is the side line. Stone Pound Lane is the side street. It is a corner lot. The plan falls under Article IV, Section 400:4. Otherwise, it would fall under the old 60/40. The building inspector would use Article IV, Section 400:4. The Board agreed.

Abutters List: Consentino Family Trust - present; John Feuer - present; Feuer Realty Trust - present.

The Board all agreed that the application falls under Article IV, Section 400:4 which reads the building should be no greater than 15 feet from the sidelines or 30 feet from the right of way. It is a right of way so according to the ordinance, the required setback is 30 feet and the proposed building is 41 feet from the right of way. The issue is expansion of a nonconforming use, Section 700:1E, page 67. Chairman Saba read the relevant section. The work must be done within one year. The nonconforming use cannot be changed to another nonconforming use. The following conditions must be met:

1)There is no diminution of the value of surrounding properties; 2) it would be of benefit to the public interest; 3) it would result in substantial justice being done; and 4) would comply with sections of WS 300 of the Atkinson Water Supply and Storage Disposal Regulations.

Chairman Saba opened the meeting to public discussion. Mr. Consentino informed the Board that he has lived next to the lumber yard since 1965 and has no complaints. There were no other complaints. Chairman Saba closed the meeting to public discussion.

The Board questioned why it was nonconforming use. Ms. Killam explained that it is a business in a residential zone.

Chairman Saba requested the Board review the conditions.

1)There is no diminution of the value of surrounding properties. The Board agreed unanimously that this was met based on the application and the discussions as presented.

2) It would be of benefit to the public interest. Mr. Saba believes anything to help a business that has been in Town so long would be a benefit. Mr. Zannini feels that having just one building instead of three is better. The Board agreed unanimously that this was met based on the application and the discussions as presented.

3) It would result in substantial justice being done. There is no benefit to the Town by denying it. The Board agreed unanimously that this was met based on the application and the discussions as presented.

4) Would comply with Sections of WS 300 of the Atkinson Water Supply and Storage Disposal Regulations. There is no plumbing in the building and the septic systems are up to par. The Board agreed unanimously that this was met based on the application and the discussions as presented.

Chairman Saba requested a motion.

Sam made a motion to approve the proposed expansion of a nonconforming use to replace and expand an existing storage building located at 136 Main Street, Map 13 Lot 25 in the RR2 zone, Mr. John Feuer, Trustee for 138 Realty Motion. Dick seconded the motion. The Zoning Board of Adjustment voted all in favor. Vote: 4/0.

Other Business: Cathy Blash intends to resign her seat on the Board. If anyone wishes to serve on the Board, they may speak to Sue Killam in the Planning Office. She will forward applications to the Selectmen for approval.

Chairman Saba requested a motion to adjourn.

Mr. Zannini made a motion to adjourn the February 12, 2014 meeting of the Atkinson Zoning Board of Adjustment. Shane seconded the motion. The Board voted all in favor. Vote: 4/0.