

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

**Public Hearing Meeting Town Hall
Wednesday, April 9, 2014**

Present: Glenn Saba, Chair, Sam Zannini, Vice Chair, Dick Paquin

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

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.

There are three board members, if there is a vote it must be unanimous. The Board agreed to continue the meeting.

Abutters List:

Shawn and Melissa Finnerin - present; Town of Atkinson - present; Daniel Messuri- present; Edward and Sandra Tomassi - present.

Mr. Tim Lavelle, James Lavelle Associates appeared before the Board representing AROD Realty Group, LLC. The property to the rear of all three lots is owned by the Town of Atkinson. It is known as the Marshall Lands. The applicant is proposing to change the buffer to the lots owned by the Town of Atkinson. There are residential lands to the South, there will be no change to the buffer there. It is a narrow parcel, ranging from 280 feet to 261 feet in depth. Also, when the subdivision was made, the zoning requirements did not exist. 70 feet of setback to the road is required, in order to build a normal building a variance to the buffer zone would be needed.

The side line setback is 150 feet. The Board looked at a topography map. The land slopes downward to a large wetlands complex at the end of the property. There is about a 28 foot embankment in back of the property and the Town of Atkinson property is much higher than the proposed parcel. The sideline buffer to residential is 150 feet. The Board pointed out that the application requests relief from Article V, Sections 530-e and f. Section 530-f relates to the sideline buffer. Mr. Lavelle requested to withdraw the application for Variance from Article V, Section -f. The property only abuts one property on Deer Run Road.

Chairman Saba opened the hearing to the public. Daniel Messuri asked if the question was to eliminate the 150 foot buffer in the back or reduce. Mr. Lavelle replied that the buffer would be reduced from 150 feet to 50 feet. Melissa Finneran, 8 Deer Run Road, stated she can see right

through the woods to the industrial zone, they get lots of noise and pollution from it. She would like to state for the record that she is strongly opposed.

Mr. Lavelle responded that reduced buffer would not change, if the side setback is not reduced, without the variance to the rear setback, the development would go closer to her property. The noise and pollution is from the existing industrial buildings.

Tim Dziechowski, Chairman of the Atkinson Conservation Commission spoke. The Judge Marshall Town Forest is the abutting property. The Conservation Commission has voted unanimously to support the variance. They believe it will have no impact on the conservation land. The buffer is the same on that side. There will be a 50 foot piece of conservation land deeded to the Town as a way for the Town to access the conservation land so it will allow a greater space between the property.

Sandra Tomassi, had a question about moving the access road. She stated that she is opposed to it, because the proposal does move industrial use closer to their neighborhood and she does not know what type of business will be built. Mr. Saba informed Ms. Tomassi that the only question before the Board was the variance to the 150 foot setback at the rear of the property. Ms. Tomassi is requesting that the Board look at the law and uphold it.

Mr. Dziechowski pointed out that the only relief the applicant is seeking is the variance for the buffer on the rear lot line. Mr. Messuri pointed out that allowing the variance will bring it closer to his property. Mr. Lavelle agreed, instead of 1000 feet from the Messuri, property it will be 900 feet. Mr. Saba asked what was allowed in the buffer zone. Cutting trees is allowed, but there is no parking, no drainage facilities, no traffic circulation, no storage. It is basically green space. The buffer will remain vegetated. There will be a path to conservation land, which is allowed. Mr. Messuri reiterated that it will make the commercial industrial property closer to their properties. It will affect all their properties and they are requesting that the board not allow the variance. The property can still be used without the variance. The Conservation Commission currently has a right of way on the extreme western edge of the property and would need to dig into the cliff in order to access the conservation land. Changing the right of way would allow access on a gentle slope. Mr. Lavelle showed where the right of way would change on the land. There has been no decision as to developing the property. From the back of the lot to the closest residential lot is about 1000 feet. If you cut diagonally to the Finneran property, the minimum zoning requirements are met.

Ms. Tomassi asked why the Zoning Law was put in for 150 foot regulation. Mr. Lavelle explained that the Zoning Regulations did not exist at the time the lots were created. Mr. Saba explained that if the land did not abut residential, the setback would be 25 feet. Mr. Saba asked if Conservation Land is always residential. Mr. Dziechowski replied no. Mr. Saba informed the audience that the Board had the obligation to be fair. The side setback is still 150 feet and complies with the regulation. The Board must balance out the needs of all the property owners. Mr. Messuri again stated the Board should wait until there is a plan before the Board looks at the variance. Mr. Saba replied that a variance for the setback must be allowed before anything can go before the Planning Board. There were more objections regarding noise.

After due deliberation, Mr. Saba closed the Public Hearing.

AROD Realty group was not the owner when the zoning was changed to industrial. When AROD purchased the property, the buffer was 150 feet. They purchased the property knowing there was a possibility they would not get the variance. Mr. Lavelle cannot speak to what the

owners knew when they purchased the property. Mr. Lavelle informed them of the 150 foot buffer. Lot 16 is 283 feet wide and 106 feet long. The Board discussed the dimensions of the lot and possible dimensions for a building. It was agreed that it is not impossible to put a building up and abide by the buffer zones. The question is, could a building that is 100 feet plus or minus on this four acre parcel be feasible. At this point, Mr. Lavelle would like to continue the hearing so that he can speak to his client's attorney and come back to the next available meeting.

Mr. Paquin made a motion to grant a continuance to the next scheduled meeting of the Zoning Board of Adjustment. Mr. Zannini seconded the motion. The Board voted unanimously to grant a continuance. Vote: 3/0 with one member absent.

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, April 9, 2014 meeting of the Atkinson Zoning Board of Adjustment. Mr. Dick Paquin seconded the motion. All members present voted in favor to adjourn. Vote: 3/0 with one member absent.

Next Regular Zoning Board Meeting scheduled May 14, 2014.