

ATKINSON ZONING BOARD OF ADJUSTMENT
21 Academy Avenue
Atkinson, New Hampshire 03811
Public Hearing Meeting Town Hall
Thursday, November 12, 2015

Members Present

Glenn Saba, Chair
Sam Zannini, Vice Chair
David Farris
Bob Connors
Shane Keating

Others Present

Doug MacGuire for The Dubay Group
Sue Killam, Planning and Zoning
Administrator

Work Shop 7:00 PM

Call to Order: Chair Glenn Saba called the meeting to order at 7:10 PM.

Other Business:

Correspondence: none

Public Hearing – 7:30 P.M. - Chair Saba opened the public hearing at 7:30 PM November 12, 2015

1) Doug MacGuire, The Dubay Group, for Robert Allen Jr., application for Special Exception under Article VII Section 700:2 to allow conversion of a seasonal home to year-round status and a Variance from Article IV Section 400:4 of 15 feet to a Right of Way line where 30 feet is required on property located at 46 Boulder Cove Rd, Map 23 Lot 85 in the RR 3 Zone.

Doug MacGuire of the Dubay Group came before the Board representing Robert Allan, Jr.

Mr MacGuire handed out a copy of the application and a valid septic permit for year round use from DES. This is an application to convert a seasonal home to a year round home, there are two parts. One is a special exception under Article VII Section 700:2. The second part is a variance under Article IV, Section 400:4 for a setback relief of 15 feet from the right of way where 30 feet is required. Mr. MacGuire requested to start with the special exception to Article VII Section 700:2. The ordinance requires review by the Health Officer, compliance with the Town of Atkinson septic and well requirements and compliance with State requirements. In the packet given to the Board is a copy of an approved septic design for the proposed single family dwelling, it makes reference that the plan is for a year round home. It has been reviewed and signed off by the Health Officer and signed off by the State. The applicant has a CA number.

Chair Saba stated he would read the abutters list.

Abutters: Town of Atkinson, Paul McGalliger, Katrina Lynn Eulakis - present; Henry Barry Jr., Robert Allan, Jr., Jordan Bibo.

Chair Saba stated that the Board would review the application to convert a seasonal home to a year round home. There are two parts, a special exception and a variance.

At this time, Chair Saba asked Ms. Eulakis if she had any questions about the special exception. She responded no. The public was given the opportunity to speak for or against the proposal.

Article VII Section 700:2

Chair Saba explained that if the applicant meets the criteria on page 68, Article VII Section 700:2, then the Board must grant the exception. Chair Saba read Article VII, Section 700:2.

A change in the status of a dwelling from a seasonal, recreational, or secondary home to a home which is intended to be used as a primary or year-round dwelling shall be considered a change in the use of the existing building according to the building code of the Town of Atkinson and shall require upgrading to state and local water supply and sewage disposal regulations in effect at the time of such change in status. Before any permits for structural alteration or change in use are issued by the Building Inspector and the Health Officer, a special exception from the Board of Adjustment shall be obtained, the granting of which shall include, but not be limited to, compliance with the following requirements:

Chair Saba read a letter from the Fire Chief dated November 12, 2015 into the record. The Fire Chief has reviewed the proposed plan and has concerns for access. If the proposed plan meets the criteria for the Zoning Board, he will review the plans as development moves forward.

The Board reviewed the criteria for Article VII, Section 700:2.

A) A review by the Health Officer:

Based on the approved septic plan of August 2014, Chair Saba asked the Board if they would agree.

All members of the Atkinson Zoning Board of Adjustment agreed. Vote: 5/0.

B) Compliance with Sections WS300 of Atkinson's Water Supply and Sewage Disposal Regulations.

All members of the Atkinson Zoning Board of Adjustment agreed. Vote: 5/0.

C) Written consent by the New Hampshire Water Supply and Pollution Control Commission (NHWSPCC) (the subsurface bureau).

All members of the Atkinson Zoning Board of Adjustment agreed. Vote: 5/0.

The Special Exception has been approved and granted. There is a 30 day appeal.

Variance from Article IV Section 400:4

The Atkinson Zoning Board of Adjustment moved to the second half of the application, a request for a variance from Article IV Section 400:4.

Mr. Macquire reviewed the plans for the Board. Mr. Maguire has some exhibits of the surrounding properties. On the overview, it can be seen, and also according to the tax cards, all the other five dwellings appear to have been converted to year round and all are approximately 1800 square feet. The applicant is proposing 1800 square feet of gross living

area. The applicant is also proposing to improve the setback to the front. The dwelling is currently 8 feet from Boulder Cove Road, the applicant is pushing it back to 15 feet. The dwelling meets the side and rear setbacks.

Mr. Saba asked if there is a well in place. Mr. MacGuire responded that there is an existing well, but the applicant is proposing a new well in the upper right hand corner of the lot. There is a 75 foot well radius on the plan. The applicant is proposing to leave the septic system in the same location so the plan will maintain compliance with the proposed upgraded layout. This is the last lot on the street and the surrounding property on the rear and the right hand side is Conservation Land. The applicant is planning on bulldozing the existing dwelling and building a new one.

Chair Saba opened the meeting to the public. There were no questions.

The applicant is proposing two bedrooms. The septic is approved for a two bedroom home. The applicant is proposing one and a half bathrooms. The State does not review bathroom plans. It is one story so height is not an issue, and 1800 square feet of living space.

Chair Saba asked if the Board is ready to go through the criteria.

Article 4 Section 400:4 to permit a front Setback of 15 feet where 30 feet is typically required on an existing substandard lot

1) The variance would not be contrary to the public interest;

Mr. MacGuire stated that the proposed dwelling is similar size to surrounding properties, it has an approved septic, the existing structure is 8 feet from Boulder Cove Road, the proposed plan would make the structure less nonconforming.

Discussion: Mr. Zannini stated that Fire Chief's letter solidifies that. He has reservations about emergency vehicle access and he will review as building goes forward. The updated plans were forwarded to the Fire Chief.

All members of the Atkinson Zoning Board of Adjustment agreed. Vote: 5/0.

2) The spirit of the ordinance is observed;

The ordinance is to provide building setback standards. The proposed plan makes the existing lot more conforming, increasing the setback from eight feet to fifteen feet. The spirit of the ordinance is met because the existing condition is improved and the sides and rear setbacks are more than met.

Discussion: The septic is a round tank. Mr. Zannini would agree. Mr. Zannini stated that the shoreline setback is not an issue. Chair Saba asked if trees needed to be cleared and if the applicant would need a wetland or shoreline permit. Mr. Macguire stated that as part of the building permit, an expedited permit may be required because some of the work would be in the 250 foot shoreline, but the plan meets the 150 and 50 foot setbacks.

All members of the Atkinson Zoning Board of Adjustment agreed. Vote: 5/0.

3) Substantial justice is done;

The applicant is proposing a home of similar size and style as other properties on Boulder Cove Road. The submitted existing conditions plan show that all existing homes have been upgraded within the last 10-15 years to year round homes and all have approximately 1800 square feet living areas. The applicant's lot is larger than some of the adjacent lots. It is actually a double lot. There are homes of similar or larger size on smaller lots, so the proposed dwelling is in kind with the neighborhood. Granting the application would allow the applicant to build a home similar in size and kind as the other homes in the neighborhood.

Discussion: Chair Saba stated that he drove through the neighborhood and the proposed home meets the character of the neighborhood. Vice Chair Zannini agreed.

All members of the Atkinson Zoning Board of Adjustment agreed. Vote: 5/0.

4) The values of surrounding properties are not diminished because;

This proposal is for a year round single family residence of similar size and style as existing homes on Boulder Cove Road. The surrounding properties are also year round residences and have the same average square footage. New construction and replacement of the existing camp would enhance surrounding property values.

Discussion: Chair Saba stated that the new structure will conform to today's codes and a one story dwelling would not be overbearing in the neighborhood.

All members of the Atkinson Zoning Board of Adjustment agreed. Vote: 5/0.

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 because;

(a) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property;

The property is unique because it is an existing substandard lot with an existing residential home which currently does not meet the required 30 foot setback. The lot is also uniquely limited as to where the septic system can be placed based on the well radius encroachment from abutting lots and existing drainage culvert outfall. The required placement of the septic field limits where the house can be placed on the lot and prevents a reasonably sized home from fully meeting the front 30 foot building setback. The general public purpose of the ordinance is to maintain minimum separations between buildings on adjacent lots. The setback to the only adjacent abutter exceeds the minimum 15 foot side setback requirement and the front setback is being improved from eight feet to fifteen feet. The rear and other side setback abut Town owned Conservation Land. There is no fair and substantial relationship that exists between this setback requirement and the existing site because the existing lot is already nonconforming with regard to the front setback. The proposed condition is an improvement and therefore meets the intent of the ordinance provision.

Discussion: Chair Saba believes the applicant has clearly outlined the special conditions of the property. Vice Chair Zannini agrees that the applicant does have a hardship. The applicant cannot go to the left because of the well, and Mr. Zannini believes the criteria have been met.

All members of the Atkinson Zoning Board of Adjustment agreed. Vote: 5/0.

(b) The proposed use is a reasonable one:

As discussed, the proposed home is of comparable size and style of the surrounding properties. The proposed house will fit well on the property. It meets state and local septic and water supply requirements. The proposed house allows the applicant reasonable use of the land in similar fashion as the surrounding properties which have also been updated and upsized over the years.

Discussion: Chair Saba stated that single family homes are what the area consists of. He also noted the improved waste water management system would benefit the watershed.

All members of the Atkinson Zoning Board of Adjustment agreed. Vote: 5/0.

Vice Chair Zannini made a motion to approve a Variance from Article IV Section 400:4 of 15 feet to a Right of Way line where 30 feet is required on property located at 46 Boulder Cove Rd, Map 23 Lot 85 in the RR 3 Zone for the purpose of a single family home to be constructed of 1800 square feet of living space with a 24x24 garage as submitted with the approved septic plan and packet. Member David Farris seconded the motion. All members of the Atkinson Zoning Board present voted in favor. Vote: 5/0.

Vice Chair Sam Zannini made a motion to close the public hearing. Member Farris seconded the motion. All members of the Atkinson Zoning Board of Adjustment voted in favor. Vote: 5/0.

Approval of Minutes: October 14, 2015

October 14, 2015 Minutes

The Atkinson Zoning Board of Adjustment reviewed the minutes of the October 14, 2015 meeting.

Member Shane Keating made a motion to approve the minutes of the October 14, 2015 meeting as amended. The motion was seconded by Member Bob Connors. All members of the Atkinson Zoning Board of Adjustment present voted in favor. Vote: 3/0/0.

Vice Chair Sam Zannini made a motion to adjourn the November 12, 2015 meeting of the Town of Atkinson Zoning Board of Adjustment at 9:00 PM. The motion was seconded by Member Bob Connors. All members of the Atkinson Zoning Board of Adjustment present voted in favor. Vote: 5/0/0.