

ATKINSON ZONING BOARD OF ADJUSTMENT

21 Academy Avenue

Atkinson, New Hampshire 03811

Public Hearing Meeting Town Hall

Wednesday, January 13, 2016

Members Present

Glenn Saba, Chair
Sam Zannini, Vice Chair
Shane Keating

Others Present

Sue Killam, Planning and Zoning
Administrator
Nichols Hall

Work Shop 7:00 PM

Call to Order: Chair Glenn Saba called the meeting to order at 7:00 PM.

Minutes: December 9, 2015

The Atkinson Zoning Board of Adjustment reviewed the minutes of the December 9, 2015 meeting.

Vice Chair Zannini made a motion to approve the minutes of the December 9, 2015 meeting as amended. The motion was seconded by Member Shane Keating. All members of the Atkinson Zoning Board of Adjustment present voted in favor. Vote: 3/0/0.

Other Business: None

Correspondence: See below

Public Hearing – 7:30 P.M.: Chair Saba opened the public hearing at 7:30 PM January 13, 2016. Vice Chair Sam Zannini and Member Shane Keating are present.

1) John Widman, Nancy & Shawn Smith, request for Extended Family Accessory Living Unit as specified in the Zoning Ordinance, Article IV, Section 460 at property located at 8 Emery Drive, Map 16 Lot 8, RR3 Zone. Continued from December 9, 2015.

Abutters: Rick Schaefer, Michael and Lisa Daly, Robert and Teresa Allen from the 2014 Allen Family Trust, John and Ellen Marie Widman, Roland and Mindy Richardson, Steve and Malinda Paley

Chair Saba read the request to withdraw into the minutes.

Vice Chair Zannini made a motion to grant the request for withdrawal of the request for Extended Family Accessory Living Unit as specified in the Zoning Ordinance, Article IV, Section 460 at property located at 8 Emery Drive, Map 16 Lot 8, RR3 Zone by the applicant without prejudice. Member Keating seconded the

motion. All members of the Atkinson Zoning Board of Adjustment present voted in favor. Vote: 3/0/0.

2) **Nichols & Melissa Hall**, request for Wetlands Variance from Article IV, Section 410:8b to allow a proposed barn 42' feet from Wetland instead of the required 100 feet (58' variance) on property at 5 Brittany Lane, Map 14 Lot 140 in the TR2 zone.

Abutters: Ronald and Nancy Koval (present), John and Diane Murphy, Keith Cutler, Jessica Yusef, Shaws and Elizabeth McCoy, McCoy Realty Trust, Nichols and Melissa Hall

Nichols Hall came before the Board to present the application. Mr. Nichols explained that he is seeking a variance to build a garage/barn at a corner of the property 42 feet from a wetland. The wetlands have been surveyed.

Chair Saba explained to the applicant that only three members were present at the hearing and if the application proceeds to a vote, then the vote would have to be unanimous. If the Board votes at this meeting and the vote is not unanimous, the application would be denied. The applicant agreed to continue the hearing.

The applicant showed the Board the surveyors report which stated in part that it is a low function, low value wetland. The applicant appeared before the Conservation Commission on Monday, January 4, 2016 to request their feedback regarding the proposed structure. Chair Saba read the letter from the Conservation Commission into the minutes. A wetlands study and plans were submitted. The Conservation Commission was initially concerned that the wetland affected might be part of the East Sawmill Swamp wetland area but concluded that there is an area of uplands between Sawmill Swamp and the wetland for which Mr. Hall is seeking a variance. An alternative location is not practical due to the septic system and other drainage issues. The Conservation Commission discussed the issues at the meeting and voted unanimously to recommend the variance.

Chair Saba invited Ms. Nancy Koval to appear before the Board.

Chair Saba explained that the notification was published and noticed with the wrong date, but the Planning Assistant called each abutter to notify them of the correct date.

Ms. Koval's address is 96 Maple Avenue and she is a direct abutter. She thought that the structure was a proposed barn. The applicant explained to her that the proposed structure will house two trailers and a small tractor, no animals. The applicant showed Ms. Koval and the Board pictures of the lot with the existing stone wall and the cul de sac. Most of the lot is wooded except for the area close to Maple Avenue. Mr. Hall explained that the back of the lot slopes down dramatically, and leveling that area would leave the foundation exposed. The front of the lot has the septic system. There is also a koi pond in the back.

The applicant proceeded to review the plans for the proposed structure with Ms. Koval. She explained that her concerns were first, if the Conservation Commission had been advised. Second, if the proposed structure would be a barn and what would be housed

in the structure. The applicant reviewed the application with Ms. Koval. He explained that he planned to house equipment and that the Conservation Commission was satisfied that the proposed structure would not affect the main wetland. Chair Saba asked if Ms. Koval had any questions. She asked if the house had a garage. There is a three car garage. She agreed that she was mainly concerned about the wetlands and if any special drainage was needed but it doesn't sound if that would be needed, it does not seem that anything will be draining into the wetlands. She explained that she has a good understanding of the proposed structure and no longer had concerns.

Chair Saba asked if there were more questions. There were none. Chair Saba requested the Board review the requirements. Vice Chair Zannini asked to look at the plans.

Vice Chair Zannini asked about the existing garage and the applicant explained that it was a 3 stall garage under the house.

The Atkinson Zoning Board of Adjustment went through the requirements for a variance From Wetlands Variance from Article IV, Section 410:8b.

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

Chair Saba explained the applicant only has to show that there will be no harm to the general public.

The proposed area is screened by mature trees and a long standing stone wall on two sides, delineating dry landscaped yard from a wooded area. We are not asking to encroach on wooded areas. The wetlands were surveyed and described as a low function value wetland.

Discussion: Chair Saba asked if the applicant is planning on cutting any trees. The applicant replied that some dead trees were cleared in the last two and a half years, but no trees will be cut to build the proposed structure. It is close to the area where the trailers are presently being stored.

All members of the Atkinson Zoning Board present agreed. Vote: 3/0.

2) The spirit of the ordinance is observed because;

Chair Saba explained that the intent of the wetland ordinance is to protect the interest of the public health, convenience, safety and welfare.

By building in an already landscaped, leveled area, there will be minimal change and impact on the wetland.

Discussion: Chair Saba added that the Conservation Commission letter states clearly that their position is that storing the equipment in an enclosed structure with a concrete floor so any spillage does not get into the ground and into our wetlands is a better scenario than not. Member Keating asked the applicant if he planned to have any plumbing and the applicant replied in the negative. Vice Chair Zannini commented that the proposed structure will meet all the other building setbacks.

All members of the Atkinson Zoning Board present agreed. Vote: 3/0.

3) Granting the variance will do substantial justice because;

Chair Saba stated that this requirement is any loss to the individual that is not outweighed by gain to the general public.

Esthetically, the applicant is attempting to clean up the yard and keeping what some can construe as junk or a mess enclosed, which will better the neighborhood by putting the implements inside.

Discussion: Chair Saba stated that the primary goal is to protect primary wetlands. This is not a primary wetland. To allow the applicant to encroach within the 100 foot buffer as long as he is not in the wetland and the implements are contained; is an advantage to the general public.

All members of the Atkinson Zoning Board present agreed. Vote: 3/0.

4) The values of surrounding properties are not diminished;

Chair Saba explained that the burden is on the applicant to convince the Zoning Board of Adjustment that it is more likely than not that the project will not decrease values in the surrounding neighborhood.

The applicant has met with the neighbors that the structure would visually have an impact on including the end property who is not an abutter and they had no objections. They are not here this evening. The applicant apologized for not meeting with Ms. Koval prior to the hearing. By enclosing the implements and yard equipment, the applicant actually will better the neighborhood and increase the visual appearance of it.

Discussion: Chair Saba asked if the building material will match the house and if it will be the same quality and construction as the home. The applicant replied that the proposed structure will be absolutely the same quality, it will not be a square box, it will be something with a little detail. It has vinyl siding but everything on the block does. It will have detail in keeping with the home and the character of the neighborhood.

All members of the Atkinson Zoning Board present agreed. Vote: 3/0.

5) Owing to special conditions of the property that distinguishes 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 purpose of the ordinance provision and the specific application of that provision to the property;

The area proposed is already developed and delineated from the wetland by the historic stone boundary wall and therefore is not encroaching on the definition of the wetland area.

Discussion: Vice Chair Zannini pointed out that the courts believe that Number 5 is the hardest criteria to meet and in his opinion, this is a textbook hardship case. Vice Chair

Zannini pointed out that there is no other place on the property to put the proposed garage/barn so it would be a hardship. The lot size is 2.5 acres.

All members of the Atkinson Zoning Board present agreed. Vote: 3/0.

(b) The proposed use is a reasonable one because;

The topography and shape of the lot dictate the location of the proposed structure. The purpose of the structure is to keep the otherwise unsightly trailer and tractor out of sight in a well kept neighborhood.

Discussion: Chair Saba agreed that the proposed use is a permitted use and to take what is being seen by the neighbors and put it indoors is always a positive. Vice Chair Zannini agreed that it is a residential and it will stay residential. The applicant is not going to run a car or storage business out of it so the proposed use is reasonable.

All members of the Atkinson Zoning Board present agreed. Vote: 3/0.

Chair Saba stated that all conditions have been met and requested a motion.

Member Shane Keating made a motion to approve the request for a wetlands variance from Article IV, Section 410:8b to allow a proposed barn 42' feet from Wetland instead of the required 100 feet (58' variance) on property at 5 Brittany Lane, Map 14 Lot 140 in the TR2 zone. Vice Chair Zannini seconded the motion. All members of the Atkinson Zoning Board of Adjustment present voted in favor. Vote: 3/0/0.

Chair Saba reminded the applicant that there is a 30 day appeal period, and any work done prior to that is at the applicant's own risk.

Vice Chair Sam Zannini made a motion to adjourn the January 13, 2016 meeting of the Town of Atkinson Zoning Board of Adjustment at 9:00 PM. The motion was seconded by Member Shane Keating. All members of the Atkinson Zoning Board of Adjustment present voted in favor. Vote: 3/0/0.

The Wednesday, January 13, 2016 meeting of the Atkinson Zoning Board of Adjustment was adjourned at 8:00 P.M. The next meeting of the Atkinson Zoning Board of Adjustment will be February 10, 2016.