

## **ATKINSON ZONING BOARD OF ADJUSTMENT**

**21 Academy Avenue**

**Atkinson, New Hampshire 03811**

**Public Hearing Meeting Town Hall**

**Wednesday, June 8, 2016**

### Members Present

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

### Others Present

Tim Lavelle, Lavelle Associates  
Jim Kirsch, Code Enforcement Officer

### **Work Shop 7:00 PM**

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

Minutes: May 11, 2016

The Atkinson Zoning Board of Adjustment reviewed the minutes of the May 11, 2016 meeting.

Chair Saba requested the recorder to review the tape again.

Other Business: None

Correspondence: None

Public Hearing – 7:30 P.M.: Chair Saba opened the public hearing at 7:35 PM, June 8, 2016. Vice Chair Sam Zannini, Member David Farris and Member Bob Connors are present.

1. Application of Variance from Article V Section 510 submitted by AROD Realty Group, LLC to allow the use of Industrial Property for Vehicle and Storage Container Storage on property at 19 Industrial Way, Map 16 Lot 56 in the CI Zone.

Abutters: Town of Atkinson, MYA Victoria, LLC, AROD Realty Group, Gagnon Realty Trust, Pat Bauer and James Lavelle, Associates (present)

Tim Lavelle, James Lavelle Associates appeared before the Atkinson Zoning Board of Adjustment for the applicant.

Mr. Lavelle explained that the proposed application is a variance for the last lot on Industrial Way. Chair Saba stated he drove by and asked which property it was. There is no number. Mr. Lavelle informed him it is the property with the for sale sign in front. The number is supposedly on the for sale sign. The applicant is proposing a gravel storage area or parking area with associated drainage and landscaping. A plan has been submitted to the Planning Board. It is the same use as the lot to the north and to the left except that lot has a building on the other lot. This is a standalone use for this site with no building. No business transactions will be taking place. It is proposed to be a pay-as-you-store facility for storage containers and to park construction vehicles and boats. When the storage containers are not being used, they

would be stacked on the lot. The proposed plan will clean up the lot and add some landscaping.

The second sheet on the plan set is the drainage plan. There will be drainage swales along the back and sides. Treatment swales are proposed along the side and the entrance to catch water before the water flows to the drainage system for Industrial Way. Amoskeag Engineering designed the drainage.

The third sheet is the detail for construction. The application specified spruce trees across the front, but the planning regulations require hardwoods. There was discussion but the issue is still not resolved. The applicant will use whatever trees the Planning Board would prefer.

The drainage systems and structures in place for the proposed lot would be adequate if a building were ever built there.

Mr. Lavelle explained that the variance is for the use, but the Planning Board did not believe the use of open storage is allowed in the Zone. The use is not in the regulations as permitted however it is not prohibited, either. One proposed use is for a parking lot for the storage of construction equipment which is a construction use but open storage, which is another proposed use, is not listed as a use in the regulations and this use is the subject of the variance request.

The Board discussed a similar application. The Zoning Board looked at the regulation and discussed uses in the Commercial Industrial zone. Chair Saba stated that closed storage is a specified use in the regulation. The Board discussed parking, commercial for a fee and if that would be a proposed use.

Chair Saba asked if a proposed use for the lot would be as a construction yard. Mr. Lavelle explained that no construction material would be stored, but possibly construction equipment, trucks and empty roll off containers. Mr. Lavelle explained that AROD Realty sold three abutting lots to MYA Victoria or Bay State and the plan was approved. Lot 55, one of the three lots to be sold to MYA Victoria, is a gravel parking lot and is proposed to be used for open storage. Chair Saba informed the applicant that he drove by and saw the lots. Chair Saba asked about the containers and did not believe it was an allowed use. Mr. Lavelle explained that the containers were left by the previous owners and that the applicant has removed many of them and is in the process of removing more. The purpose of the proposed plan is to ensure that the lot will be used in an orderly fashion with proper drainage and landscaping.

Chair Saba asked about the drainage and asked where the detention areas are for the proposed plan. Mr. Lavelle stated that there are two detention areas and pointed them out on the plan. They are in the front by the street. The swale is for some storm water treatment and reduction of velocity.

The Zoning Board of Adjustment discussed the proposed use. Mr. Lavelle explained that the adjacent lot has similar uses. That plan is approved and recorded. It went before the Planning Board. Mr. Kirsch explained that the Planning Board agreed it was a permitted use as an ancillary to the business. The proposed application is to allow the applicant to continue to use the lot for outdoor storage that has landscaping and drainage.

The Board discussed prior use and the adjacent property. The adjacent property consists of two separate lots, but the same business owns both of them. Vice Chair Zannini asked what would happen if the owner of the adjacent lots sold one of them, and if one lot was sold it would have to be considered prior use. Mr. Lavelle stated that it was kept as two lots so that if Bay State no longer needs both lots, then one could be sold and the current use for the other could continue. The Zoning Board discussed how the plans for the abutting lots were approved with a separate, overflow lot for open storage. The Zoning Board further discussed if a present use that is not permitted could be continued. Chair Saba stated that the use at the site is not permitted. Mr. Lavelle stated that he agreed with the Zoning Board that the present use is not permitted and that is why he is requesting a variance.

Vice Chair Zannini would agree that the applicant needs relief.

Chair Saba opened the meeting to the public. There was no public comment. Chair Saba closed the meeting to public.

The Board discussed what would be stored on the site. The proposed use is not as a junk yard and junk will not be stored on it. Mr. Lavelle stated that containers are one proposed use. Another proposed use would be to store boats during the winter. Construction equipment storage is also a proposed use. The applicant wants the site to be orderly and a place where a boat owner would not fear putting a boat. These proposed uses are listed in the application. Mr. Keating asked if one possible use would be under "U – Parking for a Fee". Chair Saba stated that construction equipment or boat storage could not be considered parking. The picture given to the Board by Mr. Lavelle showed 20-30 containers close to the wetland. The containers should be at least 150 feet away. Mr. Lavelle stated that the picture given to the Board is an old one. Vice Chair Zannini stated that the applicant needs to include what will be stored on the lot in the plan and asked if the application is approved, who determines how much construction equipment could be stored on the lot. Mr. Kirsch responded that it is a tough position but he has not had any complaints. It is an industrial zone. Other sites in the area store equipment outside, there have been complaints but the Selectmen have not gone to the Town Attorney. Mr. Kirsch added that this applicant is attempting to clean up the site.

Chair Saba stated that it is up to the Zoning Board to give the applicant a variance for the use. Vice Chair Zannini is concerned that if the proposed variance is allowed, who would control what is stored on the lot, how much would be stored and in what manner.

The Board discussed the amount of containers and equipment that can be permitted if the variance is approved. Chair Saba stated that the area is a mess. There is no management. Mr. Farris asked if there were any criteria as to what is being stored and the amount. Mr. Lavelle explained that there are criteria as far as the use but not the amount. The roll off containers can be stacked. The boats would be parked on the gravel, not in racks. No structures are proposed. There may or may not be a trailer for any boats being stored on the lot. The number of boats and/or storage units to be stored is not specified in the application. Mr. Farris asked if the variance can be approved with the caveat that the Planning Board must decide on rules similar as for the Bay State extension. The plan is still subject to site plan approval.

The drainage has been reviewed by the Town Engineer but requires more review and approval.

Chair Saba pointed out that Sheet 2 requires that grass be planted in the disturbed areas of the site. There is a buffer that cannot be used. The swale has to be out of the buffer. The buffer runs parallel to the rear.

Mr. Lavelle explained that the disturbed areas would be contained by erosion control around the swales during construction. There is also a buffer on the one side of the property. The swale is just outside the buffer. The buffer is behind the silt fence, along the tree line. Mr. Lavelle showed the Zoning Board where the buffer is on the plan. The applicant is trying to minimize impervious surface which is why the area will be gravel.

Vice Chair Zannini asked Mr. Kirsch about the business at the top of the hill. Mr. Kirsch explained that many other businesses in the area have open storage, however an office is also located at the site. This application is only for open storage.

The Board asked about the location of the applicant's business and Mr. Lavelle explained that the applicant has a home business and it will not be located on the site. The applicant would meet anyone wishing to use the site for storage at the gate.

Chair Saba asked if there were other questions. There were none. The meeting was closed to the public.

The Zoning Board of Adjustment reviewed the requirements for approval with the application and voted.

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

Discussion: The proposed use is not listed as permitted but it is not listed as prohibited. The proposed use is similar to uses surrounded it.

Mr. Kirsch explained that Section 250 of the Atkinson Zoning Regulations states that Atkinson has exclusionary zoning so if the proposed use is not listed as allowed, then it is not allowed. This is why a request for variance is needed.

Chair Saba agrees that the use is similar to the uses of surrounding property but wants to go on the record to state that he does not believe that the abutting properties have the right to the use either. Vice Chair Zannini stated that the other businesses are active and continue in the use. Mr. Kirsch stated that the Building Inspectors are aware.

**All members of the Atkinson Zoning Board of Adjustment present agreed that the requirements for Article V Section 510 (1) are met based on the application and the discussions as presented. Vote: 4/0/0. The vote is unanimous.**

2) The spirit of the ordinance is observed because;

Discussion: The site is in the industrial zone and would not offend the neighbors. The use is similar to other properties in the area. Chair Saba stated that there are permitted uses for the Industrial Zone but open storage is not one. Chair Saba asked if the proposed site would be

maintained as poorly as the Bay State site. Chair Saba asked the Code Enforcement Officer if the plan for the Bay State site is being enforced. The Code Enforcement Officer explained Chair Saba is correct, but the buildings are not being used. Also, that an occupancy permit has not been issued. There are 100's of containers stored there. The Code Enforcement Officer explained that the garage and office is not being used. Chair Saba stated that the garage and office are permitted use, however, the lot is being used to store containers. The Code Enforcement Officer explained that Bay State is only allowed empty containers. Vice Chair Zannini explained that some Towns have a mechanism for onsite inspections for compliance, but Atkinson does not. Mr. Lavelle explained that there is a bond in place but the site is not complete as yet. Chair Saba pointed out that the site is a mess, the site is being used but there is no occupancy permit and it is not built per approved plan.

**All members of the Atkinson Zoning Board of Adjustment present agreed that the requirements for Article V Section 510 (2) are met based on the application and the discussions as presented. Vote: 4/0/0. The vote is unanimous.**

3) Granting the variance will do substantial justice because;

Discussion: It will do substantial justice to the owner of the property and allow full productive use of the property and by observing his rights, the rights of the public will not be injured. Mr. Farris pointed out that the property is for sale and asked why the applicant is proposing the site plan. Mr. Lavelle agreed that the property is for sale and stated the applicant is still planning on making the improvements in the plans. Chair Saba stated that if it were sold, then the new owner would have to abide by the proposed site plan. By allowing his rights, you would not affect the general public. Vice Chair Zannini questioned if the use would affect the abutters.

Vice Chair Zannini stated that a Board, probably the Planning Board, has to decide how much can be stored on the site, what can be stored on the site and when the site is being accessed. If the restrictions are not met, then it is a Code Enforcement issue.

The Board discussed how the general public would be affected by approving the proposed site. Chair Saba stated that no abutters are present at the meeting, this type of use has been ongoing in the Commercial Industrial Zone and there have been no complaints. As far as #3 goes, denial would affect the applicant more than the general public.

There was no more discussion.

**All members of the Atkinson Zoning Board of Adjustment present agreed that the requirements for Article V Section 510 (3) are met based on the application and the discussions as presented. Vote: 4/0/0. The vote is unanimous.**

4) The values of surrounding properties are not diminished;

Discussion: Mr. Lavelle explained that it is an industrial type use, similar to surrounding properties. The property would not diminish the surrounding properties. By adding some landscaping and drainage the lot would be improved and look better.

Chair Saba asked about the abutters. Mr. Lavelle stated that there is a nearby empty lot owned by whom he believes is Atkinson Realty, ADC; and Bob Allen is also nearby. The Board

looked at the plans. Chair Saba stated that no abutters are present and no one has complained.

**All members of the Atkinson Zoning Board of Adjustment present agreed that the requirements for Article V Section 510 (4) are met based on the application and the discussions as presented. Vote: 4/0/0. The vote is unanimous.**

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 applicant stated that it is an industrial complex. It is similar to other uses around the site. The purpose of the ordinance is to make sure there is not a junk yard. This lot will be used for paid storage.

Discussion: The Zoning Board of Adjustment reviewed the permitted uses for the ordinance. There are three uses that are not permitted. The regulation states that enclosed storage is not allowed. Nonprofit use is not permitted. Mr. Kirsch explained that enclosed storage is allowed for Eastern Seaboard.

Vice Chair Zannini asked why enclosed storage is not allowed but paid parking is allowed. Interior warehousing is allowed. Also, self service storage facilities are allowed. The regulation gives a definition. It is defined as a miniware house and goes on to list what can be stored.

Vice Chair Zannini stated temporary storage outdoors like at Bryant Woods where Winnebagos, vehicles and boats which are stored outside and asked why it is allowed. Member Farris read the definition for enclosed storage.

**All members of the Atkinson Zoning Board present agreed that the conditions of Article IV, Section 410:8b (5)(a) are met. Vote: 4/0/0. The vote is unanimous.**

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

The applicant is asking for the variance because it is in the Industrial Zone. Also, if a roof were put over the lot, the proposed use would be permitted.

Discussion: Chair Saba stated that under GG – self storage facility, site plan development approval from the Planning Board is required. Also, it is a reasonable use. The Board discussed the size of the containers. A roll off container is about 400 square feet.

**All members of the Atkinson Zoning Board present agreed that the proposed use is a reasonable one and the conditions of Article IV, Section 410:8b (5)(b) are met. Vote: 4/0/0. The vote is unanimous.**

Chair Saba stated that all conditions have been met and requested a motion. Vice Chair Zannini asked who would determine the stipulations for approval, such as what is being stored

and how much. Mr. Lavelle stated that the Planning Board would be responsible for the specifics of the plan.

**Vice Chair Zannini made a motion to approve the Application of Variance from Article V Section 510 submitted by AROD Realty Group, LLC to allow the use of Industrial Property for Vehicle and Storage Container Storage on property at 19 Industrial Way, Map 16 Lot 56 in the CI Zone. Furthermore, this Board, as part of the approval, would require the applicant to obtain site plan approval; specify what is to be stored on the site; specify how much area in the lot is to be used for storage of each material proposed to be stored; the capacity of the lot needs to be determined; each type of storage needs to be contained within the proposed, outlined area; and the site must conform to the proposed plan when the applicant goes to the Planning Board with the proposed plan. Member Dave Farris seconded the motion. All members of the Atkinson Zoning Board of Adjustment present voted in favor. Vote: 4/0/0. The vote is unanimous.**

Chair Saba informed the applicant that there is a 30 day waiting period.

**Vice Chair Zannini made a motion to adjourn the June 8, 2016 meeting of the Atkinson Zoning Board of Adjustment. Member David Farris seconded the motion. All members of the Atkinson Zoning Board of Adjustment present voted in favor. Vote: 4/0/0.**

The next meeting of the Zoning Board of Adjustment will be July 13, 2016.