

## **ATKINSON ZONING BOARD OF ADJUSTMENT**

**21 Academy Avenue**

**Atkinson, New Hampshire 03811**

**Public Hearing Meeting Town Hall**

**Wednesday, November 8, 2023**

### **Members Present**

Glenn Saba, Chair

Arthur Leondires

Guy Wetherbee

### **Others Present**

Sue Coppeta, Planning & Zoning  
Administrator

Deputy Fire Chief David Holigan  
Ryan Lavelle, Lavelle Associates

### **Workshop 7:00 PM**

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

### **Public Hearing – 7:30 P.M.**

Chair Saba opened the public hearings at 7:30 PM, November 8, 2023.

1. Application submitted by Kelly Lacourse for Special Exception/Home Business, specified in the Zoning Ordinance, Article IV, Section 450 to operate “Kelly’s” (a hair salon) at property located at 51 Maple Ave, Map 9 Lot 38, TR2 Zone.

### **Abutters:**

Randy J. and Diane M. Nunley, Timothy E. and Kelly F. LaCourse (present), Steven Murphy, Joseph Abucewicz, Thomas M. Pignatiello II

Chair Saba informed the applicant that only three members of the Board were present so all votes had to be unanimous. He asked if she still wished to proceed. The applicant agreed to proceed. Ms. Kelly F. LaCourse came before the Board. Chair Saba asked her to explain her business.

Ms. LaCourse explained that this is a new business. She would like to put a salon in the breezeway just for herself and would do hair 20-25 hours a week.

Chair Saba stated he drove by and there is plenty of parking. Ms. LaCourse stated that at most there would be 2 customer cars at a time.

Chair Saba opened the hearing for discussion. There was none. Chair Saba reviewed the criteria.

A permit for a home occupation shall be allowed in residential zones by special exception from the Board of Adjustment if the occupation complies with the following:

- a. A proposed occupation shall be incidental and secondary to the use of the property as a dwelling and shall not consume more than 20% of the gross residential building space, and not change the residential character of the premises thereof. (1992)

The applicant agreed. The application states that the proposed home business will use around 10% of the gross residential building space.

**Vote: 3/0/0. All members of the Zoning Board of Adjustment present agree that the criteria for Article IV Section 450:2 (a) have been met.**

- b. Unless exempted by Section 450:4-a, no home occupation shall take place in a multi-family dwelling.

It is a single family home.

Discussion: none

**Vote: 3/0/0. All members of the Zoning Board of Adjustment present agree that the criteria for Article IV Section 450:2 (b) have been met.**

- c. The occupation may be carried on by the occupant's immediate family residing at that location and by one or more additional employees whose aggregate hours of work at that location do not exceed eighty hours per week (80 hours/week). The foregoing limitations on the aggregate hours of work per week by additional employees shall not apply in the case of medical, dental or veterinary home occupations. (2007)

Discussion: It will just be the applicant.

**Vote: 3/0/0. All members of the Zoning Board of Adjustment present agree that the criteria for Article IV Section 450:2 (c) have been met.**

- d. There shall be no physical evidence of equipment or materials outside the dwelling.

Discussion: The applicant stated that there will be none.

**Vote: 3/0/0. All members of the Zoning Board of Adjustment present agree that the criteria for Article IV Section 450:2 (d) have been met.**

- e. Adequate off-street parking areas must be provided. Parking areas in excess of those necessary for normal residential purposes may be allowed in side and rear yards only provided the residential character of the environment is preserved. (1992)

Discussion: Chair Saba stated that the ordinance says side and rear but there is a horseshoe driveway and it is wide so it should be adequate. The applicant agreed.

**Vote: 3/0/0. All members of the Zoning Board of Adjustment present agree that the criteria for Article IV Section 450:2 (e) have been met.**

- f. When necessary, further restrictions shall be placed on the occupation in order to comply fully with Article IV, Section 400:2 of this ordinance.

Discussion: Any uses that may be obnoxious or injurious. The applicant stated that the business will be conducted entirely inside.

**Vote: 3/0/0. All members of the Zoning Board of Adjustment present agree that the criteria for Article IV Section 450:2 (f) have been met.**

- g. A permit to operate a home occupation shall be issued to the owner/occupant only and is not transferable to a subsequent owner. A permit to operate a home occupation shall be issued to the owner/occupant only, and is transferable to a subsequent owner who will certify to the Zoning Board of Adjustment in writing that he or she will continue the home occupation on the same terms and conditions as the previous owner/occupant. (2007)

Discussion: The applicant agreed.

**Vote: 3/0/0. All members of the Zoning Board of Adjustment present agree that the criteria for Article IV Section 450:2 (g) have been met.**

- h. The applicant shall complete and sign a form that sets forth the nature of the home occupation and provides details of the business and its scope of operation.

Discussion: Agreed.

**Vote: 3/0/0. All members of the Zoning Board of Adjustment present agree that the criteria for Article IV Section 450:2 (h) have been met.**

- i. No home occupation that will result in heavy truck use in excess of 20,000 lbs. gross vehicle weight shall be allowed. (1992)

Discussion: Agreed.

**Vote: 3/0/0. All members of the Zoning Board of Adjustment present agree that the criteria for Article IV Section 450:2 (i) have been met.**

- j. Vehicles registered to a home business or occupation must comply with the provisions of Section 480:1. (1992)

Discussion: There are no vehicles registered to the business.

**Vote: 3/0/0. All members of the Zoning Board of Adjustment present agree that the criteria for Article IV Section 450:2 (j) have been met.**

Chair Saba read from the ordinance. The applicant agreed to all provisions. Member Leondires listed the findings of fact.

## **Findings of Fact**

- Operating a hair salon
- Approximately 15-20 hours per week
- No signs or evidence or equipment or material
- It is a new business
- No more than 2 customer cars at any time
- Single family dwelling
- Applicant has met all the criteria.

**Member Leondires made a motion to approve the Application submitted by Kelly Lacourse for Special Exception/Home Business, specified in the Zoning Ordinance, Article IV, Section 450 to operate “Kelly’s” (a hair salon) at property located at 51 Maple Ave, Map 9 Lot 38, TR2 Zone. Alternate Wetherbee seconded the motion. Vote: 3/0/0. Unanimous.**

Chair Saba reminded the applicant that there is a 30 day period and any work done during that period will be done at the applicant’s risk.

The applicant asked about the form and the inspection. Chair Saba instructed her to talk to the Zoning Administrator who would help her.

**2. Application by Scott Bilodeau for a Special Exception under Article VII Section 700:1a to allow the extension, expansion, enlargement or alteration of a nonconforming use on property located at 1 Rocky Point Lane, Map 22 Lot 27, in the RR3 Zone. Alteration will be add dormers to the attached garage.**

## **Abutters:**

Mildred Reynolds, Paradise Realty Trust, Kalil, Robert A. TTE, Bilodeau, Scott & Gretchen Liv, Bilodeau, Scott & Gretchen Liv, TT (present), Reidel, Mary A., Reidel Robert & Susan C. (present), Robert J. Blaser, John T. Mason, Jr., Chase Island Assoc. (present), Jaguar Realty Trust, Kalil, Teresa TTE, Big Island Pond Corporation

Chair Saba informed the applicant that only three members of the Board are present so all votes have to be unanimous. He asked if he still wished to proceed. The applicant agreed to proceed.

## **Discussion:**

Chair Saba requested the applicant speak about the application. The applicant explained that he has an existing garage and would like to add some dormers for light. The garage was built in 2001 but was never finished. There is already electrical, a sprinkler system and a door. The dormers will be on both sides. Member Leondires commented that the dormers would let some light in and give some headroom.

There was no more comment from the Board members.

Chair Saba opened the hearing to the public.

Robert Reidel, 3 Rocky Point Lane spoke. He stated the applicant's garage is very close to his home. The garage was built with an exception because it is too close to the lot line. The applicant had the property surveyed. The entire plot of that area was redone, including the lot line which changed the dimensions and the angle of the line between them. It has taken his property and resulted in disagreement so they will be going to court. The abutter has not hired a surveyor as of the time of the hearing. The abutter has measured it. There is a permanent marker between the two lots near the water. He saw the prior owner move the peg between the two lots. Chair Saba commented that mistakes are made and a surveyor is hired to do research and figure out what the actual boundaries are through their research.

Chair Saba informed the abutter that this is an existing structure and the applicant is not changing the footprint of the structure. Mr. Reidel stated that when the garage was built it was a different plan from the plan that was approved. He stated that he doesn't believe that what was build ever received approvals. Chair Saba stated that even if that is the case, it is an existing structure that has been there since 2001. The abutter stated that building the dormers would cause diminution of the property values. Chair Saba asked how building the dormers would cause diminution of the property values. The abutter replied that it would lower his property values and the size of his lot because it establishes a new plot plan. The dormers can also block sunlight to his property, it is that close to the lot. Chair Saba asked how adding a dormer could block sunlight because the ridge is the highest point of the roof line. The abutter replied that as the sun comes up, instead of coming past the roof, it will hit the roof of the dormer and block the sunlight from his lot and diminish the value of his property. Chair Saba asked if the problem is because the lot line might have changed. The abutter replied that the lot line is the main problem. Chair Saba asked how changing the lot line affects how the sun comes down. The abutter replied that the argument on the lot line is that the applicant is taking his property. Chair Saba responded that the Board cannot discuss that at this hearing, it is beyond the purview of the Board. The abutter responded that changing the lot line shrinks his property. Chair Saba informed him that the dormer is the issue before the Board and if allowing the dormer will cause diminution of his property. Mr. Reidel informed the Board that other abutters object to changing the lot line as well but the issue is how the dormer causes diminution of the property.

The applicant spoke stating that the sun comes up in the east and the dormer on the side of the abutter, Mr. Reidel, is on the north side and would not affect sunlight on the abutter's property. The abutter's house is not directly across from the garage. The applicant showed the Board how the sun would circle the abutter's dwelling. The abutter's dwelling is lower than the garage and the elevation of his home is lower. Mr. Reidel commented that the sun comes up in different positions throughout the year. The abutter stated that the applicant is also expanding the size of his living area which also diminishes the value of other properties in the area. Chair Saba stated that that the Board would need to determine that.

The Chase Island Association representative, Deputy Holigan, stated that the Association has not had a meeting to discuss the proposed dormers. He believes the Association generally supported the original house changing but he cannot comment one way or the other on the

application.

Chair Saba asked for further comments from the abutters. There was none so public participation was closed. The Chair requested further comment from the Board. There was none.

Chair Saba stated that this is a nonconforming use and special exception. If the applicant meets all the criteria, the Board can grant it, if not then the Board cannot allow it. Chair Saba stated that the applicable paragraphs of the ordinance are 700:1 (a) and (e).

**NONCONFORMING USES: 700:1 - ANY NONCONFORMING USE, AS THAT TERM IS DEFINED IN ARTICLE II**

**I, MAY BE CONTINUED IN ITS PRESENT FORM EXCEPT AS PROVIDED HEREIN:**

- a. No extension, expansion, enlargement, or alteration of a nonconforming use will be allowed without the granting of a Special Exception by the Board of Adjustment. This Special Exception shall be issued in the form of a special permit which shall expire within one (1) year unless acted upon by the permittee.

Discussion: none

- e. A Special Exception shall be granted by the Board of Adjustment provided the following conditions are met for the non-conforming use:

- 1) There is no diminution of the value of surrounding properties.

Discussion: Chair Saba stated that the application states that there will be no diminution of the value of surrounding properties and will enhance the esthetics of the house.

Chair Saba requested Member Leondires review the findings of fact for the Board.

**Findings of Fact:**

- Adding dormers to the garage will finish the space
- The space is unfinished
- There is a door
- The dormers will give height and bring light into the space
- The house was built in 2001 and the garage has been unfinished for 22 years.
- There was discussion on sunlight and the affect of the dormers on neighbors but there is no consensus
- The discussion on plot line is not in the purview of the Board

Chair Saba stated that looking at the plan in front of him and knowing that the sun rises in the east, the question is how low in the sky it is. The abutter stated that the applicant's lot is to the east. Chair Saba stated that the Board is looking at a stamped plan. The abutter objects to the stamped plan. Chair Saba stated that if the abutter has objection to the

stamped plan then it is a civil matter. The Board can only address what is in front of them and if anything in the plan is inaccurate it would have to be addressed by the Court.

The abutter asked if it shows north and south and Chair Saba replied that it does. The applicant pointed out the direction of sunrise in front of his house, where the house, garage and dormer are located and the location of the abutter's house. Also, he agreed that the peak of the roof will be at a higher point than the dormer and the dormer will be on the other side of the sun.

Alternate Wetherbee asked if the applicant had a more detailed plan. Member Leondires asked how far the dormer sticks out. The applicant informed the Board that it is a shed dormer so it will be lower than the pitch of the roof. The applicant informed the Board that the room is 15 feet wide by 22 feet. Member Leondires asked the size of the dormer and the applicant responded that the width of the dormer is 11 feet. Alternate Wetherbee informed the applicant that if the dormer is even a foot back, it will not have an appreciable effect on the sun. He suggested the applicant do a sun study. The applicant stated that the window manufacturer recommends a minimum of 8 inches to a foot so that is what the applicant planned for.

Alternate Wetherbee stated that there are other options, but because the applicant is not going above the ridge line and it is set back at least a little bit, in his experience that is usually not a problem for sunlight on properties. Alternate Wetherbee reviewed the stamped plan and the original plan with the abutter. The original plan and the stamped plan both show the location of the structure to the abutter, the lot line and the distance to the abutter's dwelling. Alternate Wetherbee stated that there are discrepancies between the two. Alternate Wetherbee stated that there are seven feet from the applicant's dwelling and the property line and another 7 to 10 feet from the property line to the abutter's dwelling on the stamped plan. Chair Saba asked Alternate Wetherbee his opinion and Alternate Wetherbee stated that the proposed dormers would have no effect on sunlight occurring on the abutter's property. Chair Saba agreed.

The Board had no more discussion on diminution. Chair Saba stated that the Board has always ruled that any improvement to a property is a bonus, the house is beautiful. Member Leondires stated that there would be a finished space, the dormers look nice, it would increase the value for everyone.

**Vote: 3/0/0. All agree.**

2) It would be of benefit to the public interest.

Discussion: The application states that the additional living space will increase the taxes paid to the town and the property value. Chair Saba stated that he does not see a detriment to the public interest. Member Leondires agreed.

There was no more discussion.

**Vote: 3/0/0. All agree.**

3) It would result in substantial justice being done.

Discussion: The application states that the work being done will not affect others. Member Leondires stated that the applicant is making use of his space. Chair Saba read from the ordinance which states that substantial justice is any loss to the individual which is not outweighed by a gain to the general public is an injustice. Chair Saba asked if denying the application would be a gain to the general public and the Board agreed that denial would not be a gain to the general public.

**Vote: 3/0/0. All agree.**

4) It would comply with Sections WS300 of the Atkinson Water Supply and Sewage Disposal regulations.

Discussion: There are no changes to the water and sewer system, there is no water or sewer piping over the garage because neither a bathroom nor a sink are being added. The abutter asked if the applicant could be adding a bedroom. Chair Saba replied that the proposed dormer windows are not egress windows.

**Vote: 3/0/0. All agree.**

**The four criteria are met.**

Chair Saba requested a motion.

**Member Leondires made a motion to approve the Application by Scott Bilodeau for a Special Exception under Article VII Section 700:1a to allow the extension, expansion, enlargement or alteration of a nonconforming use on property located at 1 Rocky Point Lane, Map 22 Lot 27, in the RR3 Zone. Alteration will be to add dormers to the attached garage. Alternate Wetherbee seconded the motion. All members of the Atkinson Zoning Board of Adjustment voted in favor. Vote: 3/0/0. The motion passes.**

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

Mr. Reidel asked about his objections. Chair Saba stated that his argument has been heard and the Board has determined that there is no hardship. Mr. Reidel asked how to file an appeal. Chair Saba informed him that he could call the Zoning Administrator and she will explain it to him.

Chair Saba also informed Mr. Reidel that in his appeal he would have to state what the Board did not know at the hearing which might have changed the opinion of the Board.

As far as the lot line discrepancy, the abutter may have an argument, but it is not the purview of this Board. Chair Saba stated that the plan presented by the applicant is stamped by an engineer so the Board has to accept it. The abutter stated that it diminishes his lot and is different from the prior plan. Chair Saba stated that that is a civil matter and not a matter for the Board. He requested to end the discussion and move to the next hearing.



**3. Application by James Lavelle Associates for Patricia Woodman for a Special Exception under Article VII Section 700:1a to allow the extension, expansion, enlargement or alteration of a nonconforming use on property located at 19 Stickney Rd, Map 23 Lot 23, in the RR3 Zone. Alteration will be to add a second deck over an existing deck.**

**Abutters:**

Conleys Grove Improvements c/o Ann Woodman, Patricia Woodman (present), Heinrich, Dorothy Trust, Heinrich, Dorothy, TTEE (present), McCarthy Realty Trust, McCarthy Frederic G. & Mary J. TTEE, Nicholas Fabrizio (present), Blaine & Mary Ellen Austin, Gillam Clare M. Rev. Trust, Gillam Clare M. TTE, Big Island Pond Corporation, James Lavelle Associates (present)

Discussion: Mr. Ryan Lavelle, James M. Lavelle Associates came before the Board to represent the applicant. Chair Saba asked if there was a letter of representation in the application. There was none but Chair Saba allowed Mr. Lavelle to proceed.

Mr. Lavelle gave the Board a new set of plans. Chair Saba asked if the application is regarding the side of the house. Mr. Lavelle replied that is correct and an open air deck is being proposed. Mr. Lavelle stated that he has two plans, one of the existing conditions and one of the proposed conditions. He stated that not much had changed. The applicant is replacing the existing deck with a new one on the lower level because it is falling apart. Then the applicant proposes to increase the value of their home by adding a balcony deck directly above it with door access. The proposed deck will not be going any closer to the lot line than the existing deck on the ground level. The footprint is not changing, just the overhead. The door is not changing the footprint.

Chair Saba informed Mr. Lavelle that only three members of the Board are present so all votes have to be unanimous. Chair Saba asked if Mr. Lavelle still wished to proceed. Mr. Lavelle agreed to proceed.

Chair Saba asked for questions from the Board.

Member Leondires affirmed that the dimensions of the deck are staying the same and Mr. Lavelle agreed, stating that the applicant is proposing to replace the deck on the lower level because it is rotted and adding a deck above it on the three quarter floor of the same dimension. He believes it is 6 feet by 12 feet.

Chair Saba opened the hearing to the public.

Ms. Dorothy Heinrich asked if this application only covers the specific project. Chair Saba explained that it is a special permit and in order to do any work outside of the home a special permit is needed. All that is being discussed at this hearing is an open air deck above an existing open air deck.

Mr. Nicholas Fabrizio asked if the proposed deck is going higher than the second part of the roof. Alternate Wetherbee pointed out that part is above the eave but it is a technical point and the proposed deck does not go over the roof line.

Deputy Fire Chief Holigan stated that a new extended third floor is shown on the second page of the plans and asked if the applicant is just putting beams in to cantilever the deck out and not changing the square footage. Mr. Lavelle stated that is correct. Chair Saba asked if the applicant proposed to cantilever it or install posts. Mr. Lavelle responded that the applicant proposed to install posts.

Alternate Wetherbee asked if the bump out was new. Ms. Woodman responded that the applicant is extending the left side of the upper part of the proposed deck to the existing roof line. Mr. Lavelle agreed that there is an approximate 6 foot extension. The applicant is proposing to frame that section so that it connects to the existing balcony. Alternate Wetherbee pointed out a small addition to the Board. Deputy Chief Holigan stated that there seems to be a change in the square footage and if it were extensive then a fire inspection would be required but it looks like this change is relatively small. Ms. Woodman informed the Board that the applicant is proposing to bump out two walls in order to connect to the bottom half of the house. She stated that there is a section there and the applicant proposes to bring it to the end by six feet.

Chair Saba reviewed the application again and stated that the applicant is proposing an extension of living space as well as the open air deck. He stated that the application is not very clear and needs to be discussed. He read the application for the audience "...the proposed addition of the second floor to the existing deck..." and pointed out that there is no deck on the second floor. Mr. Lavelle informed him that the applicant was referring to the new extension of the third floor and the deck would be the one above. Chair Saba agreed that technically the bump out does not extend the footprint of the dwelling but it does extend the envelope of the home. Chair Saba said that the application states that the alteration would be to add a second deck over an existing deck so when he did a drive by he envisioned a second floor deck with no living space being included or walls expanded. Ms. Woodman explained that the second floor deck is going up and there is six feet to where the actual top part of the home is so the applicant proposes to bring it over six feet so residents can walk out on the deck. She informed the Board that there are two bedrooms on the three quarter floor. The proposed addition will not go beyond the existing roof line. Mr. Lavelle stated that a new roof would be added above the proposed deck.

Chair Saba requested Mr. Fabrizio come before the Board to review the plan with him. Mr. Fabrizio is concerned that the addition will block his view. Chair Saba pointed out the front of the house and how the roof would go all the way to the back. He asked Mr. Fabrizio if the proposed addition would affect him. Mr. Fabrizio responded that he is not sure. Chair Saba asked if his view would be over the proposed deck or the house. Mr. Fabrizio responded that it would be both because it was a half roof. Chair Saba is concerned that the proposed addition would not allow Mr. Fabrizio to see over because the applicant is proposing a shed, where the addition ends. Chair Saba informed the applicant that he would like to make another drive by for sight vision because the application is not clear.

Chair Saba requested discussion from the Board. Member Leondires agrees that the application is not clear. Alternate Wetherbee stated that the bump out becomes an issue because it is an expansion of an existing nonconforming use where the decks might not be as big of an issue, square footage upstairs is something the Board would want to consider. If the deck went all the way back to the roof and that extrusion was not there, then the application could be approved. Member Leondires asked if the extension was on the chimney side and Ms. Woodman informed him that the chimney was removed. Alternate Wetherbee informed the applicant that it is a different consideration than just the decks. Chair Saba stated that the Board needs to make sure that the public notice was correct and that another drive by is needed to see if the abutters are affected. Chair Saba pointed out that one wall is being moved out according to the plan and will be the same plane as the edge of the present chimney. Alternate Wetherbee stated that the wall would be on the same plane as the first floor. Ms. Woodman explained that the chimney is coming out and pointed out that the room would only be going to the peak. The wall will be even with one of the windows on the bottom.

Chair Saba asked Mr. Lavelle how he wished to proceed. Mr. Lavelle stated that he would prefer to review the application and ask for an extension. Mr. Lavelle requested an extension. Chair Saba requested a motion.

**Member Leondires made a motion to continue until December 13, 2023 the application by James Lavelle Associates for Patricia Woodman for a Special Exception under Article VII Section 700:1a to allow the extension, expansion, enlargement or alteration of a nonconforming use on property located at 19 Stickney Rd, Map 23 Lot 23, in the RR3 Zone. Alteration will be to add a second deck over an existing deck. Alternate Wetherbee seconded the motion. All members present voted in favor. Vote: 3/0/0. The motion passes.**

**Member Leondires made a motion to close the public hearing. Alternate Wetherbee seconded the motion. All members present voted in favor. Vote: 3/0/0. The motion passes.**

Chair Saba closed the public hearing at 8:26 PM.

#### **Approval of Minutes:**

**Member Leondires made a motion to approve the minutes of the October 11, 2023 meeting as amended. The motion was seconded by Alternate Wetherbee. The members of the Atkinson Zoning Board of Adjustment present voted in favor. Vote: 3/0/0. The vote is unanimous.**

Chair Saba requested a motion to adjourn.

**Member Leondires made a motion to adjourn. Alternate Wetherbee seconded the motion. All members of the Atkinson Zoning Board of Adjustment voted in favor. Vote: 3/0/0. The motion passes.**

The meeting was adjourned at 8:30 PM. The next regular meeting of the Atkinson Zoning Board of Appeals is scheduled for December 13, 2023 at Atkinson Town Hall.