

ATKINSON ZONING BOARD OF ADJUSTMENT

21 Academy Avenue

Atkinson, New Hampshire 03811

Public Hearing Meeting Town Hall

Wednesday, December 13, 2023

Members Present

Glenn Saba, Chair
Bob Connors, Vice Chair
Arthur Leondires
Kevin Wade
Guy Wetherbee, Alternate
Scott Sullivan

Others Present

Ryan Lavelle, James Lavelle Associates

Workshop 7:00 PM

Approval of Minutes:

Member Leondires made a motion to approve the minutes of the November 8, 2023 meeting as . 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.

Correspondence: none

Call to Order: Chair Glenn Saba called the meeting to order at 7:30 PM. Chair Saba stated that Alternate Wetherbee would participate in discussions but would not vote. There will be three hearings. Member Art Leondires will be keeper of the findings of fact.

Public Hearing – 7:30 P.M.

Chair Saba stated that there is a hearing continued from last meeting and he has a request to dismiss. A new, modified application has been submitted and will be heard at this meeting.

Vice Chair Connors made a motion to dismiss without prejudice 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. Member Scott Sullivan seconded the motion.

Discussion: None.

Vote: 5/0/0. All in favor. The motion passes

1. Application by James Lavelle Associates for Patricia Woodman for a Special Exception under Article VII Section 700:1(a) 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 and will also include an expansion of living space and change of roofline to provide access to the deck. *(This application is a modified application from the November 8, 2023 public hearing which was continued.)*

Abutters:

Conleys Grove Improvements c/o Ann Woodman, Patricia Woodman (present), Heinrich, Dorothy Trust, Heinrich, Dorothy, TTEE, 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 Lavelle Associates came before the Board to represent the applicant. Mr. Lavelle explained that this is a new, modified application from the one presented at the November 8, 2023 hearing. The application presented at the November 8, 2023 hearing did not correctly represent the expansion of the second story. In the new application, the drawing for the second story balcony was changed. The site plan for the modified application shows a connection to the balcony and the second story addition, and the plan was updated to show the second story addition as 78 square feet. It is easier to see on the architectural drawings what the roof lines will look like. Pictures of what the house looks like now and what it will look like afterwards have been provided.

Vice Chair Connors stated that the area where the window is now will be changed and a door and balcony will be added. Chair Saba stated that the application at the last hearing showed that living space will be added to get the door to fit and allow the space to reach the deck. There is no roof over the second story deck and the first story deck is being replaced. Mr. Lavelle stated that the expansion of 78 square feet of living space is to allow the room on the second floor to gain access to the balcony. Vice Chair Connors stated that the upstairs is gaining 78 square feet but the deck is already there, so the footprint will not change.

There was no more discussion by the Board.

Chair Saba opened the hearing to the public.

Mr. Nick Fabrizio asked if the area would go any higher. Mr. Lavelle stated that it will not go any higher, it is an expansion to allow Ms. Woodman access to the balcony. It was intended that the proposed modification match the current roof line. Because of the discussion regarding the roof line at the November 8, 2023, pictures of the current roof line and the proposed roof line have been added. Mr. Fabrizio reviewed the plans. Member Leondires stated that there will be a continuation of about six feet to the tall ridge for a small section in order to connect to the balcony. Mr. Lavelle agreed.

There was no further discussion. Chair Saba closed the hearing to the public.

Chair Saba asked the members of the Board for further discussion. There was no more comment from the Board.

Mr. Leondires read the findings of fact.

Findings of Fact:

- The motion to dismiss the previous application was approved
- The updated application shows a second story expansion
- The first floor deck is being replaced
- 78 square foot expansion to access new second story deck
- Expansion matches existing roof line

Chair Saba requested the Board to review the conditions. The applicable paragraphs of the ordinance are 700:1 (a) and (e). 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.

NONCONFORMING USES: 700:1 - ANY NONCONFORMING USE, AS THAT TERM IS DEFINED IN ARTICLE III 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: Vice Chair Connors stated that the new decks would be an enhancement. Chair Saba stated that there is an improvement, the deck below is in need of repair and will be replaced.

There was no more discussion. Chair Saba requested a vote.

Vote: 5/0/0. All agree.

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

Discussion: Vice Chair Connors stated that anyone updating their house is benefiting everyone. Chair Saba commented that it would increase the value of the house and the tax base. The Board agreed.

There was no more discussion. Chair Saba requested a vote.

Vote: 5/0/0. All agree.

- 3) It would result in substantial justice being done.

Discussion: Substantial justice is defined as denying the application would be a gain to the general public that would outweigh a loss to the applicant. Vice Chair Connors stated that he did not believe denying the application would be a benefit to the public.

There was no more discussion. Chair Saba requested a vote.

Vote: 5/0/0. All agree.

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

Discussion: No plumbing is being added and the septic is in good working order. Chair Saba asked Mr. Lavelle if he applied to the State for a permit since it is in a watershed. Mr. Lavelle responded that the footprint did not change so he does not believe a wetlands permit is necessary. Mr. Sullivan asked that the applicant confirm with NHDES that a permit is not required. Mr. Lavelle will contact NHDES for a permit.

There was no more discussion. Chair Saba requested a vote.

Vote: 5/0/0. All agree.

The four criteria are met.

Chair Saba requested a motion.

Vice Chair Connors made a motion to allow 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 and will also include an expansion of living space and change of roofline in order to provide access to the deck.

Chair Saba informed the applicant that any work done prior to the end of the 30 day appeal period will be at the applicant's own risk.

2. Application by John Pomer 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 4 Hemlock Shore Dr, Map 22 Lot 114, in the RR2 Zone. Alteration will be to increase the size of the existing porch from approx. 4' x 6' to 10' x 12'.

Abutters:

Nijhof Family Rev. Trust, Jeroen and Sally Nijhof, TTEE; Gorrow, Lorraine D. Rev. Trust, Diane Gorrow, TTE; Keith E. Miller; Kenneth M. and Mary Ann Burrridge; Derik Honrado and Kimberly Fritsch; Justin J. Craig; Kelly Snell; John Palmer (present); Meadowsend Timberlands LTD; Matthew Berube

Chair Saba informed the Board that Diane Gorrow sent an email in support of the application and read it into the record.

“...I am an abutter to John Palmer’s property. He has applied for a special exception to enlarge his deck. I am not able to attend the December 13, 2023 hearing but want to let you know that I support the application. At .7 acres, John’s lot is significantly larger than the other lots in the area and has ample room for a 10’x7’ deck. Granting the special exception will not diminish the value of my property or other properties in the area...”

Mr. Pomer appeared before the Board to explain the application. He stated that the left side of the house, looking at the front, is where he is proposing to put the deck. There is a six foot sliding door and a 4’ by 6’ foot landing with four steps. Mr. Pomer explained that the landing was rotting, so he took it down and subsequently asked for a permit to make it bigger, expanding it to 10’ by 12’ so the applicant can sit out there and use it.

Chair Saba that he did a drive by and noted that the lot is a fairly large parcel compared to others in the vicinity. He stated that he sees no issue with setbacks.

Chair Saba asked if there were comments from the Board. Member Sullivan asked if the language in the application could be corrected from “porch” to “deck”. The application for appeal states the structure will be a porch and the construction in the application appears to fit the definition of a deck. Chair Saba asked if this would be the main entrance to the house and the applicant replied, no the main entrance faces Hemlock Shore Drive. Member Sullivan stated that any time “porch” is used it should be replaced with “deck”.

Member Sullivan stated that he is looking at the plan, it is a large, rectangular lot that does not appear to come close to encroaching setbacks, this is a special exception for a nonconforming lot to install a recreational deck, it is not a habitable space, it is a recreational space. It seems natural.

Chair Saba asked if the applicant installed a new septic system and moved the well. Mr. Pomer replied that the septic was installed in 2002. Mr. Pomer showed the location of the well on the plan. It is approximately 100 feet from the deck. Member Leondires stated that it was irrelevant to the proposed deck because no bathrooms are being added.

Chair Saba asked if there was more comment from the Board. There was none.

Chair Saba opened the hearing to the public. There was no comment from the public.

Chair Saba requested the findings of fact be read into the record and Member Leondires read them.

Findings of Fact:

- Applicant is proposing to increase the deck size from 4 feet by 6 feet to 10 feet by 12 feet, approximately 5 times the size of the original deck
- The old deck was rotted, has subsequently been removed and needs to be replaced
- The deck will be on the side of the house
- There are no setback issues

Chair Saba requested to go through the criteria.

NONCONFORMING USES: 700:1(a) - ANY NONCONFORMING USE, AS THAT TERM IS DEFINED IN ARTICLE III, 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.
- 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: Vice Chair Connors stated there will be no diminution to the surrounding properties. Chair Saba stated that the applicant is proposing to replace an existing, smaller, rotted deck with a new, bigger deck.

There was no more discussion. Chair Saba requested a vote.

Vote: 5/0/0. All agree.

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

Discussion: Member Sullivan stated it will be an enhancement to the dwelling unit and the property. Chair Saba stated it will also be an enhancement to surrounding properties. Vice Chair Connors stated it would not add much value to the house but it will certainly not diminish it and the neighbors will have something to look at besides a broken down deck.

There was no more discussion. Chair Saba requested a vote.

Vote: 5/0/0. All agree.

- 3) It would result in substantial justice being done.

Discussion: Chair Saba does not see a gain to the general public by denying. All members agree.

Vote: 5/0/0. All agree.

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

Discussion: The applicant informed the Board that no bathrooms will be added and nothing will be changed inside.

Vote: 5/0/0. All agree.

The four criteria are met.

Chair Saba requested a motion.

Member Leondires made a motion to allow the Application by John Pomer for a Special Exception under Article VII Section 700:1(a) to allow the extension, expansion, enlargement, or alteration of a nonconforming use on property located at 4 Hemlock Shore Dr, Map 22 Lot 114, in the RR2 Zone. Alteration will be to increase the size of the existing deck from approx. 4' x 6' to 10' x 12'. Vice Chair Connors seconded the motion. Vote: 5/0/0. All in favor. Unanimous.

Chair Saba informed the applicant that any work done prior to the end of the 30 day appeal period will be at the applicant's own risk. Member Sullivan informed the applicant that the special exception was approved and now he needs a building permit.

Other Business:

Motion for Rehearing:

Robert Riedel (3 Rocky Point Lane) is asking for a rehearing on the Approval for a Special Exception – Expansion of Nonconforming Use (Article VII Section 700:1) to allow the issuance of a building permit to add dormers to the attached garage on property located at 1 Rocky Point Lane (Map 22 Lot 27).

Chair Saba read excerpts from the Zoning Board of Adjustment Handbook into the minutes:

“...When a motion for rehearing is received, the Board must decide to either grant the rehearing or deny it. If the Board decides to grant the rehearing a new public hearing is scheduled with new notice to everyone and the process moves forward. If the Board decides to grant the rehearing, it must set the date for the new hearing. If, in its review of the motion for the rehearing, the Board feels compelled to add additional reasons for denial beyond those issues raised in the motion, they should grant the motion, hold a new hearing and include their additional reasons in a new denial decision. It is recommended that the meeting to consider a motion for rehearing not be a public hearing and that no testimony is taken. If the Board believes there are sufficient grounds to reconsider their original decision, the motion should be granted. If not, the motion should be denied. A person has the right to apply for a rehearing and the Board has the authority to grant it. However the Board is not required to grant the rehearing and should use its judgement in deciding whether justice will be served by doing so. If the Board reverses a decision at a rehearing, a new aggrieved party results and that party has 30 days in which to appeal for a rehearing on the new decision.

It is assumed that every case will be decided originally only after careful consideration of all the evidence on hand and on the best possible judgment of the individual members. Therefore, no purpose is served by granting a rehearing unless the petitioner claims a technical error has been made to his detriment or he can produce new evidence that was not available to him at the time of the first hearing. The evidence might reflect a change in conditions that took place since the first hearing or information that was unattainable because of the absence of key people or for other valid reasons. The Board and those in our position to the appeal should not be penalized because the petitioner has not adequately prepared his original case and did not take the trouble to determine sufficient grounds and provide facts to support them....”

Chair Saba asked the Board if there were any questions.

Chair Saba stated that last meeting the applicant submitted an application to put dormers on his attached garage towards the street side of his property. The front side of these properties are facing Big Island Pond. There was discussion on whether the proposed dormers would affect sunlight to the abutter. Chair Saba stated that in his understanding and according to his research, any structure can affect sunlight or someone else's view. Anyone can make that case. The question is, is it unreasonable and are there any provisions in a deed or an agreement that state that the structure will not block a view or block the sun. Chair Saba believes it was never presented to the Board that there was ever any deed restriction or agreement. He did find that the property was originally in front of the Board and granted permission to build with a contingency. The contingency was that there would be a crawl space basement, possibly due to height issues, and that crawl space could never be improved to living space. That was the only condition. He believes that in the Board's discussion, they looked at a site plan and some members did drive-bys.

Chair Saba read what was presented in the application for rehearing and the motion. The following was sent to the Zoning Board Administrator.

"...The decision by the Zoning Board of Adjustment on November 8, 2023 was influenced by a false statement by the applicant for the special exception. The applicant for the special exception stated that the objection by the abutter was not true and that there would not be a blockage of sunlight. The attached first two photos of the applicant's garage and house at the top of the hill show the current blockage of the sunlight to the abutters, the property of Mr. Reidel. It also shows the slope of the shadow on a 3 Rocky Point Lane building, the lower building at the right of the photo. The slope of the shadow is caused by the slope of the garage roof. If a dormer were to be added to the garage roof the shadow that shows that it would cause additional blockage of sunlight. There is also a third photo from the window of our building, 3 Rocky Point Lane. That has the daylight of the sky partially blocked by the garage currently and if a dormer were added, the sky would be almost completely blocked..."

There are some color photos as well.

Chair Saba requested comments from the Board. Vice Chair Connors requested to read the findings of fact from the hearing on November 8, 2023.

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 lines is not in the purview of the Board

Vice Chair Connors has been on the Board for seven years and does not believe an application has ever been denied because it affects sunlight or views. He asked if there were some shading caused by the improvements would it have any impact on the

decision.

Chair Saba replied that the Board looked at it, and the plot plan. The consensus was that based on the distance between the buildings, and because the dormer was not any higher than the existing ridge line, the Board decided that if there was any shadowing effect, it would be minimal and that the Board did not believe it would be enough to say no to the applicant and deny the request. Vice Chair Connors reiterated that the Board never has, even if a building was blocking the building behind them. Chair Saba stated that unless there is a deed restriction or some other agreement, the Board would be treading on thin ice to stop a project because of an abutter's claim.

Member Wade recalls a detailed discussion on where the sun comes up on every building. Vice Chair Connors stated he understands the issue for the neighbors but he believes that the Board has a legal ground to say no to the application solely because of the sun.

Chair Saba stated that he agrees and he does not see any evidence to change the Board's opinion. The sun may be setting below the applicant's roof line but he has every right to build or improve as in this case on his lot. All within reason.

Alternate Wetherbee stated that he did some extra research on this project. Initially, what was before the Board was not sufficient to say whether the sun would affect this. He has done sun studies in other towns in Massachusetts, but in those cases, it was done when a second or third story would be built. One woman had a beautiful garden, they did a sun study and found that it would cover the garden by just a foot and it got denied. There is precedent, but it is extreme. Sun studies are usually done to mitigate the fear that a structure would excessively block the sun. Alternate Wetherbee did an unofficial sun study on this application. They built a model and discovered that the dormers, as designed, would cause a little bit more shadow for a couple more hours for a few months a year. A lot of people get concerned that a project will block the sun forever. This is not an official sun study. The abutter could have an official sun study done at great expense, but Alternate Wetherbee stated that in Winchester or Cambridge he may have a case, but in Atkinson, the applicant has every right to build.

Chair Saba stated that most of the houses in Atkinson are far enough apart so that sun is not an issue, however the houses on the lake are very close together and the Board has never denied an application because it was blocking the sun or a view. It is taken under consideration to see if the size of a structure is reasonable for each unique case and if impact could be mitigated. In one case, there was a deed restriction so the Board could not do anything, the abutter brought in the deed and the case was closed. That is not the case here.

Member Leondires pointed out that the photos were taken November 22, 2023 so the sun was pretty low in the sky all day. In the summer it will be high. Alternate Wetherbee stated that a study is needed to understand. It is great expense and would satisfy the complaint, but the Board may not have the authority to do anything.

Chair Saba stated that the Board must decide if it is unreasonable to add a dormer to a structure that is no higher than the existing ridge of that structure. That is what the Board needs to decide and if it will cause diminution of value to surrounding properties. Alternate Wetherbee stated that a sun study would be needed to determine whether the sun will be blocked, when and how long.

Vice Chair Connors stated he does not believe the application could be denied. Alternate Wetherbee stated that the study could be done, it could show that the sun would be blocked 100% every day, all day and the applicant would still have the right to build the dormer. Chair Saba agrees. Member Sullivan remarked that there are other elements that block the sun, such as trees and the pines are very tall and close. The Board discussed whether the dwelling was year round or seasonal unit and the consensus was is that it did not matter.

Chair Saba stated that the question is whether there is anything in the motion for rehearing presented to the Board that was not presented or available at the last hearing and that may change the decision.

Member Leondires said no.

Member Sullivan stated that the letter in the motion for rehearing uses the word “almost” completely blocked. He does not find that even the request suggests something new.

Alternate Wetherbee stated that he did not have time review or to put the buildings in place for an unofficial study but even so, it is moot, the applicant is not going up a floor. Chair Saba asked if there was anything in the motion to make him reconsider his vote. Alternate Wetherbee replied no, even though I did not have all the information at the first application, there is nothing new to suggest the Board relook at the application. Chair Saba stated that the abutter showed pictures in his motion, but nothing prevented him from bringing the pictures at the first hearing. According to the Zoning Board of Adjustment Handbook, it has to be evidence that was not available and could not have been presented at the hearing. Alternate Wetherbee agrees.

There was no further discussion.

Member Leondires read the Findings of Facts

Statement of Facts:

- This is a request for a motion to rehear.
- The decision was from the November 8, 2023 ZBA meeting
- The application was a request to add dormers to the garage roof
- The application was approved
- The abutter has requested a rehearing
- There is nothing in the original approval to deny the addition of dormers, no deed restriction, so there is nothing that should disallow addition of the dormers
- In the motion for rehearing there is no new evidence that was not available to the

Board at the first hearing that could change or influence the decision

Chair Saba remarked that lack of preparation is not the applicant's fault.

Vice Chair Connors made a motion to deny the request for rehearing made by Mr. Robert Riedel (3 Rocky Point Lane) on the Approval for a Special Exception – Expansion of Nonconforming Use (Article VII Section 700:1) to allow the issuance of a building permit to add dormers to the attached garage on property located at 1 Rocky Point Lane (Map 22 Lot 27). The motion was seconded by Member Kevin Wade. Vote: 5/0/0. All in favor. The motion is denied.

Member Leondires made a motion to close the public hearing. The motion was seconded by Vice Chair Connors. Vote: 5/0/0. All in favor. The motion passes.

Member Leondires made a motion to adjourn the December 13, 2023 meeting of the Atkinson Board of Adjustment. Member Sullivan seconded the motion. Vote: 5/0/0. Unanimous.

Next Regular Zoning Board Meeting is scheduled for January 10, 2024.

The meeting was adjourned at 8:12 PM.