

**ATKINSON PLANNING BOARD MEETING
MINUTES
WEDNESDAY, NOVEMBER 15, 2023**

Members Present:

Sue, Killam, Chair
Mike Turell, Vice Chair
Paul Wainwright
Heidi Mahoney
Ted Stewart
Bill Baldwin– Selectman Ex-Officio
Hannah Rizzo, Alternate
Sue Coppeta, Alternate and Planning
Office Administrator

Others Present

S.E.C. & Assoc.
Bill Elmer, Palmer Gas & Oil
Paul Perry
Vernon Dingman, V. W. Dingman Consulting,
LLC
David Holigan, Deputy Fire Chief

Call to Order:

Chair Killam called the regular meeting of the Atkinson Planning Board to order at 7:00 PM. Chair Killam, Vice Chair Turell, Member Wainwright, Member Mahoney, Selectman Ex-Officio Baldwin, Alternate Rizzo and Alternate Coppeta are present and voting.

7:00 pm - Preliminary Consultation – Palmer Gas, 6 Commerce Dr - Tank Storage

Representatives from S.E.C. & Assoc. and Palmer Gas & Oil came before the Board. Chair Killam informed them that this is a conceptual discussion. The Board allows one conceptual discussion, then if the applicant moves forward there will be a public hearing. Nothing said at this discussion is binding to the parties. There is public notice by the agenda but no abutter notification goes out. If the applicant returns, abutter notification is required.

Mr. Perry stated that the applicant just bought the lot and is not sure how it will be used. They would like to take down some trees and stump them. They might store some small propane tanks to be used by customers there.

Chair Killam requested the Board to open their books to the section on site plans.

Chair Killam explained that lots requiring site plan are commercial and/or multi family. This lot is in the Commercial, Commercial Industrial or Commercial Professional zone. The Chair and Mr. Perry discussed whether 6 Commerce Drive is Commercial Industrial or Commercial Professional.

Chair Killam informed Mr. Perry that buffer areas are required and there are limits on land clearing. Across the street, where the applicant has a site plan in process, the prior owner had not maintained the proper buffer for tree cutting. If you turn to Section 690, Screening and Buffering in the Site Plan Book, there are two columns, one shows the required width for buffering and the other shows the required width for screened areas. Mr. Perry informed her that the deed states that 20 feet of buffering are required. Chair Killam informed him that the site plan code requires 15 feet and Mr. Perry

responded that the applicant would have to comply with the buffer requirement in the deed.

The applicant assumes that the screening and buffering requirements would allow a driveway off the road. Mr. Perry informed the Board that two sides of the lot abut applicant property. Chair Killam informed him that the applicant would have to maintain the screening between them unless they consolidated the lots. However, if the lots were consolidated, they could not be resold individually.

Mr. Perry informed Chair Killam that the applicant would like to put in a driveway at some point but for the present they are planning to take down some trees and do some stumping.

Vice Chair Turell pointed out that some kind of a cut would be needed for the trucks to come in and out. Mr. Perry agreed that the applicant would like to put a cut in from the road and maybe some rip rap for a construction entrance or else access the lot from one of their abutting lots.

Member Ted Stewart appeared.

Chair Killam informed the applicant that erosion control measures would also be needed. The Board does not allow commercial/industrial type uses to impact a lot and expose it to potential for erosion until there is a bond in place. As yet, there is no bond.

Member Stewart explained that as soon as access is needed by vehicles from a road to do anything, a driveway permit is needed. It protects both parties because drainage is involved and a drainage ditch cannot be filled in order to get a driveway in.

Chair Killam stated that she is referring to the stumping and grubbing the applicant is proposing. The applicant wants to put some "stuff" out there without a site plan.

Member Stewart stated that typically, a site plan is required. A site plan will state how much the bond would be for the erosion control and Keach and Nordstrom would review it. They are not building a field for farming. If the applicant has an idea of what they want, they should present a site plan and get it approved. Chair Killam agreed. Mr. Perry stated that the applicant does not know what it wants to put on the lot.

Mr. Bill Elmer, owner Palmer Gas & Oil, spoke. He informed the Board that the idea is to have the 20 foot buffer on the road for now. That was the agreement with the previous owner. The applicant can come off their abutting property, cut the trees and put in the tanks temporarily. They would like to put tanks there for the winter and come back with a site plan.

Chair Killam stated that tree cutting is allowed, the issue is grubbing out the roots. Once the roots are grubbed out, the soil will be exposed to erosion. This is why the Town would need a bond and a site plan. The Town Engineer would calculate the bond based on the site plan.

Chair Killam asked how big the trees are and Mr. Perry responded that they are not that big, the lot may have been cleared before.

Chair Killam explained that it is not easy with regard to Town regulations. Mr. Perry asked what would happen if they just cut the trees and did not come before the Board. Chair Killam responded that it would expose them to a lawsuit.

Member Stewart stated that an "intent to cut" permit would be needed from the Selectman's office to cut trees. This would let the Planning Board know that something is happening on the property. The logger needs to get a driveway access permit to go on and off the property. Member Stewart also stated that a site plan to create a field and put in a driveway would be very simple if the applicant just wants to clear the lot in order to store some tanks without bringing in any material and put in a driveway to get trucks in and out. This could happen while the trees are being cut and the applicant could come in at the next meeting to present a site plan.

Chair Killam informed the applicant that a variance would be needed in order to have an auxiliary use without a primary use.

Alternate Coppeta asked what would happen if the lot line were adjusted by adding some of another parcel owned by the applicant to 4 Commerce Drive. Only one acre is needed for CI. If 4 Commerce Drive were bigger, it would not be an auxiliary use. Combining the two gives them flexibility but they would not be able to separate them as easily. Chair Killam stated that lot line adjustments are simple and are covered more under State law than Atkinson ordinances. The Board usually just signs off, there can be a public hearing but it is not necessary.

Mr. Perry asked what would be the fastest way and Chair Killam responded a lot line adjustment would be. A site plan would still need to be amended because the lot is bigger and they are adding a use. Another issue is outside storage. Mr. Perry stated that a lot of fill would have to be taken down and they have a wall there. He stated that the applicant could come off 13 Hall Farm Road in the back. Chair Killam stated that the issue is the legality of using the lot without a building. There is a lot of precedence for lots in those zones being required to have variances. The screening can be interrupted by a driveway. Mr. Perry remarked that if the lots were combined, then screening would not be needed other than on the side of the neighbors. Chair Killam responded that voluntary lot mergers are also covered by State law and the Planning Board signs off.

The Board informed Mr. Perry that the applicant can cut trees, they cannot remove the stumps without a site plan. Member Stewart informed him that they can call the Road Agent for a driveway permit. Mr. Perry asked if the 20 foot buffer and a driveway permit would be needed if the applicant accessed the property from 13 Hall Farm Road. Member Stewart replied no, because the applicant would be using a pre-existing entrance.

Mr. Elmer informed the Board members that the tanks will be empty. They are prepared as they go out to customers. He has an excessive amount because they purchased a

lot due to COVID 19. The tanks are from 120 gallons up to 1000 gallons, but most of the tanks stored on the lot would be 120 gallon tanks. The 120 gallon tanks are 30 inches in diameter and five feet tall. This is a temporary solution for the winter. This is not why the lot was purchased. The tanks could be hauled in with a loader if the trees were cut to the ground. They would sit on the ground in a ring and would probably freeze to the ground. There is an excess of tanks so they could be put on the lot and the applicant would not need to get them out.

Chair Killam stated that cutting the trees is the first step. Changing a lot line or requesting a variance would be needed because an ancillary or auxiliary use without a primary use is not permitted. This has been an issue in the Commercial Industrial Zone. A lot line adjustment could be drawn up and put on the agenda if that is what the applicant decides.

Alternate Coppeta stated that the applicant could go before the Zoning Board the second week of December and then to the Planning Board the third week if it decides to request a variance. The deadline for the application is Wednesday, November 28, 2023. Chair Killam stated the site plan would be a simple drawing. The applicant stated that it has already been surveyed.

Chair Killam stated that if the applicant requests a variance and the lot would not be changed, they are asking permission to use it without a building. The Board discussed moving the lot line. Selectman Ex Officio stated that getting a variance to store the tanks temporarily would probably be the best solution. The Board discussed the buffer.

The applicant thanked the Board for their time and left the meeting.

Public Hearings:

Chair Killam opened the first public hearing at 7:30 PM and read the abutters list.

- 1. An Application for Conditional Use Permit submitted by Vernon Dingman for Jaguar Reality Trust, George Kalil, Trustee to establish an Accessory Dwelling Unit as defined in the Zoning Ordinance, Article IV, Section 460 at property located at 18 Chase Island Rd, Atkinson NH, Map 22 Lot 33, RR3 Zone.**

Abutters:

Guy and Karen LaPlante, Mildred Reynolds, Bilodeau, Scott & Gretchen Liv, Scott & Gretchen Billodeau TT, John T. Mason, Jr., Chase Island Assoc. (present), Jaguar Realty Trust, Kalil, Teresa TT, Baker Living Trust, Baker, Baker, Blake & Donna TT, Big Island Pond Corporation, Vernon Dingman, V. W. Dingman Consulting

Discussion:

Alternate Coppeta informed the Board that the applicant went before the ZBA and was approved for a seasonal conversion and a special exception/extension because they are proposing to tear down the present structure and build a new house. Chair Killam

stated that in that case the picture the applicant sent is not relevant. Alternate Coppeta informed her that the application stated it was from the tax record.

Chair Killam stated that as you look through the application, the person who signed approval for Vernon Dingman to represent the applicant is George Kalil, but he is now added to the trust. Alternate Coppeta also informed the Board that there is an abutter list provided by the applicant but there are some cam reports in the new software and she picked the abutters from these reports.

Chair Killam requested Mr. Dingman give an overview of the application. Mr. Dingman explained that the applicant was approved by the ZBA to tear down the present structure and build a new home. In the meantime a family situation occurred and the applicant is requesting to add an ADU above the attached garage. The proposed ADU will be 715 square feet. Because of the ADU, since initial approval, the applicant was required to go back to NH DES for shoreline and subsurface approval. Amended State shoreline and septic design permits are in place and approved. Mr. Dingman explained that he had trouble with NH DES and did not receive the approvals until two days prior to the hearing. He also explained that the family issues resolved themselves and the applicant may not construct the proposed ADU.

Member Wainwright asked about square footage for the ADU and Mr. Dingman replied that the square footage includes the hallway and the closet, not just the space over the garage.

Member Wainwright asked Mr. Dingman about a proposed second garage on one of the drawings. Mr. Dingman responded that the proposed second garage with a bath would not be built for at least two years. It meets all setbacks and the Zoning Board did not address it. Alternate Coppeta informed Mr. Dingman that the applicant may have to return to the Zoning Board when they decide to build the garage. The septic system would facilitate the proposed garage with a bath.

Member Stewart reviewed the plan and stated that the proposed dwelling looks like a two family already. There is a full kitchen and bath on the first floor, a full kitchen, bath and storage area in the basement and a third kitchen and bath in the proposed ADU over the garage. Chair Killam stated that it would not qualify to be a rental unit without going through this process. An ADU can be rented. Member Stewart stated that one renter is allowed, but more than one is not. After the building inspector signs off, an assessor would have to see the property. Only one ADU is allowed and there is a drawing with three potential living units in a single building. Member Stewart said the application states only one ADU would be rented. Alternate Coppeta informed the Board that when the proposed structure is complete, the applicant will get an occupancy permit as a single family house with an ADU. Chair Killam added that the proposed house would have a 675 gallon per day septic system to accommodate exactly that number of bedrooms and kitchens.

Member Stewart stated that he is concerned about how the regulation regarding renting an ADU would be enforced in the future. Mr. Dingman state that he just did a site assessment for a large home on the lake and there were four kitchens. Chair Killam responded that the Board has to trust people. The Board does not administer to the plan. That is the responsibility of the Building Inspector. Alternate Coppeta informed the Board that there are other homes on the lake with a second kitchen on the ground level on the lake side.

Vice Chair Turell asked about detail as to where the appliances in the kitchen would be shown and Mr. Dingman pointed it out on the second sheet.

Chair Killam stated that the application that was submitted states the ADU will be 536 square feet and Mr. Dingman had informed the Board that the ADU will be 715 square feet. Mr. Dingman stated that the square footage on the application is only for the area over the garage and does not include the hallway or the bathroom. Member Wainwright reviewed the dimensions to calculate the correct square footage. Chair Killam gave Mr. Dingman the original application and asked him to amend it to show the correct square footage and sign it.

Mr. Dingman informed the Board that the nearest building is approximately 45 feet away to the closest corner of the deck. He also informed the Board that fire control would be covered in the building permit. The applicant is proposing to install a sprinkler system and fire proof siding would not be required.

Mr. Holigan spoke again as representative for Chase Island Associates and stated that the 50 foot State required shore line buffer and the 100 foot buffer required by the Town of Atkinson were not addressed. He stated that it is well established that structures built within the 50 foot buffer devalue the property the State owns which is the lake. He stated that this issue has not been addressed at recent hearings and requested the Board to address it when evaluating whether a dwelling would cause loss of value to the public. Chair Killam informed him that this issue is in the jurisdiction of the State. The Planning Board takes the signed stamped documents from the State and relies on them. Alternate Coppeta stated that it is also a Zoning Board issue and if the Association wished to address it, then it would have to be at a Zoning Board hearing. Mr. Holigan stated he is concerned because there is another lot that was clear cut. He reported it and was informed there was nothing that could be done until a permit was received. Chair Killam stated that a written complaint needs to be submitted to NHDES. Mr. Holigan asked Mr. Dingman why the reference line showing the 50 foot buffer to the shoreline was not shown on his drawings and Mr. Dingman replied that it was not shown because the new structure would not be closer to the shoreline than the existing one. Mr. Holigan stated the Conservation Commission should be asking what the applicant would be doing inside the 50 foot buffer. Mr. Dingman informed Mr. Holigan that water treatment was shown on the shoreline plan. It shows drainage pits for each of the down spouts. The building permit references his plan. Member Wainwright informed Mr. Holigan that the shoreline protection permits do not go to the Conservation

Commission, they go to the Town Clerk and the Town Clerk is only required to inform the Conservation Commission of dredge and fill.

Chair Killam requested to go through the conditions for approval. All a-k criteria must be met, and if they are, the Planning Board is required to approve the plan.

Conditions:

The applicant must respond below to each of the following Conditional Use Permit criteria.

- a. The accessory dwelling unit shall be subject to the standards and conditions as set forth in the Town of Atkinson Zoning Ordinance (e.g. lot/dimensional requirements, environmental/other setbacks).

Yes. No comment.

- b. No more than one accessory dwelling unit shall be allowed per single-family dwelling. The accessory living unit shall be within or attached to the single-family dwelling and shall not be permitted within detached accessory structures located on the same lot as the single-family dwelling.

Yes. It is proposed to be attached to a new single family residence.

- c. The combination of a single-family dwelling and accessory dwelling unit shall not be converted to a condominium or any other form of legal ownership distinct from the ownership of the existing single family dwelling.

Yes. No comment.

- d. The single-family dwelling unit or the accessory dwelling unit shall be owner-occupied, and both dwelling units shall remain in common ownership by the primary resident.

Yes. No comment.

- e. Accessory dwelling units will not be allowed as part of duplex housing or multi-family housing.

Yes. No comment.

- f. The accessory dwelling unit, and any related changes to the property, shall be designed so that the appearance remains that of a single-family residence and is consistent with the single-family character of other residences in the neighborhood.

Yes. Chair Killam stated that there is a picture of the existing dwelling and drawings for the proposed new dwelling.

- g. The accessory dwelling unit shall have convenient and direct access to the principal dwelling unit through an interior door between the principal dwelling and accessory dwelling unit. The accessory dwelling unit shall have independent means of ingress and egress.

Yes. Mr. Dingman explained that the end of the hallway goes into the main building and there is a separate stairway that goes into the second floor of the garage.

- h. The accessory dwelling unit shall be no more than 1,000 square feet in size, and shall be clearly accessory to the principal dwelling unit. The accessory dwelling unit shall have no more than 2 bedrooms.

Yes. Chair Killam stated that the application now states that the ADU has 715 square feet with one bedroom.

- i. Two parking spaces shall be provided for the accessory dwelling unit.

Yes. Mr. Dingman explained that it is not shown on the plan but the space between the present garage and the proposed garage is all open space and gravel. There are at least 8 spaces.

- j. Any and all construction shall be in accordance with the building standards of the Town of Atkinson in effect at the time of construction. A Building Permit and Certificate of Use & Occupancy signed by the Building Inspector shall be obtained for all ADUs.

Yes. No comment.

- k. In accordance with the standards of the Town and regulations adopted by the New Hampshire Department of Environmental Services (NH DES) in compliance with RSA 485-A:38, the water and septic facilities whether separate or shared shall be adequate to service both the existing single family dwelling and the accessory dwelling unit. Proof of adequacy of these facilities shall include: an existing septic plan approved by the NH DES and a site inspection by a NH licensed septic designer verifying the proper function of the existing system; or a new replacement septic plan approved by the NH DES.

Yes. Mr. Dingman informed the Board that the new septic shown on the plans will be installed. The only thing being reused will be the existing well. The applicant has NH DES approval for the new proposed septic.

Findings of Fact:

In accordance with Section 460 the ADU with 715 square feet with one bedroom at 18 Chase Island Road, Map 22 Lott 33 in the RR-3 zone complies with criteria a – k.

Chair Killam requested a vote. Members voting will be Vice Chair Turell, Selectman Ex Officio Baldwin, Member Mahoney, Member Stewart, Member Wainwright, Alternate Rizzo and Chair Killam.

Vice Chair Turell made a motion to approve an Application for Conditional Use Permit submitted by Vernon Dingman for Jaguar Reality Trust, George Kalil, Trustee to establish an Accessory Dwelling Unit as defined in the Zoning Ordinance, Article IV, Section 460 at property located at 18 Chase Island Rd, Atkinson NH, Map 22 Lot 33, RR3 Zone. Member Stewart seconded the motion. Vote: 7/0/0. The motion passes.

Chair Killam closed the public hearing.

Minutes: 10/23/2023 and 11/1/23

November 1, 2023

Vice Chair Turell made a motion to approve the minutes of the November 1, 2023 meeting of the Atkinson Planning Board as corrected. Selectman Ex-Officio Baldwin seconded the motion. Vote: 7/0/0. All in favor. The motion passes.

October 23, 2023

Vice Chair Turell made a motion to approve the minutes of the October 23, 2023 meeting of the Atkinson Planning Board as presented. Selectman Ex-Officio Baldwin seconded the motion. Vote: 7/0/0. All in favor. The motion passes.

Alternate Coppeta stated that regarding the discussion with Palmer Gas, the variance that may be needed would be for outside storage because outside storage is not a permitted use. Chair Killam stated that the lot standing by itself would need a variance because there is no primary use. Alternate Coppeta pointed out that lots 15 and 17 do not have a buffer between them. Chair Killam stated that the lot lines were moved. When site plans are reviewed in the future, the Board should require visual screening. The applicant can request a waiver because it is site plan. The Board discussed why there is no buffering between the lots.

Adjournment:

Member Wainwright made a motion to adjourn. Vice Chair Turell seconded the motion. Vote: 7/0/0. The motion passes.

Chair Killam adjourned the November 15, 2023 meeting of the Atkinson Planning Board at 8:21 PM.