

ATKINSON ZONING BOARD OF ADJUSTMENT

21 Academy Avenue

Atkinson, New Hampshire 03811

Public Hearing Meeting Town Hall

Wednesday, April 14, 2021

Members Present

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

Others Present

Sue Coppeta, Planning Office Administrator
Karen Wemmelmann, Recorder
Tim Lavelle, Lavelle Associates
Heather and Scott Braley

Workshop 7:00 PM

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

Chair Saba read a statement into the minutes regarding electronic meetings. This meeting will be conducted via Zoom which is authorized pursuant to the Governor's emergency order. The public has access to listen and/or to participate by telephone or by Zoom. If the public is unable to access the meeting, it will be adjourned and rescheduled. All votes will be taken by roll call vote.

Roll Call Attendance: Vice Chair Connors, present and alone; Member Wade, present and alone; Member Leondires, present and alone; Member Sullivan, present and alone; and Chair Saba, present and alone. All of the Atkinson Zoning Board of Adjustment members stated they were present.

Chair Saba informed the Board that it had received a notice of appeal regarding the request for rehearing that was before the Board at the March 10, 2021 meeting. He asked if the Board had a chance to look at the email sent by Sue Coppeta. Chair Saba must attend a meeting with Town Council and asked if other Board members could also attend and to let Ms. Coppeta know so a time and date could be set. He informed the Board members that Vice Chair Connors will also be present. The meeting will be held at the offices of Sumner Kalman. Vice Chair Connors asked if Council could interview some Board Members first and then decide if more were needed. Chair Saba informed him that he and Vice Chair Connors had the most input in the minutes. In the meeting Attorney Kalman will review the March 10, 2021 minutes and also review the certified file. He will then go through the Appeal line item by line item, the Board can admit or deny, admit with admissions or deny with admissions. Member Connors asked about the Appeals Board who will hear the case. The Board has been set up to streamline these appeals to relieve congestion in the Courts.

Approval of Minutes: March 10, 2021

Vice Chair Connors made a motion to approve the minutes of the March 10, 2021 meeting as amended. The amendments were made to clarify the implied thoughts of the Board members. The motion was seconded by Member Sullivan. Roll Call: Vice Chair Connors, yes; Member Wade, yes; Member Leondires, yes; Member Sullivan, yes and Chair Saba, yes; the members of the Atkinson Zoning Board of Adjustment present voted in favor. Vote: 5/0/0. The vote is unanimous.

Correspondence: none

Public Hearing – 7:30 P.M.

Chair Saba opened the public hearing at 7:30 PM, April 14, 2021. It is a Zoom meeting there is a full board and one application.

Application for Variance from Article VI Section 600:8 b submitted by Richard Braley to allow construction an inground swimming pool 9' from the side property line setback (6' variance) where 15' is required - on property located at 11 Winslow Dr. Map 13 Lot 29-27 in the TC Zone.

Abutters:

Winslow Drive Realty Group LLC, Jameson Ridge Homeowners' Assn c/o Sharon Boyle; Richard P. Oliveri, Jr. and Jessica Oliveri; Richard R. Braley, Jr. and Heather E. Braley (present); Paul A. Marcotte III and Stacey Marcotte; Hall 2016 Trust, Leonard & Joan Hall, TTEES; Jason W. Stover and Brinlyn A. Stover; Lisa A. Sarcia and David A. Montanus; James Lavelle, Assoc. (present)

Chair Saba informed the Board that there were several emails from abutters. Ones from Lisa Sarcia, Jason and Brinlyn Stover, Stacey and Paul Marcotte, and Richard Oliveri. All emails state that they had no issues with the applicant's request. Vice Chair Connors stated that for the record, Lisa Sarcia has the abutting lot which would be most impacted. It is lot 29-25.

Chair Saba informed the Board that there is a letter in the file from the applicants authorizing Tim Lavelle, Lavelle Associates, to appear on their behalf.

Mr. Tim Lavelle, Lavelle Associates, came before the Board to represent the applicant. For a brief overview, he informed the Board that the property is at 11 Winslow Drive, part of the Jameson Ridge Subdivision. It is an open space or planned residential development so the property is not a typical lot due to open space requirements. It is the first house on the left coming in from Route 121 or Main Street.

Mr. Lavelle informed the Board that the applicant is proposing to install an inground swimming pool nine feet from the property line which requires a six foot variance. The reason for the request is to keep the pool a safe distance from the house so the youngsters do not have the

idea to jump out windows and things like that into the pool. The applicant does not want the pool too close to the house for safety reasons. The Building Inspector brought up the question of distance to the septic system. The required setback to the septic system is 10 feet when the pool is above the septic system and there is about double that distance.

Vice Chair Connors stated he is looking at the diagram and there seems to be quite a lot of distance from the house to where the pool is proposed. He questioned why the proposed pool can't be moved a little bit rather than requesting a variance.

Mr. Lavelle again stated that the pool company recommends keeping the pool a safe distance from the house to keep kids from jumping out windows into the pool. Vice Chair Connors asked about the distance from the house to the pool and Mr. Lavelle informed the Board that there is 25 feet from the house to the pool in the diagram. Board members commented that it was quite a jump, even 19 feet is quite a jump and suggested that the applicant move the pool nine feet. With the pool nine feet from the lot line, the abutters will see and hear everything going on in the pool. Vice Chair Connors is concerned that the next people to buy the abutting property will not like having a pool right on their lot line.

Mr. Lavelle informed the Board that the applicant has done a lot of work with landscape architects. The other reason for leaving the bulk of the area on the other side of the pool, is if the pool were closer to the house, the sitting area for the pool would be on the side abutting the neighbors. This actually gives more buffer from the neighbor.

Chair Saba informed Mr. Lavelle that he should know the purpose of the Board and know that the Board has rules and regulations it needs to follow. Also, Mr. Lavelle understands that there are hardship criteria that the application needs to address. He asked Mr. Lavelle if he believes there are hardships that need to be addressed. Mr. Lavelle informed Chair Saba that he filled out the application and believes that there are hardships. He informed Chair Saba that the lot is unique where it is not a fee simple lot, it is an open space, cluster development.

Chair Saba asked if the applicant owns the lot and Mr. Lavelle stated the applicant owns the lot, but these are not two acre lots. Chair Saba stated although it is an undersized lot, based on the site plan before the Board, it is hard to justify a hardship when there seems to be enough room. There are many options, one is to make the pool smaller, the other is to move the location of the pool.

Mr. Lavelle reiterated that the applicant believes it is a reasonable request and the paperwork has been filled out in that manner. He went on to say that there are always changes that could be made such as moving the house or changing the septic. Chair Saba stated if the septic needed to be moved that would be a hardship.

Vice Chair Connors stated that the Board has to be concerned about precedent. Most applicants that come before the Board have a compelling reason, such as a well head, for requesting a variance. The Board has to understand what the reason for the request is. The applicant has to go through the criteria and if there is not a good reason in the criteria why the pool cannot be moved in nine feet, then the Board has to deny the variance according to the ordinance.

Vice Chair Connors asked if Chair Saba wanted to open the hearing to the public and Chair Saba responded that he would like more discussion.

Member Sullivan stated for clarity, that the required lot line setbacks for pools is 15 feet and the applicant is requesting a six foot variance. The pool would only have to be six feet closer to the house to be compliant. Zoning allows pools to be as close as fifteen feet because they are considered a piece of recreational equipment. That is with the understanding that it is reasonable to put a pool in the back yard. The applicant is requesting more than a 15 foot variance. Member Sullivan looked at the site and believes it is reasonable to be compliant to the 15 foot setback for that lot line.

Chair Saba stated that he also visited the site and remarked that the homes are beautiful, it is a gorgeous street and the homes are close together because it is a cluster development. Also, the current abutters have sent an email stating that they do not have a problem. However, he is concerned that future buyers may not agree. It is a precedent that the Board has to be very aware of when making its decision.

Chair Saba asked if the public had any questions. There were none.

Chair Saba asked the applicant if they would like to speak.

Heather Braley spoke. She stated she was concerned that the stairs to the slider seem very close to the water. It seems like six feet to the bottom of the stairs on that side. There is a flag where the water's edge would be in relation to the house.

Vice Chair Connors stated that according to the plan in front of him, there is at least 20 feet from the edge of the house to the pool. Only six feet of relief is needed and he did not see a compelling reason to allow the variance.

Ms. Braley replied that she is looking at the distance from the stairs to the flag where waters edge starts.

Chair Saba stated that the other reason for the setback is grading. The proposed pool is very close to the open space where no grading is allowed. At least a fifteen foot setback gives the applicant room to maneuver without disturbing the open space.

Member Sullivan suggested the design of the pool be changed so the bump out was not as close. Vice Chair Connors stated he had to change the design of his pool for the same reason.

Mr. Richard Braley stated that Family Pools was out there and they looked at the lot a couple of times. The applicant picked the shape because Family Pools told them that this pool design is the shape that would fit on the property the best. At the time, when Family Pool marked out the proposed area, the applicant noted that the pool was very close to the house where the original location was proposed. Their issue is that there is not enough room if they are having friends over. The applicant feels the extra six feet gives just enough room between the house and the water for safety and to feel comfortable.

Vice Chair Connors stated that the plan does not do the application justice. According to the plan, at the bottom where the nine feet variance is requested, if that were changed, according to the plan, it looks like the pool is still well away from the house.

Mr. Braley agreed that it is hard to tell the location of the pool according to the drawing but if the Board actually saw where the edge of the water is in relation to the house, then everyone on the Board would understand. Mr. Braley also informed him that the applicant has spent a lot of time moving flags and determining the best location for the proposed pool.

Chair Saba asked Mr. Lavelle if the plan before the Board was to scale. Mr. Lavelle responded no, the plan with the pool that was before the Board, was from Family Pools. Mr. Braley informed the Board that it was his understanding that the Board only needed a quick drawing.

Chair Saba asked if the plan with the large stamp was to scale and Mr. Lavelle responded yes, it is to 20 scale. Chair Saba asked if it was close to what Family Pool gave them. Mr. Lavelle responded yes, the only thing he did not have was the pool. Chair Saba asked if he put the pool on the plan that has his stamp and Mr. Lavelle responded no.

Chair Saba informed Mr. Lavelle that he has a plan with his stamp that has a pool and asked if it were from Mr. Lavelle. Mr. Lavelle informed the Board that someone overlaid the plan because he does not have that information in his computer. Chair Saba informed Mr. Lavelle that the plan could not be used and he should realize that a certified plan should not be marked up. Mr. Braley asked if the contractor might have overlaid the pool on the plan just for a diagram.

Ms. Braley asked for clarification. Chair Saba informed the applicant that there was a certified plan submitted from Mr. Lavelle. The applicant informed the Board that their contractor overlaid the pool on the plan with a certified stamp and that was what the applicant submitted to the Board. Mr. Lavelle informed the Board that the contractor tried to overlay the pool on the plan he gave the applicants and did not eliminate the surveyor stamp.

Chair Saba informed the applicant that they should not have submitted that plan. Mr. Lavelle informed the applicant that they should not have submitted a plan with a certification on it and which had something added to it. If the stamp and logo were removed, it would have been fine.

The Board continued to discuss the plan. Chair Saba would like to know how much space was from the back of the house to the 15 foot setback.

Vice Chair Connors stated that the Board needed another plan that correctly shows the setbacks and distances from the house to the pool.

Chair Saba again stated the applicant is asking for relief but he cannot see a hardship based on what is submitted. It is only a 15 foot setback requirement and there is a reason for the setbacks. He can see several options for the applicant to meet the setbacks without difficulty. He believes it would not be a problem for the applicant to make adjustments and the changes would not change the scope of the project.

Mr. Lavelle informed the Board that there is 26.9 foot setback from the garage to the lot line on the left line. There is eight extra feet on the left side. Coming back to the location to the pool, if the location were changed six feet, it would not be a hardship. Some changes might have to be made.

Chair Saba explained that the Board has a responsibility. The plan has to meet the criteria that warrants a variance.

Mr. Braley stated he wished the Board could see how close to the water the house would be without the variance. He also stated that the Administrator was not helpful and informed him that the requested variance would probably be denied. Chair Saba informed the applicant that the administrator is well versed in our zoning ordinances and maybe she saw what we are seeing. Chair Saba informed him that the Board has to follow the zoning ordinances. Chair Saba again stated that it appears that there are options and the Board does not see a hardship.

Mr. Braley tried to say it is difficult to determine hardship or relief.

Chair Saba replied that hardship also depends on what relief the applicant is seeking. For this instance, the applicant is seeking relief to a side setback that has already been reduced to 15 feet and the applicant is seeking another six feet of relief making the set back nine feet and Chair Saba believes it is too close. If similar variances were requested, they would also be too close and would set a precedent. The Board tries to understand land owner's rights, but does not feel the variance is warranted.

Mr. Braley responded that he tries to be a good neighbor and that the addition would make the property nicer than before.

Mr. Lavelle asked if a site walk could be set up where the pool is laid out as proposed and ask for a continuance. He agrees with the applicant, it is difficult to see by the plan.

Vice Chair Connors stated it would be much more helpful if the Board had a plan with the correct dimensions and a site walk could be avoided. Mr. Lavelle apologized for the plan. He sent the auto cad to the contractor so that they could draw the pool on it and the contractor left the stamp on it.

Member Sullivan asked if waters edge was as close as 15 feet from the lot line, but there will also be an apron around the pool and a fence. The guarding on your neighbor's perspective is quite close to their lot line. Having waters edge 15 feet from the lot line is still close. If a 3 foot apron and a fence is added, 9.5 feet is too close in his opinion.

Chair Saba asked the Board if it would like a site walk.

Vice Chair Connors stated he would like a site walk and a plan with accurate dimensions so there would be no doubt. Mr. Wade agreed. Member Leondires stated that there are many options without a variance and felt the pool could be modified, but agreed. All members of the Board agreed to a site walk. The applicant agreed.

Mr. Lavelle requested a continuance to the next available meeting and also requested to set up a site walk at the Boards' earliest convenience.

Discussion: Sue Coppetta reminded the Board that if they all went on the site walk at the same time, it would have to be noticed, there would have to be a quorum and a vote. Two members at a time can go on a site walk together. Chair Saba informed the applicants and the Board that the next meeting is May 12, 2021.

Vice Chair Connors asked if Board members could go out on their own time and Ms. Coppeta responded, yes, just be careful about not going out at the same time and discussing it as a Board.

Mr. Braley informed the Board members that the pool area was staked and the lot line is staked. Mr. Lavelle informed the Board that he would submit a better plan. Chair Saba reiterated that the Board members have committed to a site visit and the applicants approved and Mr. Lavelle has stated that he will submit a certified plan to scale.

Vice Chair Connors made a motion to approve a continuance for the Application for Variance from Article VI Section 600:8 b submitted by Richard Braley to allow construction an inground swimming pool 9' from the side property line setback (6' variance) where 15' is required - on property located at 11 Winslow Dr. Map 13 Lot 29-27 in the TC Zone. Member Leondires seconded the motion.

Roll Call Vote: Vice Chair Connors, yes; Member Leondires, yes; Member Wade, yes; Member Sullivan, yes; and Chair Saba, yes. Vote: 5/0/0. The vote is unanimous.

The application will be continued to next month.

The motion was approved.

Vice Chair Connors made a motion to close the public hearing. Member Leondires seconded the motion. Roll Call Vote: Vice Chair Connors, yes; Member Leondires, yes; Member Wade, yes; Member Sullivan, yes; and Chair Saba, yes. Vote: 5/0/0. The vote is unanimous.

Member Leondires made a motion to adjourn the April 14, 2021 meeting of the Atkinson Zoning Board of Adjustment at 8:14 pm. Member Sullivan seconded the motion. Roll Call: Vice Chair Connors, yes; Member Leondires, yes; Member Wade, yes; Member Sullivan, yes; and Chair Saba, yes. Vote: 5/0/0. The vote is unanimous.

Chair Saba adjourned the meeting at 8:14 pm.