

**ATKINSON ZONING BOARD OF ADJUSTMENT**  
**21 Academy Avenue**  
**Atkinson, New Hampshire 03811**  
**Public Hearing Meeting Town Hall**  
**Wednesday, June 10, 2020**

**Members Present**

Glenn Saba, Chair  
Sam Zannini, Vice Chair  
Arthur Leondires  
Bob Connors

**Others Present**

Tim Lavelle, Lavelle Associates  
Paul Wainwright, Conservation Commission

**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 was conducted via Zoom.

Roll Call Attendance: Chair Saba, Vice Chair Zannini, Member Connors, and Member Leondires of The Atkinson Zoning Board of Adjustment stated they were present and indicated no one else was in the room with them.

**Other Business:** none

**Correspondence:** none

**Approval of Minutes:** May 13, 2020

Chair Saba, Vice Chair Zannini, Member Farris, and Member Leondires and Member Wade of The Atkinson Zoning Board of Adjustment were present at the May 13, 2020 meeting. Chair Saba, Vice Chair Zannini, Member Connors, and Member Leondires are present at the June 10, 2020 meeting, reviewed the May 13, 2020 minutes, and made corrections and amendments.

**Member Connors made a motion to approve the minutes of the May 13, 2020 meeting as amended. The motion was seconded by Vice Chair Zannini. Roll Call: Vice Chair Zannini, Member Leondires, Member Connors and Chair Saba, the members of the Atkinson Zoning Board of Adjustment present and who were at the May 13, 2020 meeting voted in favor. Vote: 4/0/0. The vote is unanimous.**

**Public Hearing – 7:30 P.M.**

Chair Saba opened the public hearing at 7:30 PM, June 10, 2020.

Chair Saba informed the Board that there is a continuance from the March 11, 2020 meeting.

**Application for Variance from Article IV 410:8 submitted by James Lavelle Assoc. for Four Industrial Way, LLC, to permit the construction of a Commercial Building 28' from wetland where 100' is required (72' variance) and also a Variance from Article V Section 530:d to permit the construction of same Commercial Building 30' from the road where 50' is required. A previous variance of 17' was granted on 9/11/02, this request is for the additional (3' variance) on property located 4 Industrial Way, Map 16 Lot 4 in the CI Zone. (cont'd from March 11, 2020 and May 13, 2020).**

Abutters: 4 Industrial Way LLC (not present), T & T Realty Trust, David and Joseph Trombley, Trustees (not present) James Lavelle Associates (not present), Gove Environmental Services, Inc. (not present), Gregory and Alicia Emerson (Gregory Emerson, present), Cheryl Malley Trust, Lole Markevitz, Trustee, Carol Markevitz representing (not present), Benjamin Hoag (not present), 2 Industrial Way Trust, Gary & Karla Russell, Trustees (not present), Macedonia Trust, John Kalamkaris, Trustee (not present), Stonehenge Estates Conservation (not present), Town of Salem (not present), Christina Hill (not present), Edward Sarkisian (not present), Theodore Hatem (not present), Lori Heymans (not present)

Chair Saba stated that the Board has an application but the applicant is not present.

Chair Saba reviewed and summarized past actions of the Board regarding the application. He also stated that the Board is asking for some things to be clarified as follows:

The easement that the Board was discussing has been addressed and reviewed. The easement would grant access to the back half of the property to the Atkinson Conservation Commission. There is about 6 acres of upland included in the easement which would be kept in Conservation Land. The Board was supposed to get the actual size of the proposed building. At one point in the hearing, it was thought it would be 50 feet by 104 feet. The Board was also supposed to get a picture of the proposed building; it is noted on the plan as a steel building with some brick in the front. The Board also asked for a grading plan because there will be a substantial retaining wall 28 feet from wetland. The Board wanted to know exactly how the parking lot would be graded. The Planning Board will also review the grading, but the Zoning Board would like to review due to the proposed wetland easement.

Paul Wainwright, Chair Conservation Commission is present and stated that the easement does not make the proposed conservation land accessible to the public.

Sue Coppeta showed the plan to the Board and the public.

Chair Saba reviewed the plan. There is no grading plan, but there is a topography of the lot, and it does show the easement. The building size as shown on the plans as 5200 square feet.

Member Connors stated that the applicant is not present, and he would like to ask what the building would be used for, why the parking lot needs to be so big and why the building could not be turned 90 degrees. Member Connors is also concerned about businesses on Industrial Way dumping in the parking lots.

Vice Chair Zannini pointed out that there was a calculation based on the square footage and use of the building for minimum parking.

Chair Saba stated that the Board did have that discussion and clarification of the actual dimensions of the building and grading. The applicant had offered to bring a picture of the proposed building.

Member Leondires stated that if the building were turned sideways, the applicant had stated that additional variances would be needed for setbacks.

Member Connors stated that concerning wetlands, one is presently dry as a bone, the other is quite wet which mean that the stream can be quite high. The Board discussed the use of the building; it is for storage and maintenance of vehicles.

Mr. Lavelle joined the meeting. Chair Saba informed him that at the March 11, 2020 meeting, the Board had asked about the size of the building, if there were a picture and about grading.

Mr. Lavelle informed the Board that he sent in the grading plan today.

Mr. Connors restated his questions: what is the building being used for, why can't it be turned 90 degrees and why does the parking lot need to be so big.

Mr. Lavelle stated that the parking lot size is to meet the required parking spaces and travel area. The building will be used for storing of equipment for Palmer, such as a dump truck, a trailer and an excavator and other equipment. It is proposed that the side of the building facing the parking lot will have some overhead doors, and an overhead door facing Industrial Drive. Last, turning the building sideways would require the parking to be in the front and would increase the front setback requirement. The proposed site plan would have the least amount of variances. The applicant met with the Conservation Commission and they felt that the proposed site plan is actually protecting wetlands by not placing the proposed building in the back where there was a large buildable area, but would require the wetlands to be crossed.

Member Connors asked about the concrete pillars. Mr. Lavelle informed him that it is an empty lot, there was never anything there before, the applicant is not sure what the concrete pillars were for and believes that they were dumped there.

Mr. Lavelle stated that there is an underground holding tank shown on Sheet 2 because it is a requirement if an oil truck were to go in the proposed building, although that is not the primary use of the building. Gas trucks will not go in there, it is against State Law. There has to be a tank and a floor drain to accommodate an oil truck if it were to go in the proposed building.

Mr. Lavelle also informed the Board that the proposed building will be 50 feet by 104 feet.

Chair Saba asked if there were any other discussion from the Board.

Mr. Lavelle commented that since the last meeting he was able to attend, a ten-foot access easement was added to the plans so the Conservation Commission can monitor the proposed large easement area in back. The access easement is on the right-hand side in the north allowing the Conservation Commission to walk in.

Chair Saba pointed out that there would be major grading on the right-hand side where the 10-foot access easement was added to the plan and if it would be accessible. Mr. Lavelle agreed and stated that the retaining wall would be directly against the parking lot, leaving the path

accessible by foot. Mr. Lavelle stated that the Conservation Commission did not want vehicles to be able to drive through the easement, but they were also concerned about foot access being blocked in the future. Thus, they decided to add the 10-foot easement. The access easement has been reviewed by the Town Attorney and the Board of Selectmen.

Chair Saba asked if there was more discussion from the Board.

Chair Saba opened the meeting to the public.

Paul Wainwright, Chair, Conservation Commission requested to speak and asked if the Board had a chance to read the letter of approval of the easement from the Conservation Commission. Chair Saba stated that he had.

Mr. Wainwright stated that the Conservation Commission thinks that this is a good thing for the Town of Atkinson and for the applicant as well. This type of mitigation in the environmental areas happens frequently. Whenever an applicant wants to do something that might have an impact on the environment, if there is an offset somewhere else on the proposed project, then that is a good thing. The Conservation Commission is wholeheartedly in support of the proposed easement and requested variance. He also requested to mention for the record that this is not a public access easement, there will be no trails, it is for wildlife habitat and watershed protection. However, the Town of Atkinson and the Conservation Commission need to access the proposed conservation land to verify that it is being used according to the proposed easement documents.

Chair Saba requested to clarify that the back land has upland and is approximately 6 acres.

Mr. Lavelle informed the Board that the proposed easement area is 6.07 acres and more than 50% is upland. Mr. Wainwright agreed. Mr. Lavelle also informed the Board that there is a large buildable area, in the center of the back of the lot, where setbacks can all be maintained but it would be necessary to cross wetlands to access it. Chair Saba interjected that if the applicant wished to build in the back, then a wetland crossing to access the upland could not be denied. The crossing would be about 100 feet in length. Other possible access would create more drainage issues. The applicant felt that the current plan would have the least impact on the wetlands.

Greg Emerson, 12 Theodore Avenue, Salem NH, requested to speak and asked if the Conservation Commission had signed off.

Chair Saba responded that the Conservation Commission acts as an advisor to the Board, and gives advice and recommendations, but the Zoning Board makes the final decision.

Mr. Emerson also asked the next steps if the proposed plan were approved.

Chair Saba stated that if the proposed variance were approved it would be contingent upon the proposed easement being deeded to the Town. This would occur after the proposed plan is approved by the Planning Board. If it does go through, the ZBA would be preserving quite a bit of the land for open space.

Chair Saba read the letter dated May 11, 2020 from Paul Wainwright, Chair, Conservation Commission recommending approval of the proposed easement and variance into the record again.

Mr. Lavelle informed the Board that the applicant has done draft language for the easement which has been reviewed by the Town Attorney, the Conservation Commission and the Selectmen who are all in agreement.

Chair Saba asked if there were more questions. Mr. Emerson requested to see the grading plan and the retaining wall because there is a big cut there.

Chair Saba stated he asked to see the grading plan because he would like to make sure that the access easement is accessible. The Planning Board would also look at the plans regarding grading and retaining walls and they are the proper Board. Therefore, he is not going to hold up the vote and abutters will be notified when the application goes before the Planning Board.

Chair Saba asked if there were other questions from the public. There were none.

Chair Saba asked if there were more questions from the Board members. There were none.

Chair Saba stated that there were two variance requests. Sue Coppeta recommended they be taken individually. The Board agreed.

Chair Saba stated that the Board would go through the criteria with the applicant one at a time for each variance.

**The first variance request was from Article IV Section 410:8 submitted by James Lavelle Assoc. for Four Industrial Way, LLC, to permit the construction of a Commercial Building 28' from wetland where 100' is required (72' variance).**

The Applicant went through the criteria:

1) Granting the variance would not be contrary to the public interest because:

The 28-foot distance allows the applicant enough area for grading to ensure that there are no negative drainage issues into the wetland and would allow the applicant not to fill areas of wetlands in order to give access to the back of the property.

Discussion: Chair Saba agreed that by granting this wetlands setback and in light of what the applicant has offered the Town in exchange, the public interest that this particular ordinance has to protect wetland is in essence preserved because of all the land that is being protected.

Chair Saba asked for more discussion. There was none.

**Roll Call: Vice Chair Zannini, Member Connors, Member Leondires and Chair Saba agreed. All members of the Atkinson Zoning Board of Adjustments present agreed that the conditions of Article IV Section 410:8(1) are met based on the application and the discussion as present. Vote: 4/0/0. The vote is unanimous.**

2) The spirit of the ordinance is observed because:

The wetlands and the wetlands complex will be more protected by this particular variance.

Discussion: Vice Chair Zannini agreed with Chair Saba's comments on the previous criteria because this is a better scenario because the wetlands will not have to be crossed in order to access the other area and have a greater impact. Chair Saba agreed.

Chair Saba asked for more discussion. There was none.

**Roll Call: Vice Chair Zannini, Member Connors, Member Leondires and Chair Saba agreed. All members of the Atkinson Zoning Board of Adjustment present agreed that the conditions of Article V Section 410:8(2) are met based on the application and the discussion as present. Vote: 4/0/0. The vote is unanimous.**

3) Granting the variance would do substantial justice because:

It would create substantial justice by allowing the lot to be developed and brought to productive use without negatively impacting the wetland.

Discussion: Chair Saba agreed that the proposed application is a win-win and stated that it would minimize impact on the wetlands and the public is actually gaining from the proposed variance, for all the reasons previously discussed. Therefore, there is substantial justice.

Chair Saba asked for more discussion. There was none.

**Roll Call: Vice Chair Zannini, Member Connors, Member Farris, Member Leondires and Chair Saba agreed. All members of the Atkinson Zoning Board of Adjustments present agreed that the conditions of Article V Section 410:8(3) are met based on the application and the discussion as present. Vote: 4/0/0. The vote is unanimous.**

4) For the following reasons, the values of the surrounding properties will not be diminished:

Basically, the applicant is building an industrial building in an industrial park and they are actually keeping the proposed building and so forth, further away from the residential area in the rear, in Salem, and it would not impact their property values at all.

Discussion: Chair Saba requested discussion and stated that the Board does not have any evidence to prove otherwise.

**Roll Call: Vice Chair Zannini, Member Connors, Member Leondires and Chair Saba agreed. All members of the Atkinson Zoning Board of Adjustment present agreed that the conditions of Article IV Section 410:8(4) are met based on the application and the discussion as present. Vote: 4/0/0. The vote is unanimous.**

5) Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because (answer a & b)

(a) No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because:

Developing the lot without accessing the larger buildable area in the back by filling portions of the wetland areas for crossing is a better use of the lot.

Discussion: Chair Saba stated that the reason the Zoning Board is here is to look at individual lots and their uniqueness and for this lot, there is no question that because of the porkchop shape of it, and that most of the upland is being preserved is a good thing for the community.

**Roll Call: Vice Chair Zannini, Member Connors, Member Leondires and Chair Saba agreed. All members of the Atkinson Zoning Board of Adjustment present agreed that the conditions of Article V Section 410:8(5a) are met based on the application and the discussion as present. Vote: 4/0/0. The vote is unanimous.**

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

It allows for the reasonable, productive use of the property without excessive filling of wetlands.

Discussion: Chair Saba agreed that the proposed use is for an industrial park and there is limited industrial area in the Town. Also, that this proposal is preserving so much upland and wetland for wildlife habitat, it is a win-win for all.

**Roll Call: Vice Chair Zannini, Member Connors, Member Leondires and Chair Saba agreed. All members of the Atkinson Zoning Board of Adjustment present agreed that the conditions of Article IV Section 410:8(5b) are met based on the application and the discussion as present. Vote: 4/0/0. The vote is unanimous.**

**Member Connors made a motion to approve the Application for Variance from Article IV 410:8 submitted by James Lavelle Assoc. for Four Industrial Way, LLC, to permit the construction of a Commercial Building 28' from wetland where 100' is required (72' variance) with the condition that the Conservation Easement is conveyed on the six acres for open space and also conditioned upon Planning Board Approval. Vice Chair Zannini seconded the motion. Roll Call: Vice Chair Zannini, Member Connors, Member Leondires and Chair Saba agreed. All members of the Atkinson Zoning Board of Adjustment present voted in favor. Vote: 4/0/0. Vote is unanimous.**

Chair Saba informed the applicant that there was 30 days before approval.

**The second variance request is from Article V Section 530:d to permit the construction of same Commercial Building 30' from the road where 50' is required. A previous variance of 17' was granted on 9/11/02, this request is for the additional (3' variance) on property located at 4 Industrial Way, Map 16 Lot 4 in the CI Zone.**

The Applicant went through the criteria:

1) Granting the variance would not be contrary to the public interest because:

Whereas there is no parking in front of the proposed building, just a single driveway to the proposed building, it would not encroach on the roadway. There was already a variance granted for 33 feet, the applicant is asking for three more, so that the proposed building can be sited in the front.

Discussion: Chair Saba asked if there were buildings in the Industrial Park that are closer to the street than the required 50 feet. Vice Chair Zannini asked if there was one proposed a few years ago towards the bottom on the left. Mr. Lavelle stated that there was one. Due to the buffer that was created after the subdivision went through there was a 150-foot buffer from the back line. The applicant since obtained a variance to reduce the buffer to 50 feet, so that the buildings could be pushed back. Vice Chair Zannini asked if it were approved and Mr. Lavelle replied that he believes that variance was approved. Mr. Lavelle also stated that at the time the subdivision was drawn, the setback requirement was 30 feet, but that was in the '70's.

Chair Saba asked if there was more discussion. There was none.

**Roll Call: Vice Chair Zannini, Member Connors, Member Leondires and Chair Saba agreed. All members of the Atkinson Zoning Board of Adjustments present agreed that the conditions of Article V Section 530:d(1) are met based on the application and the discussion as present. Vote: 4/0/0. The vote is unanimous.**

2) The spirit of the ordinance is observed because:

The building will be far enough back so that it will not impede in the roadway or in roadway maintenance, like but not omitted to plowing, and there is plenty of driveway access created by this proposal.

Discussion: Chair Saba asked if the parking were in front of the building, if the setback would still need to be met at the parking lot. Mr. Lavelle stated that the setback increases from fifty feet to seventy feet if parking were between the building and the street and that is why the applicant is proposing the parking lot on the side.

Chair Saba asked if there were more discussion. There was none.

**Roll Call: Vice Chair Zannini, Member Connors, Member Leondires and Chair Saba agreed. All members of the Atkinson Zoning Board of Adjustment present agreed that the conditions of Article V Section 530:d(2) are met based on the application and the discussion as present. Vote: 4/0/0. The vote is unanimous.**

3) Granting the variance would do substantial justice because:

It would allow for productive use of the small portion of this lot in the front, similar to other lots developed in this commercial industrial subdivision and would protect the portion of the lot in the rear.

Discussion: Chair Saba agreed that by granting both variances, it would allow for development of the land, preserving the major portion which has been discussed by the Board for the entire meeting. Chair Saba asked if there were more discussion. There was none.

**Roll Call: Vice Chair Zannini, Member Connors, Member Leondires and Chair Saba agreed. All members of the Atkinson Zoning Board of Adjustments present agreed that the conditions of Article V Section 530:d(3) are met based on the application and the discussion as present. Vote: 4/0/0. The vote is unanimous.**



4) For the following reasons, the values of the surrounding properties will not be diminished:

Mr. Lavelle stated that for the same reason that he mentioned before, the proposed plan would be to build an industrial building on an industrial roadway, a similar or nicer, newer building and would protect the portion of the lot in the rear which abuts the residential properties thereby not adversely affecting any property values.

Discussion: Chair Saba stated that it definitely helps the residential abutters in the back because the proposed application is keeping the development much further away and as far as property values in the park itself, any improvement is good there, especially getting rid of all the dumping that is happening.

**Roll Call: Vice Chair Zannini, Member Connors, Member Leondires and Chair Saba agreed. All members of the Atkinson Zoning Board of Adjustment present agreed that the conditions of Article V Section 530:d(4) are met based on the application and the discussion as present. Vote: 4/0/0. The vote is unanimous.**

5) Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because (answer a & b)

(a) No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because;

Developing the lot without accessing the larger area of the lot by filling portions of the wetlands for the crossing is a better use of the lot. The Town Conservation Commission feels that it would be a good deal for the Town if the area could be preserved as a condition of granting of the variance.

Discussion: Chair Saba agrees with the applicant's statement and also stated that decreasing the setback from 50 feet to 30 feet for this particular site would not affect the industrial park as much as the general public will benefit from preserving all this open land.

**Roll Call: Vice Chair Zannini, Member Connors, Member Leondires and Chair Saba agreed. All members of the Atkinson Zoning Board of Adjustment present agreed that the conditions of Article V Section 530:d(5a) are met based on the application and the discussion as present. Vote: 4/0/0. The vote is unanimous.**

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

It allows for reasonable use of the property without adversely affecting or filling wetlands.

Discussion: There was none.

**Roll Call: Vice Chair Zannini, Member Connors, Member Leondires and Chair Saba agreed. All members of the Atkinson Zoning Board of Adjustment present agreed that the conditions of Article V Section 530:d (5b) are met based on the application and the discussion as present. Vote: 4/0/0. The vote is unanimous.**

**Member Connors made a motion to approve the Application for Variance from Article V Section 530:d to permit the construction of same Commercial Building 30' from the road**

where 50' is required. A previous variance of 17' was granted on 9/11/02, this request is for the additional (3' variance) on property located 4 Industrial Way, Map 16 Lot 4 in the CI Zone, with two conditions; that an easement is granted to the Conservation Commission to preserve open space and that there is approval by the Planning Board.

**Discussion:** Chair Saba requested that a condition be added that the easement is recorded prior to recording the plans approved by the Planning Board. Mr. Wainwright asked if the easement needed to be recorded prior to the Planning Board hearing but before everything is settled. Chair Saba stated that the easement needs to be recorded prior to recording the plan approved by the Planning Board. Mr. Lavelle agreed and stated that it made for a cleaner plan.

The motion is restated as follows:

Member Connors made a motion to approve the Application for Variance from Article V Section 530:d to permit the construction of same Commercial Building 30' from the road where 50' is required. A previous variance of 17' was granted on 9/11/02, this request is for the additional (3' variance) on property located 4 Industrial Way, Map 16 Lot 4 in the CI Zone, with three conditions; 1) that an easement is granted to the Conservation Commission to preserve open space; 2) that the easement is recorded prior to recording the approved plan by the Planning Board; and, 3) that there is approval of the proposed application by the Planning Board.

Vice Chair Zannini seconded the motion. Roll Call: Vice Chair Zannini, Member Connors, Member Leondires and Chair Saba. Vote: 4/0/0. The vote is unanimous.

Member Connors made a motion to close the public hearing. Member Leondires seconded the motion. Roll Call: Vice Chair Zannini, Member Connors, Member Leondires and Chair Saba voted in favor. Vote: 4/0/0. The vote is unanimous.

Chair Saba requested a motion to adjourn.

Member Connors made a motion to adjourn the June 10, 2020 meeting of the Atkinson Zoning Board of Adjustment. Member Leondires seconded the motion. Roll Call: Vice Chair Zannini, Member Connors, Member Leondires and Chair Saba all voted in favor. Vote: 4/0/0. The vote is unanimous.

Chair Saba adjourned the meeting at 8:24 pm.