

ATKINSON ZONING BOARD OF ADJUSTMENT
21 Academy Avenue
Atkinson, New Hampshire 03811

Public Hearing Meeting Town Hall
Wednesday, December 9, 2009

Present: Frank Polito, Chairman; Hank Riehl, Vice-Chairman; Sandy Carter;
Glen Saba

Chairman Polito called the meeting to order at approximately 7:30 p.m.

Approval of Minutes of November 10, 2009.

Motion to approve the minutes as amended made by Sandy Carter, seconded by Hank Riehl, no discussion, voted unanimously. Amendments included:

1. Pg 2 under Public Hearings, 3rd paragraph, line 5; replace "There is now prime wetlands designation" to "Adjacent wetlands are now designated as Prime Wetlands"
2. Line 6; replace "Mr. Polito said he a" with "Mr. Polito said he had a"
3. Line 8; replace "thought" with "though"
4. Line 13; replace "The side deck is not clear." with "The situation with the side deck is not clear."
5. Line 15; change "me" to "be"
6. Line 18; replace "the" to "a" and replace "to state" with "stating"
7. Line 27; replace "because of the structure guidelines" with "regulations"
8. Line 28; replace "in" with "with"
9. Amend the minutes of the Osborn hearing to reflect that anytime a reference is made to the bunk house or bunk/boat house, other than by the applicant who refers to it as a bunk/boat house, that the minutes clearly state "bunk house" in order to avoid the possibility of any misinterpretation of the record in the future.

Incoming Correspondence

1. Deed Restriction, William Grimes, 8 Lisheen Drive
2. Attorney Kalman, dated 11/9/09, re: 09-E-0233 P.J. Murphy Transportation; 09-E-0125 Keith Wolters, et al
3. Town Administrator Memo, dated 11/17/09, re: contact numbers/annual report
4. Monthly expenses
5. Deed Addendum, George and Alicia McElroy, 80 Providence Hill Road
6. Robert Williams, dated 11/19/09, Home Business renewal application for 45 Sawyer Ave.
7. Michele Dugdale, dated 12/1/09, Home Business renewal application for 11 Old Coach Rd
8. Citizen Petitions for amendments to the Zoning Ordinance
9. Attorney Kalman, dated 12/7/09, re: 09-E-0443 John T. Mason, Jr.
10. Attorney Kalman, dated 12/7/09, re: 09-E-0233 P.J. Murphy Transportation; 09-E-0125 Keith Wolters
11. Shawn Meuse, dated 12/9/09, re: 9 Emery Drive, request for hearing continuance
12. Margaret Osborn, dated 12/9/09 re: 8 Valcat Drive, request for hearing continuance

Outgoing Correspondence

1. Arthur Anderson, dated 11/17/09, Home Business renewal letter for Kingsway Motor Mart, 4 Washington St.
2. Timothy Dziechowski, dated 11/20/09, Special Exception-Frontage Reduction approval letter, 109 Maple Ave., Map 18 Lot 71
3. ZBA Legal Notice for December 9, 2009, Ashworth request for variance, Map 13, Lot 80

Home Business Approvals

Motion to approve the renewal for Robert Williams, Farmhouse Roasters, formerly Coffeebrains, 11 Old Coach Road, having reviewed the application for renewal and finding no substantial changes from the original application, seconded, no discussion, voted unanimously.

Motion to approve the renewal for Michele Dugdale, Ladybug Ceramics, 11 Old Coach Road, having reviewed the application for renewal and finding no substantial changes from the original application, seconded, no discussion, voted unanimously.

Discussion - Right To Know request submitted to Board of Selectmen by Margaret Osborn.

The board discussed the request for a list of specific variances from the ZBA under the Right To Know law. Chairman, Frank Polito stated that it's not a legitimate request as there is no such governmental record in existence at the present time that corresponds to this request. He said that he believed that the information requested is contained in a combination of the tax map and all the minutes corresponding to the dates of interest. The Board of Selectmen responded to the request with a letter stating that the information requested would not be available until January 4, 2010.

Consideration of adoption of the following "rule of procedure":

Appeals from an administrative decision taken under RSA 676:5 shall be filed within 30 days of the decision.

Public notice read into minutes by Chairman Frank Polito. Board members discussed that there should be a timeframe for an appeal to an administrative decision when the decision is appealable to this board. There is a lack of a specific timeframe in the current Rules of Procedure in regards to administrative decisions. The Office of Energy and Planning recommends using 30 days which is the same time that is used for appeals from ZBA decisions. No public comment. Hank Reihl made a motion that we adopt the adjustment to the rules of procedure, Glenn Saba seconded, voted unanimously. Chairman Frank Polito closed the hearing.

Public Hearing – Continued from November 10;

Daniel and Margaret Osborn request for Special Exception as specified in Article VII, Section 700:1 of the Zoning Ordinance for statutory relief to modify condition of previous Variance granted 6/13/07 on property located at 8 Valcat Lane, Map 22, Lot 47, RR3 Zone.

Chairman read the incoming request for continuance by Margaret Osborn due to the weather. The board discussed that they were all here, other applicants and audience were in attendance, and that by granting the request for continuance a precedent may be set by which applicants could request continuances for frivolous reasons. In addition, it was noted that the previous continuance was granted in part based upon the applicant's wishes to come up with a regulation or change of law which could have been submitted with tonight's letter, but was not. A denial or the request with prejudice would preclude a re-application; however a denial without prejudice would allow the applicant the opportunity to re-apply. Sandy Carter made a motion to deny the request for continuance by Margaret Osborn and thereby deny, without prejudice, the request for relief made under the application before the ZBA, seconded by Hank Reihl, no discussion, voted unanimously. Chairman Polito closed the hearing.

**Public Hearing – Continued from November 10;
Shawn Meuse for Robert Allen request for Variance to Article IV, Section 410:8b of the Zoning Ordinance to permit permanent concrete slab for temporary garage 26’ (74’ variance) from wetland as opposed to the required 100’ on property located at 9 Emery Drive, Map 16, Lot 32 RR3 Zone.**

Chairman read the incoming request for continuance for Shawn Meuse on behalf of Robert Allen for property on 9 Emery Drive in order to properly prepare. Board member Sandy Carter noted that Mr. Meuse appeared before the board for the first time at the last meeting and it appeared that the issue was complex and this is his first request for continuance. At the suggestion of the Conservation Commission, Jim Kirsch, Code Enforcement Officer, mentioned that there was an RSA that may be pertinent to this application and could affect whether or not the applicant should even be before the board or not. Chairman, Frank Polito read the RSA aloud. The question arose whether the state would take jurisdiction over this and if the applicant had to go thru the permit process with the state first. At this point, there is no feedback from the state on whether this RSA applies to this particular situation. The board felt that they will need to know if the state will exercise jurisdiction, or not, before moving forward. Sandy Carter made a motion to continue and to correspond with the applicant regarding the Board’s concerns with RSA 482-a:3 and to request that he contact DES and ascertain if they will be taking jurisdiction or not, but that the DES decision in the matter does not preclude any further action that the board may take. Glenn Saba seconded. No discussion. Board voted unanimously. Chairman Frank Polito will draft the letter to the applicant.

**Public Hearing – Continued from November 10:
Michael Zedalis request for Variance from Article 410:8 of the Zoning Ordinance to permit construction of a 12’x38’ deck, 64’ from prime wetlands (36’ variance) as opposed to the required undisturbed buffer area of at least 100’ on property located at 4 East Road, Map 10, Lot 5, TR2 Zone.**

Public notice read into minutes by Chairman Frank Polito. No abutters present. The purpose of the continuance was so that the applicant could contact DES and see if they were going to take jurisdiction or not. Mr. Zedalis spoke with Sandy Crystal of DES who acknowledged that she had received his correspondence and reviewed it with colleagues in order to respond directly to the board. No correspondence was found to have been received. Board recommended that the applicant be more assertive with the state to ascertain if they will be taking jurisdiction or not. Motion by Hank Reihl to continue to the following month while applicant continues his dealings with state, Sandy Carter seconded. Ensuing discussion by the Board clearly identified that the purpose of this continuance is to allow the applicant the opportunity to ascertain if the state will be taking jurisdiction over this application and treat this as setback to prime wetlands or not, voted unanimously. Hearing closed.

Public Hearing - Peter Ashworth request for Variance to Article IV, Section 400.4 and 410:8 of the Zoning Ordinance to permit a 12x12 Shed within 15’ of side lot line and within 100’ from wetland on property located at 5 Leroy Avenue, Map 13 Lot 80, TC zone.

Public notice read into the minutes by Chairman Frank Polito. No abutters present. Board reviewed the plan and details of the project with the applicant. A previous variance was granted in 2003 for an addition to rebuild the garage. No action for an equitable waiver in that regard.

Building Inspector, Bob Jones, informed the board that the addition of the shed was noticed during the construction of such. Member Sandy Carter noted that the plans did not reflect the exact measurements for the request for variance. Applicant claimed that there was an existing hot top pad out there when he bought the house. He stated that he'd like the shed to store his lawn mower and other stuff. The Board noted that the garage that the shed will be attached to is too close to the lot line and that the applicant should consider applying for an equitable waiver for that existing non-conformance. Without such waiver, in the future, the conveyance of the property or the re-finance of a mortgage may be a problem. The applicant stated that when the back lot was created, the lot line was changed creating an issue whereby the garage was now non-conforming as it is too close to the changed lot line. It was not clear whether that was before or after the 2003 variance to rebuild the garage. The application before the board is for the shed so that will be the focus of the board. The issue now becomes that the board needs the exact measurements and recommends that the applicant get the property surveyed and apply for an equitable waiver for the record. Both applications could be heard at the same time at the next meeting, i.e. the shed and the waiver provided that the application for the waiver is received by the deadline. Mr. Ashworth agreed to file for an equitable waiver and will revise the plan to include exact measurements. Hank Reihl made motion to continue to next month's meeting, Sandy Carter seconded, no discussion, voted unanimously.

Meeting adjourned at approximately 8:40 p.m.