

ATKINSON ZONING BOARD OF ADJUSTMENT
21 Academy Avenue
Atkinson, New Hampshire 03811
Public Hearing Meeting Town Hall
Wednesday, February 12, 2020

Members Present

Glenn Saba, Chair

David Farris
Kevin Wade

Arthur Leondires

Others Present

Attorney Bernard Campbell, Beaumont and
Campbell Professional Association
Gail J. Lewis

Dean and Sue Killam Tim Peloquin, Promised Land Survey, LLC
--

Workshop 7:00 PM

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

Other Business: none

Correspondence: none

Approval of Minutes: December 11, 2019

Chair Saba, Members Farris, Leondires and Wade of The Atkinson Zoning Board of Adjustment reviewed the minutes of the December 11, 2019 meeting, the Board made corrections and alterations.

Member Farris made a motion to approve the minutes of the December 11, 2019 meeting as amended. The motion was seconded by Member Leondires. All members of the Atkinson Zoning Board of Adjustment present who were at the December 11, 2019 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, February 12, 2020. Chair Glenn Saba, Member David Farris, Member Kevin Wade, Member Bob Connors and Member Arthur Leondires were present.

- 1) Application for Variance from Article V Section 510b submitted by Beaumont & Campbell Professional Association for Gail Lewis to permit the creation of a two (2) bedroom dwelling unit (apartment), not exceeding 1,000 sq. feet, situated within a permitted accessory structure (barn), where only one dwelling unit per lot is allowed at 95 Main St, Map 13 Lot 1 in the TC zone.

Abutters: Gail Lewis (present), Fairpoint Communications, Inc., David W. Sallatch, Cogswell Farm Condominium, Rosemary Decelles

Attorney Bernard Campbell, Belmont and Campbell Professional Association of Salem appeared before the Board to represent the applicant, Gail Lewis. Chair Saba requested that Attorney Campbell review the application before proceeding to the criteria. Attorney Campbell explained that the lot is in the Town Center zone. It is the residue lot of a historic Atkinson property, formerly Cogswell Farm and is owned by the applicant. Attorney Campbell provided the Board with copies of the proposed site plan, floor plan and an elevation. The Lewis family has begun to undertake the recreation of a historic barn within the Town Center.

There is an existing single family dwelling on the site. The proposed structure would be a detached barn structure. The renderings of the barn structure are in the packet. The intention is that the barn will serve an agricultural purpose. There is an intention to house animals, specifically horses in the area which is noted as the barn area in the front of the structure. Chair Saba asked about the size of the lot and Attorney Campbell replied that the lot is shown as 2.02 acres. Chair Saba asked about horses. Ms. Lewis explained that there is 18 acres of dedicated agricultural open space around it.

Attorney Campbell added that the open space is associated with the adjoining open space subdivision in the rear which was the Cogswell Farm. The Cogswell Farm subdivision plan was provided in the packet given to the Board as Deed 28056 which shows the lot and the open space as 18.33 scenic vista open space that surrounds this lot, all part of the original, historic farm property.

Chair Saba asked if the applicant is representing that the open space is part of this lot. Attorney Campbell stated no, it is not part of the lot but the applicant has the right to use some of the open space for the purpose of boarding, using or pasturing animals in the open space vista land.

Chair Saba asked if the lot is part of the condominium association. Attorney Campbell replied, no the lot is not part of the condominium association, although he has not researched the property title. Chair Saba asked if Attorney Campbell is trying to make the open space relevant to the application. Attorney Campbell replied, no, but the Board could make it relevant. The intention in this proposal is to create a residential unit within a barn replicating a historic tack room or groomsman area in a historic barn where a groomsman or tack room employee would reside in the structure along with the animals and would be a caretaker. The applicant is seeking to replicate that type of historic Atkinson project by asking for relief in this application

Attorney Campbell added that one solution would be to connect the proposed living space to the dwelling unit. However, the applicant wants the barn and living space to be free standing from the dwelling unit. Attorney Campbell stated one reason could be a concern that damp hay would warm up and cause a fire. If the barn and the house were not connected, it would prevent both structures from burning.

Chair Saba asked if the barn was connected historically. The applicant informed the Board that the original barn was not connected. There were a series of buildings and small structures before the original barn was built in 1810 and it was not connected to the dwelling. Then, in 1933 the original barn burned but the house did not because there was a separation. Chair Saba presented an old picture that shows the dwelling, barn and structures in between and asked if the structures were connected. The applicant stated no.

Member Farris asked if the barn there currently is new or if the applicant is refinishing the older barn. The Applicant replied that the current barn is entirely new, the old barn was rebuilt, but not as a barn, but as an auto mechanics shop. It was not historic, it was a one story auto mechanics shop which the Applicant tore down. Member Farris stated that he did drive through, there is a very large driveway between the dwelling and the present barn. The applicant reiterated that the present barn is being built from scratch but it sits on the foundation of the former barn.

Chair Saba asked if there was a building permit for the construction of the barn. The applicant answered yes, and the plans submitted show the barn connected to the house because of the Accessory Dwelling Unit ("ADU") requirement. He brought it before the Board because he does not want to connect the structures. A main reason is his concern about fire. Historically, when barns were built, field debris was collected to make an artificial hill and it was possible to drive under the barn. Mr. Lewis is recreating an old barn, including replicas of the old windows and the cupola. When the project is completed, even the Cogswell Farm sign will be there. Mr. Lewis then referenced his Uncle's barn in Atkinson, saying it is similar.

Chair Saba asked about distances between the barn and the existing dwelling. The applicant stated that it is about twelve or fifteen feet.

Member Leondires remarked that the barn is there and asked if the applicant's intent was to convert 1000 square feet into an apartment. The Applicant responded yes.

Member Connors stated that the Board is concerned that if the house is sold, then Mr. Lewis' intent will be lost. If the house is sold, a new applicant can come before the Board and the ADU is just an apartment unit and is not being used for the original intent. The Board cannot memorialize that and cannot prevent someone from doing that. The spirit of the ordinance is, you are not supposed to have an accessory dwelling that is not connected for good reason, because the Town does not want people building garage units all over the place. The question is, what happens when the applicant no longer owns the property.

Mr. Lewis also stated his son will be moving into the original dwelling unit. The applicant originally wanted an in-law apartment there but there were too many stairs. It cannot be attached to the original dwelling unit. The dwelling unit is a registered historic property, everything was put back the way it was in 1768. There are no stairs in the accessory unit and a shaft for a future elevator has been installed.

Attorney Campbell remarked that the issue before the Board would be if the ancillary structure has an agricultural purpose. The Board can grant the variance with the condition that the remaining portion of the ancillary structure as depicted in the plan be used for an agricultural purpose as in RSA 21.

Member Connors, asked about hardship and pointed out that the barn has been built without an accessory unit.

Chair Saba asked if the building permit is still open. The applicant responded yes. Chair Saba asked what was stipulated in the application for the building permit. The applicant responded that when he filed the application with the Planning Board, the barn was shown as attached but stated at the time that he would come before the Zoning Board of Adjustment and request a variance for a detached ADU. Chair Saba also stated that the accessory dwelling unit law was changed in 2017, the State mandated that accessory dwelling units would be allowed in all

zones attached inside the primary dwellings, but would leave an option for municipalities to allow detached units. The Town of Atkinson voted under warrant article, not to allow detached accessory dwelling units. Now, in essence, what is before the Board is an application for a detached accessory dwelling unit.

Attorney Campbell informed the Board that the applicant was advised by the Planning Board staff that it was not an ADU application. The application was originally framed as that, but as instructed by the Planning Board staff to file an application for a second dwelling unit on a single parcel of land. Chair Saba summed up that the applicant is attempting to get two detached dwelling units on a parcel that is two acres, the minimum required in the zone for one single family and the applicant is attempting to get two detached dwelling units. Attorney Campbell agreed.

Member Connors asked if the application was for 510b or 530b. Chair Saba explained that 510b is for single family, conventional housing. Member Connors stated that the two acre requirement, the lot would not have the frontage requirements or anything. Attorney Campbell responded that the lot is preexisting. The applicant is requesting to create a second apartment in an allowable accessory building based on the concept that it would be historic agricultural use in a large barn and which would in many cases have a residential component and this is what the Applicant is requesting. This is a unique structure.

Attorney Campbell cited the zoning requirements in Section 500:8 for the Town Center and that the property would comply with the historic nature of the Town Center. The Applicant believes that this proposal is consistent with the type of structure that would enhance the historic qualities of the district. Attorney Campbell addressed the concerns of Member Connors regarding what would happen if the property is sold and the new owner does not want to use the structure for agriculture. He stated that the Board could make it a condition that the barn be used for agriculture and if not, the apartment would have to go away. Another option would be to attach the barn to the dwelling unit. Attorney Campbell stated that he believed he is finished with his presentation and would like to start addressing the criteria.

Chair Saba opened the discussion to the public. There was no discussion.

Chair Saba opened the discussion to the Board.

Member Farris asked if there would be any limits on the apartment; that it should be family related. Chair Saba stated that the application is for a two bedroom dwelling unit not exceeding 1000 square feet. Member Farris summed that it could be a rental unit.

Member Leondires asked about the second bedroom. Attorney Campbell stated that there is not a second bedroom, when Mr. Lewis began the engineering process, he obtained a septic design for two bedrooms. However, when he started to lay out the unit within the structure, he determined it would be a one bedroom unit. Mr. Lewis stated the proposed dwelling unit would be exactly 1000 square feet. Mr. Lewis also stated that he cannot get an occupancy permit for a living unit over 1000 square feet and two bedrooms would not work. The Board reviewed the plan. Mr. Lewis explained that the living unit would be behind the barn area and the septic system is separate. Mr. Lewis also stated that he no longer owns the adjacent 18 acres, but he has a 99-year lease and must maintain it as agricultural property. Mr. Lewis stated that it would be similar to Gordon Brown's barn as well as his Uncle's barn.

Chair Saba stated that the Applicant must show that the Board should act in contrary to what the people just recently voted against.

Attorney Campbell stated that the voters voted that they did not want detached accessory dwelling units. The voters did not vote on whether or not this particular application in this particular Town Center district would or would not be appropriate and that is the job of the Zoning Board of Adjustment.

The Applicant went through the criteria:

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

Attorney Campbell stated that criteria one has been defined as having two component parts, one is that granting the request would not threaten the health welfare or public safety of the Town. The applicant believes that granting of this request would not threaten the health, welfare or public safety of the community. The second component of this variance criteria would be the granting to a change to the essential character of the neighborhood, and pointed to the photographs which would show that this property has a historic use as a farm with separated outbuildings which are allowed. Therefore, granting this relief would not affect the character of this neighborhood, would be consistent with the zoning objectives to retain the historic qualities of this area. This is an individual decision relative to an individual request, in this location with this lot and the history of this lot in relation to the Town itself.

It is the position of the Applicant is that this variance would not be contrary to the public interest.

Discussion: Chair Saba asked for discussion. The Board members agreed that the barn is already there, it is historically accurate and the living area cannot be seen. Whether or not the living area was there is not relative.

Mr. Lewis stated that when he restored the house, he took it from a dump back to 1768. It would have been common for people to be living in a variety of accessory dwelling units. The Cogswell family had seventeen children and people would have been living in the barn and in the sheds. There were even bedrooms on the third level.

All members of the Atkinson Zoning Board of Adjustments present agreed that the conditions of Article V Section 510b(1) are met based on the application and the discussion as present. Vote: 5/0/0. The vote is unanimous.

2) The spirit of the ordinance is observed because:

Attorney Campbell referred to the Supreme Court definition of how this particular criteria is used, and what the prohibition of two habitable structures on the same lot attempts to accomplish. It assumes that it wants a single family character, there is adequate septic, room for recreation associated with a family, ensure the density of the community does not grow and to preserve the single family residential character of the neighborhood. The applicant is proposing that this would not affect the single-family character of the neighborhood, because no one would know that there is a second dwelling unit in back of the barn. This criteria requires the Board to think, what the objective is. Given the history, given the appearance of the structure and where the proposed dwelling unit is proposed to go, the applicant is not violating the spirit of the ordinance, it does not change the essential character of the neighborhood and is consistent with the historic nature of the neighborhood. It does not violate

Section 500:8. It is a second occupied unit on a given lot but this lot is very unique and the proposal is very unique.

Discussion: Member Connors agrees with Attorney Campbell, but is concerned about the applicant subletting the detached, accessory unit, and how do we say no to the next applicant who wants to put an apartment above their detached garage. Chair Saba is concerned about the uniqueness of the property and Mr. Lewis named two or three other properties that are identical. Attorney Campbell responded that the Board must allow accessory dwelling units. Member Connors stated that accessory dwelling units are allowed, but they had to be attached. He commented that now there is a detached building with an apartment in it and the ordinance states it is not allowed. The warrant article was clear that the voters do not want that.

Attorney Campbell replied the purpose of the ordinance is to prevent people from putting up structures with the purpose of creating an additional unit. This proposal does not go in that direction. He stated that this structure is a replication of the structure as it was 100 years ago and would allow a historic part of the structure. Chair Saba asked how the Board could agree that the variance is consistent with the spirit of the ordinance when it states that an Accessory Dwelling Unit must be attached or that one single family dwelling is allowed on a two acre parcel, not two detached family dwellings. Attorney Campbell stated that if the Board states how the State Supreme Court decides how the criteria will be judged, they would decide that it is not contrary and does not change the spirit of the ordinance. In this case it is a use-type restriction and the question is whether the character of the neighborhood has been changed and if there is a threat to the health and safety of the neighborhood. Attorney Campbell believes that relief must be granted.

Chair Saba argued that in Bacon v Town of Enfield, the court ruled that while a single addition might not greatly affect the surroundings the cumulative impact of many might. It is his concern, that this property is not sufficiently unique, and in fact the Applicant stated so, and there is the possibility that there would be more requests for variance which would change the character of the neighborhood.

Attorney Campbell stated that given what is known about this property, it is not the case where a property owner would put up a detached garage and ask for relief for a dwelling unit, this is a barn with a historic component. Chair Saba replied that there are a lot of detached structures in Atkinson.

Member Connors stated he is trying to get to a YES but he is concerned that the Board has already turned down similar applications and asked if it could be heard later so he could determine if there were a precedent. Mr. Lewis stated that there are only 4 or 5 identical properties in town.

Member Wade asked if the proposed ADU design were attached to the dwelling unit, would the applicant need to apply for a variance.

Chair Saba stated that if the ADU was attached as it was submitted to the Planning Board, the size of the structure would still be of concern but that is not what is before the Zoning Board. So, assuming the actual size of living space was less than or equal to 1,000 sf the applicant would not be in front of the Board.

Attorney Campbell stated that he has addressed Criteria 2 and believes that the application meets Criteria 2 because it does not violate the spirit and intent of the ordinance. Mr. Lewis stated that there are only 4 or 5 identical properties in town.

Chair Saba asked if there was more discussion, specifically in regards to Member Connors' thoughts of tabling the hearing. There was none. Chair Saba asked the pleasure of the Board. There was no response.

Chair Saba requested a vote.

The Members of the Atkinson Zoning Board of Adjustments present did not agree that the conditions of Article V Section 510b(2) are met based on the application and the discussion as present. Vote: 3/1/1. Chair Saba requested a roll call. Member Wade voted in favor, Member Leondires abstained, Chair Saba, Member Connors and Member Farris voted no.

Attorney Campbell asked if the Zoning Board would continue since Criteria 2 failed. Chair Saba stated that the Zoning Board would continue with the rest of the criteria.

3) Granting the variance would do substantial justice because:

Attorney Campbell stated that Criteria 3 is met, because granting the variance would do substantial justice. The applicant believes that denying the application has no gain to the community. The applicant believes that allowing the application would do substantial justice, it would allow a residential unit, it would satisfy the purpose of an accessory dwelling unit by allow another housing unit at a smaller scale particularly for smaller households for elderly residents. It remains our contention that it does not threaten health safety or welfare, and would not change the character of the neighborhood.

Discussion: Member Connors remarked that it is not an accessory dwelling unit and asked how it would be of gain to the elderly. Attorney Campbell responded that it would satisfy the obligations of the Town to provide reasonable opportunities, it could create an affordable unit, a workforce housing unit, or it could provide opportunities that might not otherwise exist within the community, therefore the community gains by the creation of the unit. It is restricted in size and is barrier free.

Member Connors responded that Attorney Campbell stated that this would be unique.

Chair Saba stated that there are provisions in the ordinance, there are ADU's and we have zoning and planning provisions. There are several projects in Town that are built with affordable housing. The Board is here for the people of Atkinson. Chair Saba stated that the Applicant wants two dwelling units on a two acre lot and the citizens of the community do not want that. They voiced this by voting against it.

Chair Saba stated that the Board is juggling an ADU, a detached dwelling unit and a second residential unit and the Board needs to focus on what is before it based on the application.

Four Members of the Atkinson Zoning Board of Adjustments present did not agree that the conditions of Article V Section 510b(3) are met based on the application and the discussion as present and one member agreed. Vote: 4/1/0. Member Wade voted yes, all others voted no.

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

Attorney Campbell stated that this property is surrounded by 18 acres of open space, consistent with an agricultural use and this barn would complement an agricultural use. There are two major abutters. Chair Saba asked how the open space is involved and exactly how it benefits the applicant. Attorney Campbell informed the Board that Mr. Lewis has a lease on the open space, it is restricted to open space and is noted as scenic vista open space on the plan. Member Connors stated that the 18 acres do not matter, there is not going to be a diminishment of the surrounding properties regardless.

Attorney Campbell stated that there are two nonresidential abutters, a religious use and a consolidated telephone abutter. Chair Saba stated there are residential abutters across the street. Attorney Campbell agreed. Chair Saba also stated that the structure is not in question, it is the use which is detrimental.

Attorney Campbell stated that given the structure, given the setback, and the abutting properties, there would be no diminution. Chair Saba responded by saying that is the Applicant's opinion.

Discussion: Chair Saba stated that the structure as it stands as a barn, would not result in diminution, it is the proposed use that is the issue. Having two detached living units on a two acre lot is not allowed in Town. The Board discussed the issue.

Four Members of the Atkinson Zoning Board of Adjustments present agreed that the conditions of Article V Section 510b(4) are met based on the application and the discussion as present and one member disagreed. Vote: 4/1/0. Chair Saba voted Criteria 4 has not been met.

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)

Attorney Campbell stated that there are special conditions to this property. It is an historic property, and is a special property within the community. There are two criteria.

(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;

This property has an historic, preexisting agricultural use, the accessory structure will meet the character of the area, this property is located in the Town Center district and mixed uses are allowed. This requires an examination of what the ordinance is attempting to achieve. The proposed use is very reasonable and represents an attempt to recreate the character of the Town Center district. This unit would meet the criteria for an Accessory Dwelling unit as it relates to size and it would not change the essential structure of the building. The applicant believes that the idea that the law allows an ADU, Atkinson does not allow an Accessory Dwelling Unit to be detached and that is why the applicant is before the Board. The issue is the right of the property owner to develop the property in the way it wants and what the community is attempting to address. As the Zoning Board is aware, the dwelling unit and the structure with the proposed dwelling unit could be connected. Given previous discussions, the applicant believes this criteria has been met.

Discussion: Member Connors stated that Attorney Campbell makes it seem that the issue is only appearance, but it is not. Member Connors is concerned with other residents putting

detached units in structures, such as a garage. Attorney Campbell stated that a residential unit over a garage has no sense of tradition. Member Connors stated he believes the general public purpose of the ordinance is to prevent people from putting detached accessory dwellings in a detached unit and calling it something else, but it is an apartment in a detached unit. Chair Saba stated it could be a second dwelling unit on a two acre lot.

Attorney Campbell stated that under the criteria that the Board needs to apply, the applicant is not violating any of the criteria.

Chair Saba stated the property is definitely historic, but does not believe the variance is necessary because there was an application for a building permit and a building permit submitted showing the structure being connected. Therefore, he does not believe the application meets the criteria for hardship. Attorney Campbell questioned whether that was the legal standard for hardship.

Member Wade asked if there was a dwelling unit in the original barn and Attorney Campbell stated that there is no record, except for Mr. Lewis' examination of the structures during renovations. Chair Saba asked how the Board could consider the special conditions of this property and grant a variance to allow two dwelling units on a two acre parcel when in his opinion the case of uniqueness or hardship was not made. Member Connors stated there might be a hardship if the two structures were farther apart, but in this instance they could be connected.

Chair Saba requested a vote.

Four Members of the Atkinson Zoning Board of Adjustments present did not agree that the conditions of Article V Section 510b(5a) are met based on the application and the discussion as present and one member agreed. Vote: 1/4/0. Member Wade voted yes.

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

The barn represents an effort to recreate an area. Chair Saba pointed out that as far as recreating the barn, when the use was for housing, if you will, it was also part of more than 2 acres and there was a use of the acreage of land at the time.

Chair Saba opened discussion to the Zoning Board.

Discussion: None.

Four Members of the Atkinson Zoning Board of Adjustments present did not agree that the conditions of Article V Section 510b(5b) are met based on the application and the discussion as present and one member agreed. Vote: 1/4/0. Member Wade voted yes.

Chair Saba stated that Criteria 1 and Criteria 4 passed, Criteria 2, 3 and 5 did not.

Attorney Campbell asked that a picture of the church and a picture of the communications structure be added to the application.

Member Farris made a motion to deny the Application for Variance from Article V Section 510b submitted by Beaumont & Campbell Professional Association for Gail Lewis to permit the creation of a two (2) bedroom dwelling unit (apartment), not exceeding 1,000 sq. feet, situated within a permitted accessory structure (barn), where only one dwelling unit per lot is allowed at 95 Main St., Map 13 Lot 1 in the TC zone;

based on the Board failing Criteria 2, 3 and all of 5. Member Leondires seconded the motion. All members of the Atkinson Zoning Board of Adjustment present voted to deny the application. Vote: 5/0/0.

Chair Saba informed the applicant that the Atkinson Zoning Board of Adjustment has voted to deny the request and there is 30-day appeal period.

6) Application for Variance from Article V Section 530b submitted by Promised Land Survey, LLC for Dean & Susan Killam to permit a two-lot subdivision of a 22.7 acre parcel with one lot on Oak Ridge Dr. having frontage of 234.34' where 250' is required (17.7' variance) on 48 Westside Dr, Map 11 lot 20-1 in the RR2 & RR3 zones.

Abutters: Andrew J. and Katie Murphy, Sean P. and Melissa Finneran, Shawn and Tara Latulippe, Nevert Masin, Michael Berube, Ed Tomasi Revocable Trust, Mark and Erin Miller, Dean and Susan Killam (present), Paul and Amy Pellitier, Abol M and Ann Tehrani, Kenneth Dibella, Elizabeth Kiley, Christopher and Lauren LeBlanc, Sean and Melissa Finneran, William Hyder, Nicole M. Pinet, Kevin and Jolene Gillans (present), Promised Land Survey (present) and Town of Atkinson

Mr. Tim Peloquin, a licensed land surveyor of Promised Land Survey, came before the Board to represent Dean and Sue Killam who own a 22.7 acre parcel having three frontages, Westside Drive, Oakridge Drive and also a fifty foot right of way on Deer Run Road. The proposal is to subdivide the 22.7 acre lot into two lots, one being 5.3 acres, with the remaining 17.4 acres making up the Killam homestead that fronts on Westside Drive, with three frontages on Westside Drive and with a total frontage of 354 feet. A parcel is in the back, fronting on Oak Ridge Drive. The proposed 5.3 acre lot will have 232.34 feet of frontage where 250 is required. The idea is to subdivide the lot using natural boundaries, a brook, a pond as well as a stone wall. Oakridge Drive is a residential subdivision of homes built around 10-15 years ago. The Killam's have frontage on Oak Ridge Drive which is 17.7 feet short of the required frontage. One unique feature is that where the house is proposed, there is 250 feet of width and that meets the ordinance. Ordinance 491 states that frontage can be up to 2/3 of the requirements, equating to 167.5 feet. The applicant is requesting a variance of 17.7 feet of frontage short on Oak Ridge Drive where all other requirements are met. It is an oversized lot. There are natural features.

Chair Saba asked where the existing house is. Mr. Peloquin replied that it is much farther down Oak Ridge Drive. He also informed the Board that the nearest house is at least 200 feet away from the proposed subdivision and there are trees in between. There is also a driveway across the street and the house sits much further back. It is a very, very quiet neighborhood.

Chair Saba summed up, both lots meet the upland criteria, a hardship is not created for the existing lot and the applicant is attempting to subdivide 22.7 acres into just two lots. Mr. Peloquin agreed and stated that the proposed variance is for 17.7 feet of existing frontage that is bounded by a stone wall on both sides of Oak Ridge Drive. The distance from the road to the house is a little more than 200 feet. Chair Saba stated that the plan would still need to go before the Planning Board.

Chair Saba opened the discussion to the public.

Mr. Gillans of Deer Run Road asked how far back the lot would go and if he would be an abutter. Mr. Peloquin pointed out the lot on the map.

Chair Saba opened the discussion to the Zoning Board. There was no more discussion.

The applicant went through the criteria: Mr. Peloquin stated that there is a typo on the front of the application. The notice should be 232.34 where 250 is required, the rest of the variance is correct. The applicant agrees.

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

The existing frontage is approximately 7% shorter than the required frontage, and the proposed lot area is larger than the required, and utilizes the natural features of the lot as new, proposed boundaries.

Discussion: Chair Saba stated that the Zoning Board is discussing a minor reduction in frontage with a lot that has more than enough area and meets all setbacks.

Chair Saba requested a vote.

All members of the Atkinson Zoning Board of Adjustments present agreed that the conditions of Article V Section 530b(1) are met based on the application and the discussion as present. Vote: 5/0/0. The vote is unanimous.

2) The spirit of the ordinance is observed because:

While the frontage of the proposed lot is short by approximately 18 feet, the requirements of 250 feet at the face of the proposed building location, the building line is met as per Section 490:1 of the ordinance.

Discussion: Chair Saba stated that question has been asked in the past, and along with the spirit of the ordinance, the Board has determined that there is no overcrowding or public safety issues. The Fire Chief will ensure that NFPA1 will be met and that there is a house number available in the subdivision phase. The applicant informed the Zoning Board that there is a house number available.

Chair Saba asked if there was more discussion. Member Farris stated that the reason Mr. Peloquin has given is not valid because the requirements of the 250 feet of frontage has nothing to do with the ordinance. Mr. Peloquin replied that he believes it is not really a tradeoff, because it is slightly short on frontage but it is a larger acreage and he believes the spirit of the ordinance is met. Chair Saba stated that it is relevant because under the reduction ordinance, once you get back into the lot, it has to be wide enough. Member Farris stated that in a previous case when the Zoning Board was reviewing splitting an existing lot, the density of the housing, not letting it be too close and safety were issues.

Chair Saba requested a vote.

All members of the Atkinson Zoning Board of Adjustments present agreed that the conditions of Article V Section 530b(2) are met based on the application and the discussion as present. Vote: 5/0/0. The vote is unanimous.

3) Granting the variance would do substantial justice because:

The applicant strongly feels that this various request meets all the criteria as set forth and explained herein.

Discussion: Chair Saba stated that there is no loss to the general public not outweighed by a loss to the applicant.

All members of the Atkinson Zoning Board of Adjustments present agreed that the conditions of Article V Section 530b(3) are met based on the application and the discussion as present. Vote: 5/0/0. The vote is unanimous.

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

The existing frontage is unchanged, the proposed lot is large, 5.3 acres, and the new lot uses its natural divisions/natural boundaries, lines of the road, brook, pond and the existing stone walls as its proposed boundaries. The remaining lot will maintain existing legal frontage on Westside Drive, which has 354 feet of frontage.

Discussion: Member Connors asked if the building would maintain the character of the neighborhood. Mr. Peloquin responded that it would be up to the builder.

All members of the Atkinson Zoning Board of Adjustments present agreed that the conditions of Article V Section 530b(4) are met based on the application and the discussion as present. Vote: 5/0/0. 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:

The frontage of 232.34 feet is the actual existing frontage along Oakridge Drive and is only approximately 7.7% short of the required 250 feet of frontage. The denial of this variance may precipitate alternatives to legally access this available land which could include wetland impacts. It also halts any future intended subdivision.

Discussion: none

All members of the Atkinson Zoning Board of Adjustments present agreed that the conditions of Article V Section 530b(5a) are met based on the application and the discussion as present. Vote: 5/0/0. The vote is unanimous.

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

The lot meets all requirements of width, but it is only slightly short at the road frontage line.

Discussion: Chair Saba agreed that it is more than reasonable to have a single family residence where under the circumstances of the area, others would apply for a condominium development.

All members of the Atkinson Zoning Board of Adjustments present agreed that the conditions of Article V Section 530b(5b) are met based on the application and the discussion as present. Vote: 5/0/0. The vote is unanimous.

Member Connors made a motion to allow the Application for Variance from Article V Section 530b submitted by Promised Land Survey, LLC for Dean & Susan Killam to permit a two-lot subdivision of a 22.7 acre parcel with one lot on Oak Ridge Dr having frontage of 234.34' where 250' is required (17.7' variance) on 48 Westside Dr, Map 11 lot 20-1 in the RR2 & RR3 zones. The motion was seconded by Member Farris. Vote: 5/0/0. All members present voted in favor.

Chair Saba informed the applicant that there is 30-day appeal period.

Member Connors made a motion to close the public hearing. The motion was seconded by Member Wade. All members present voted in favor. Vote: 5/0/0. The vote is unanimous.

Member Connors made a motion to adjourn. The motion was seconded by Member Leondires. All members present voted in favor. Vote: 5/0/0. The vote is unanimous.

Chair Saba adjourned the meeting at 9:05 pm.