

ATKINSON ZONING BOARD OF ADJUSTMENT

21 Academy Avenue

Atkinson, New Hampshire 03811

Public Hearing Meeting Town Hall

Wednesday, March 10, 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
Ryan Dogil, Project Manager, Marquis
Management

Will Reddington, Wadleigh, Starr & Peters,
P.L.L.C.
Paul Busby

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, alone; Member Wade, alone; Member Sullivan, alone; Member Leondires, alone; and Chair Saba, alone. All of the Atkinson Zoning Board of Adjustment members stated they were present.

Motion for Rehearing in the Appeal of an Administrative Decision seeking an exception from the road frontage requirement under RSA 674:41, I for Tax Map 17, Lot 62, off Huckleberry Lane, Atkinson New Hampshire as submitted by William P. Reddington, Esq and Wadleigh, Starr & Peters, P.L.L.C for Charles Kinney & Jeanine Kinney Living Trust, Charles Kinney Trustee.

Abutters:

Centerview Hollow Land, Katherine and Lonnie Goodwin, Mr. Charles Zilch, SEC Associates, Diane Kinney, Charles Kinney and Jeanine Kinney, Trustee Charles & Jeanine Kinney Liv Tr, Huoth Pech, Paul and Leann Moccia, Will Reddington, Wadleigh, Starr & Peters P.L.L.C., (present); Charles Cleary, Wadleigh, Starr & Peters, P.L.L.C.; Diane and Barry Mackin, TTE, Diane Mackin Rev Trust and Barry Mackin Rev Trust

Chair Saba informed the audience that the Board would consider the above motion for rehearing. He explained that a hearing was conducted and a vote was taken at the January

13, 2021 meeting. Chair Saba stated that the applicant submitted the appeal in the required time frame. In discussing the appeal, the Board must weigh out whether it has made an error in its decision, and whether the decision was unreasonable or unlawful. The parameters are very tight. No new evidence can be discussed that wasn't available to the board for the hearing and there will be no public participation. The Board can only discuss what it did. We have a request that has been submitted with reasons by the applicant for why they believe the Board is in error. Chair Saba requested Sue Coppeta, Planning Office Administrator read the Motion for Request for Rehearing into the record.

Vice Chair Connors asked Chair Saba to clarify that for a motion to rehear there can be no comment by the applicant, the abutters or the petitioner. Chair Saba stated Vice Chair Connors is correct. Vice Chair Connors asked if the discussion would only be held by the Board. Chair Saba stated he is correct, this is a motion for rehearing and added that if the Board agrees that it is in error, it was unlawful or unreasonable, and the Board accepts the motion, then the hearing will be rescheduled. It will not be tonight. This discussion is just to decide if the Board accepts the Motion for Rehearing.

Chair Saba again requested that Sue Coppeta read the Grounds for Rehearing into the record. Ms. Coppeta read the Grounds for Rehearing into the record.

"Grounds for Rehearing:

1. The ZBA erred in its refusal to hear the Applicant's request for an exception under RSA 674:41 where it determined the Applicant's Property is not a "lot of record". Rather, the Property is a "lot" under New Hampshire law, is a "lot of record" under Atkinson's Zoning Ordinances, and is eligible for an exception under RSA 674:41.
2. First, the ZBA mistakenly conflated an approved "building lot" with a "lot" or "lot of record" which resulted in an unreasonable and unlawful outcome for the Applicant. 2 The ZBA determined it could not hear the Applicant's request because the Property is not a "lot of record" because it "was not an approved, subdivided lot by the Atkinson Planning Board". Yet, this is not a requirement for "lot of record" status; rather, the ZBA has confused approved building lot status with lot or lot of record status. In doing so, the ZBA has effectively denied the Applicant the right to develop his property and seek relief under the various statutory mechanisms. Moreover, the ZBA's reasoning for refusing to hear the Applicant's request creates a paradox where pieces of property exist that can never be developed and are not subject to the statutory relief mechanisms put in place for such tracks of land. To elaborate, the ZBA found it could not even entertain the Applicant's request for an exception to make the Property a building lot, because it is not a lot of record. However, to become a lot of record, the lot must be an approved lot. The Applicant then sought the very relief needed to make this an approved building lot, but the ZBA would not hear the request because the Property was not an approved lot. Clearly, this circular outcome cannot be what the ZBA intended. The only explanation for the ZBA's reasoning is that it is conflating an approved building lot with a lot or lot of record. Importantly, the Applicant does not contend the Property is an approved building lot and understands there are other steps that must be completed before a building permit can be issued; however, the Applicant is attempting to take those steps and must be afforded an opportunity to do so.
3. Moving on, the ZBA's determination that the Property is not a "lot of record" because the lot is "not an approved, subdivided lot by the Atkinson Planning Board" is unreasonable because the criterion applied by the ZBA does not conform with Atkinson's own Zoning Ordinance. Under Atkinson's Zoning Ordinance Definitions, "'a lot of record' is an individual lot lawfully recorded in the Registry of Deeds of Rockingham County, New Hampshire, and/or Essex

County, Massachusetts, which conformed with the Town zoning requirements in effect at the time of its recording. (1982).” Based on a plain reading of this definition, there does not appear to be any requirement that a “lot of record” must be an “approved, subdivided lot by the Atkinson Planning Board”. Again, it would seem the ZBA is conflating the requirements of an approved building lot with a lot of record. A reasonable interpretation of a “lot of record” would mean a lot shown on a subdivision plan or evidence of the lot in the registry of deeds. Here, the Property has both where evidence was presented to the ZBA to show the Property is a lot and lot of record. For example, the Applicant submitted to the ZBA that the Property is depicted on a subdivision plan dated April 21, 1971, approved by the Town of Atkinson Planning Board and recorded at the Registry as D-2379.4. Following this subdivision plan, the Property was conveyed out and recorded in the registry of deeds. Indeed, the record and evidence show the Property is a lot of record and was in existence over a decade before the “lot of record” definition had even been enacted.

4. In addition, the ZBA cannot argue the Property was not “subdivided” where it is shown on an approved subdivision plan as a designated, separate, and distinct parcel, and was subsequently conveyed out as an individual lot and recorded in the registry of deeds. Neither the Town nor the ZBA has suggested the Property violated subdivision regulations or the like. Instead, the Town has treated the Property as a lot since 1971.
5. The ZBA’s decision is unlawful because it does not conform with New Hampshire law. The ZBA denied the Applicant’s request for an exception from the direct road frontage requirement under RSA 674:41, II because the Property was not a “lot of record”; however, classification as a “lot of record” is not required by the statute nor is “lot” defined for this subsection. The language of RSA 674:41 suggests that the statute applies to any lots or tracts of land: “no existing lot or tract of land shall be exempted from the provisions of this section except in accordance with the procedures expressly set forth in this section.” RSA 674:41, III. The section’s use of “lot or tract of land” indicates that the exception is available to any existing lot or tract of land. The Property clearly qualifies as either a lot or tract of land, and as a result, the ZBA’s decision to deny the Applicant’s request for an exception under the statute because the Property is not a “lot of record” is unlawful. Moreover, the text and reasoning behind RSA 674:41 and the frontage requirement necessarily applies to lots that are not approved building lots. For example, “no building shall be erected on any lot” . . . nor shall a building permit be issued for the erection of a building” unless “the lot” has direct road frontage. RSA 674:41, I. Of course, the statute necessarily applies to lots that have not been approved for building permits or approved building lots. Thus, the ZBA acted unlawfully when it refused to hear our request for an exception.
6. Looking beyond RSA 674:41 to Chapter 674 as a whole, the statute suggests the Applicant’s Property is a “lot” despite the ZBA voting otherwise. For instance, under RSA 674:24, Definitions for Emergency Temporary Zoning and Planning Ordinances, a “Lot” is defined as “a parcel of land at least sufficient in size to meet the minimum requirements for use, coverage and area and to provide required yards and other open spaces.” RSA 674:24 (eff. 1984). Regarding residential agricultural districts, “[l]ots shall be at least one acre minimum in size”. RSA 674:25. Here, the Property qualifies as a “lot” where it is a parcel of land over one acre in size and is sufficient to meet the requirements for use, coverage, and area. The Property is roughly the same size, if not larger, than several of the surrounding residential lots. The Property has NHDES septic approval, which demonstrates its ability to meet state standards and viability as a building lot. The Property clearly qualifies as a lot under the statute and the ZBA’s refusal to hear the application for the exception under RSA 674:41 was unreasonable.
7. The ZBA erred when it determined the Property is not a “lot of record” because it has been part of the official Town map for almost fifty (50) years. Pursuant to RSA 674:38 Status of Plats Approved, “Every plat approved by the planning board shall, by virtue of the board’s approval, be deemed to be an amendment of or an addition to or a detail of the official map.

Every approved plat shall be a part of the official map.” RSA 764:38. By virtue of being on an approved and recorded subdivision plan, the Property is part of the official Town map and becomes a lot or lot of record. It defies logic to conclude that the Property can be part of the official Town map and be taxed by the Town, but is not a “lot of record”.

8. Moreover, the ZBA’s acted unreasonably when it determined the current RR2 Zoning Ordinance applies to the Property. This is so because “[o]nce substantial completion of the improvements as shown on the subdivision plat or site plan has occurred . . . the rights of the owner or the owner’s successor in interest shall vest and no subsequent changes in subdivision regulations, site plan regulations, or zoning ordinances, except impact fees . . . shall operate to affect such improvements.” RSA 674:39, II. Indeed, because the Property preexists Atkinson’s current zoning regulations and was included in a recorded and approved subdivision plat that has been completed, the Applicant’s rights to develop the Property vested and the current Zoning Ordinances do not apply. Therefore, the ZBA acted unlawfully when it determined the Property was not a lot of record and Section 400:4 did not apply.
9. The ZBA, in support of its decision, relied heavily on the subdivision plan D2379 which identifies three lots that were “Approved”. Because the Property is not listed as one of these three “Approved” lots, the ZBA concluded it was never approved and thus cannot be a lot of record. This conclusion, however, leads to an unreasonable and unlawful outcome. The fact that the Property was not listed as an “Approved” lot merely suggests it was not an approved building lot at the time, not that it could never be developed or that it is not an existing lot of record. Again, the ZBA’s reliance on this argument demonstrates it is conflating lots/lots of record with building lots. As a result, the ZBA has created a paradox where because the Property was not an approved building lot at the time of its subdivision, any appeal or request to make it an approved building lot cannot be entertained because it is not an approved building lot. Of course, this paradox will always result in an unreasonable and unlawful outcome. On the other hand, a more reasonable interpretation of the subdivision plan shows it was the intention of the Planning Board to make this a lot with development potential. The Property was the same size, if not larger, as the surrounding approved lots and was provided an easement, roughly the size of a driveway, to access the public street. Although the Property may not have been granted building approval in 1971, the Property is a lot and lot of record, nonetheless.
10. The ZBA also acted unreasonably when it based its denial on language found in one deed in the Applicant’s chain of title. Specifically, the Deed recorded at Book 3010, Page 2213, includes the following language: “This lot has not been approved for building purposes.” Based on this language, the ZBA determined the Property is not a lot/lot of record and cannot apply for an exception under RSA 674:41. The ZBA’s reliance on such language, however, shows it is conflating a building lot with a lot or lot of record. The phrase itself uses the term “lot” and only states that it has not been approved for building purposes. The Applicant understands this – hence the building permit applicant and the request for an exception under RSA 674:41.
11. Lastly, the ZBA acted unreasonably when it voted and determined the subject parcel was not a lot of record because this action resulted in an unlawful and unconstitutional taking, depriving the Applicant of all economically beneficial use of his land without just compensation.

Under Part I, Article 12 of the New Hampshire Constitution, “[n]o part of a man’s property shall be taken from him, or applied to public uses, without his consent.” A governmental regulation can be a taking, even if the land is not physically taken, if it is an arbitrary or unreasonable restriction which substantially deprives the owner of the economically viable use of his land. Limitations on use create a taking if they are so restrictive as to be economically impracticable, resulting in a substantial reduction in the value of the property and preventing the private owner from enjoying worthwhile rights or benefits in the property.

Huard v. Town of Pelham, 159 N.H. 567, 574 (2009) (citations omitted). Through the ZBA’s unreasonable and arbitrary determination that the Property is not a lot of record, the ZBA

eliminated almost all economic value from the Property and all but ensured the Property remains undeveloped. In addition, there has been some suggestion from the Town/ZBA that the Property was intended to remain undeveloped as open space or the like; this suggestion, however, is unreasonable. See *Burrows v. City of Keene*, 121 N.H. 590, 600 (1981) (holding the city's actions constituted a taking under the constitution where, "from the outset, it was plain that the city wished the plaintiff's land be devoted to open space," and instead of compensating the plaintiff for this result, obtained it by "prohibit[ing] all normal private development."). As discussed in *Burrows*, a municipality cannot deny a landowner the right to develop his or her land simply because the municipality wants the land to remain undeveloped, and to do so would constitute an unconstitutional taking.

12. The Property is a good building lot: it is zoned in the RR2 zone, has been approved by NHDES for septic system, and is roughly the same size as the surrounding developed residential lots. In all respects, it is well suited for a single-family dwelling. However, due to the unreasonable decision by the ZBA, this Property, a lot that has existed for almost 50 years, will remain undeveloped and valueless. In addition, through the ZBA's circular reasoning, will remain undeveloped and valueless. In addition, through the ZBA's circular reasoning, it denied the Applicant the right to the statutory relief mechanisms in place. The Town of Atkinson and the ZBA must afford the Applicant the right to apply and be heard with respect to requests to develop the Property, it cannot simply deny the right to seek relief all together. The Applicant understands additional steps must be taken before a residential dwelling can be erected on the Property, and the Applicant's request for a practical difficulty exception to the road frontage requirement was a step in that direction.

WHEREFORE, the Applicant requests a rehearing on the denial of its appeal of an administrative decision, and further requests that the ZBA grant the exception to the road frontage requirement under RSA 674:41, I and find that Atkinson Zoning Ordinance section 400:4 is applicable to the Property."

Chair Saba thanked Ms. Coppeta and stated that this is the first time the Board had entertained such a motion. He informed the members that they had four minutes before we need to open the public hearing, if a conclusion is not reached in that time, he will have to open the public hearing and the discussion will have to be continued after that. Chair Saba asked the Board members if they had anything they would like to talk about. He warned the members that in its discussions, not to talk about anything that was not before it at the January 13, 2021 hearing. Anything new, for example, the RSA's mentioned in the Request for Rehearing, cannot be discussed because they were not presented at that time. They are not irrelevant, but they should not be discussed tonight. The Board must focus on whether its decision was unreasonable, unlawful or if it made an error in its decision.

Vice Chair Connors stated that he recalled that the Request for Rehearing is an Appeal for Administrative Decision. The building inspector had five points that he noted in his decision not to grant a building permit for this lot.

Chair Saba stopped Vice Chair Connors, agreed with his statement and added that the applicant stated at the hearing of January 13, 2021, that because there was a lack of forms in the Planning Office and there is no form that covers RSA 674:41, the applicant used the form for an Appeal from an Administrative Decision. The applicant specifically stated at the hearing that he was not requesting any variances and he did not address anything in the list in the Administrative Decision. He was requesting an exception under RSA 674:41, paragraph 2.

Vice Chair Connors replied that his point is that the issue with frontage keeps on coming up but it is only one of the issues. This lot does not conform to RR2, it's not 2 acres and setbacks were not clear. Chair Saba stopped him and told him that he does not want to discuss any of the Building Inspectors 5 points of denial at this time. The only question is if there is an issue, he thinks the Board members missed at the January 13, 2021 hearing, that is what should be talked about.

Vice Chair Connors stated that he reviewed all the paperwork, the drawings, he went through everything. "Unlawful" was mentioned nine times in the brief but he cannot see anything the Board did wrong in its hearing.

Chair Saba stated that the terms "lot" and "lot of record" are clearly defined in Atkinson Zoning Ordinances. If the Board did anything wrong, it may have used the word "Lot"^s loosely as opposed to the term "parcel of land". This parcel of land, which was termed a lot by the applicant was created through a subdivision in 1971 by the Atkinson Planning Board and at that time, in that meeting, it was clearly stated that parcel of land was not approved as a buildable lot. It did not meet zoning regulations then and it does not meet zoning now. Further, the Applicant never satisfactorily proved access, they simply said that there was a right of way. This is a left over parcel of land that does not have frontage, area, and upland area to name a few of its issues.

Chair Saba asked the Board members if they had anything to add. There was no further discussion.

Chair Saba requested a motion.

Vice Chair Connors made a motion to deny the Motion for Request for Rehearing of Application for Appeal of Administrative Decision submitted by Charles Cleary, Esq. and Wadleigh, Starr & Peters, P.L.L.C. for Charles Kinney & Jeanine Kinney Living Trust, Charles Kinney Trustee related to a parcel of land at Map 17 Lot 62 in the RR2 Zone. (cont'd from December 9, 2020 and January 13, 2021).

Discussion: Chair Saba stated that there is a motion before the Board to deny the Request for Rehearing based on the fact that the Board does not see any basis that its decision at the January 13, 2021 meeting was unlawful, unreasonable or in error. Vice Chair Connors agreed.

Member Leondires seconded the motion. Roll Call: Vice Chair Connors, yes; Member Wade, yes; Member Leondires, yes; Member Sullivan, yes; and Chair Saba, yes. All members of the Atkinson Zoning Board of Appeal voted to deny. Vote: 5/0/0. The vote is unanimous.

Chair Saba informed the applicant that the motion is denied and there will be no rehearing.

Public Hearing – 7:30 P.M.

Chair Saba opened the public hearing at 7:30 PM, March 10, 2021.

Application for Variance from Article IV Section 410:5 submitted by Marquis Management LLC (applicant), as authorized by Ruby Holdings, LLC (owner) to allow the

filling of 2 wetland areas (1,708 sq ft and 1,940 sq ft) to construct a building and parking lot, a non-permitted use in a designated wetland area. The property is located off Hall Farm Road (Map 16 Lots 9-2, 9-3, 9-4, 9-5, 9-6, 9-7 & 9-8) in the CI Zone.

Abutters:

Stacey Realty, LLC; Ruby Holdings, LLC; Twenty-Three Hall Farm Rd. Realty, LLC; D'Alleva, Pasqualino, Trustee of the Hall Farm Road Trust; Schafer, Rick A. Irrev. Trust, Schafer, Rebecca Lynde TTEE, Frisco, TX; Atkinson Town of; Spates, Richard Earl; Jappe, Paul; Kimball, William J; Kimball Alicia; Rock Ridge Development LLC (Paul Busby present); Timothy Ferwerda, Meridien Land Services; Greenman-Pendersen, Inc (David Jordon, present); Marquis Management (Ryan Dogil, present)

Chair Saba informed the audience that the Board depends on the expertise of the Conservation Commission on issues of conservation. He stated that Paul Wainwright, Chair Conservation Commission, has given his opinion prior to a site walk. Mr. Wainwright addressed the filling of two low spots created by poorly executed grading and informed the Zoning Board that the Commission does not object to the proposed site plan. There will be a site walk when the snow has melted.

Chair Saba requested the applicant appear.

David Jordan, Land Surveyor for Green and Petersen appeared before the Board to represent Marquis Management. Ryan Dogil, Planning Director for Marquis Management is also present.

Vice Chair Connors asked if the Conservation Commission found an issue during the site walk, could there be an appeal within the 30 day appeal period. Chair Saba replied yes.

Mr. Jordan explained that the site is 18.5 acres on Hall Farm Road across from Industrial Way. His client would like to develop a couple of buildings on this property, a 57,000 square foot office-warehouse building and a 25,000 square foot maintenance building to house the operations and headquarters of several of Marquis Managements' businesses. As part of the application and review process, the applicant realized that an application for variance would need to be filed.

Previously on this site, around 2016-2017, the current owner, Ruby Holdings obtained approval for a seven lot commercial-industrial subdivision consisting of a road and seven lots.

Subsequent to obtaining the approvals, some site work was started, including prepping of a road base and the lots. This earth work has been off and on since that time. Last year, the applicant entered an agreement to purchase the seven lots, consolidate them into a single lot and a development of 18.5 acres. The applicant found that as a result of the earth work that has gone on over the last few years, there are a couple of wetland areas that have appeared in the middle of the site which were not there originally. Mr. Jordan showed the Board a plan with existing conditions, the seven lots that are currently approved and which will be extinguished. Two wetland areas are shown in the middle of the site. They fall where the applicant is proposing to locate the office building. These wetland areas did not exist in 2016. This can be seen on the plan from the Ruby Way site plan set which shows a low area but did not have the

hydrology to support wetland designation at that time and did not appear as a classified wetland. Today, these areas are trapping water and have vegetation to support a wetland designation. The wetlands for which the applicant is requesting a variance can be seen: a 1708 square foot in relation to the proposed office building and a 1940 square foot wetland in relation to the proposed parking area. There are other wetlands on the site consistent to what was on the site in 2016-2017. The applicant will adhere to the applicable wetland setbacks for those wetlands.

In order for this development to go forward, the applicant is seeking relief from the zoning ordinance to allow these two areas to be filled for essentially lot development, something that is not allowed even as a conditional use permit or a special exception under your zoning ordinance, hence the reason for the zoning variance request.

The applicant requested to go through the criteria. Chair Saba informed him that there would be a discussion and the hearing would be opened to the public before going through the criteria.

Discussion:

Chair Saba stated that regarding the area of the wetlands the applicant is proposing to fill, the entire site appears to be relatively flat. Mr. Jordan agreed that for 18 acres it is relatively flat and explained that a lot of dirt was moved and a lot of material was stockpiled. The previous owner was trying to prep the site for eventual road and lot construction.

Chair Saba opened the discussion to the Board.

Vice Chair Connors asked Mr. Jordan if the events in the above discussion resulted in these wetlands.

Mr. Jordan replied in the affirmative. This was supported by the wetland consultant who is the same wetland consultant who was on the site in 2016. He knows the history here and knows that the wetlands did not exist previously and he identified them as existing today.

Member Leondires asked if the Conservation Commission approved allowing the wetlands to be filled and Chair Saba replied yes, he read the statement by the Conservation Commission Chair. He explained that Mr. Wainwright did not give a formal letter because the Conservation Commission did not meet.

Chair Saba opened the hearing to the public.

Vice Chair Connors requested to speak, stated this is about a designated wetland area and asked, if those were created by moving earth, who designated the wetlands. Mr. Jordan stated that Mr. Tim Ferwerda, the wetland consultant designated the areas as wetlands. Mr. Ferwerda stated that today, they support the vegetation and hydrology that define a wetland.

Chair Saba stated the hydrology is concerning, he can see leaving a hole and growing plants, and asked if it took many years to establish the hydrology. Mr. Jordan explained that when they say hydrology, it is because the water was trapped in the areas being discussed. It is an

area of standing water left alone and typically cat tails and other growth will be seen fairly quickly. Chair Saba asked if that is the reason for the vegetation and Mr. Jordan agreed.

Chair Saba opened the hearing to the public.

Mr. Paul Busby, Rockridge Realty Trust, an abutter requested to speak. He stated that he is the LLC that owns the buildings for Busby Construction. They have worked out there for four or five years. The previous owner, Ruby Holdings had a contractor out there who stripped all the topsoil off the site and all the lots. In doing so, the referenced wetland areas were created. Through the three or four years where there has been a lack of activity, the fine materials have washed down into that hole. It is a glacial till that will hold the water. That is what is holding the water and making the vegetation.

Ms. Coppeta requested to speak and stated that she spoke to the Town Engineer. He explained that many Towns have thresholds for induced wetlands in their zoning ordinances which do not require them to go for a variance, but Atkinson does not.

Chair Saba asked the applicant what the use of the buildings will be.

Mr. Jordan explained that they will be for industrial uses. There are a number of companies under the umbrella of Marquis Management. Mr. Dogil explained that he wants to move the base of operations from Salem, NH to Atkinson. The company employs around 600 laborers who work from Maine to Boston. About 50 – 100 people work in the office. Chair Saba asked who will be working in the office. Mr. Dogil explained that they will be from the Accounting Department, the Estimating Department and the Project Management Department. The building out back will be for mechanics to work on the heavy equipment. Select Demo is the primary business. There is also Select Paint, Select Tile, K-Town Disposal and Select Spray Systems. Chair Saba asked if there would be storage. Mr Dogil replied that there will be a warehouse for dry goods but no toxic materials will be stored. There will be no demo materials stored on the site.

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

Chair Saba requested that the applicant read the criteria. The Board will discuss if necessary, and each requirement will be voted on separately. An affirmative vote for all requirements is required for the request to pass.

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

Mr. Jordan explained that these two wetland areas are by-products of the earth moving activities that have occurred on this property over the last few years. These wetlands do not provide flood control, ground water recharge or wildlife habitat. Filling these wetlands will not threaten the health, safety or welfare of the general public, and will not alter or change the natural environment.

Discussion: Vice Chair Connors asked if there were a spring or stream or anything feeding these two wetlands and Mr. Jordan replied no. Chair Saba asked if the applicant had appeared before the Planning Board and Mr. Jordan explained that there was a hearing scheduled for the February 17, 2021 meeting but there was a power outage and the applicant

will appear before the Planning Board at the March 17, 2021 meeting. Chair Saba stated the comments made by Mr. Wainwright put him at ease as far as filling the wetlands being contrary to the public interest. He is looking out for the Town wetlands and resources so he will have to agree.

Chair Saba requested a vote.

Member Sullivan stated that he is a building inspector for the Town of Salem and has had building permit transactions with the applicant at their site in Salem. It would not influence his opinion. Chair Saba stated that he has also worked with the applicant.

Chair Saba asked for a roll call from the Board allowing Member Sullivan to continue.

Roll Call Vote: Vice Chair Connors, yes; Member Leondires, yes; Member Wade, yes; and Chair Saba, yes. Vote: 4/0/0.

Chair Saba asked for a vote on whether the conditions for criteria 1 have been met.

Roll Call Vote: Vice Chair Connors, yes; Member Leondires, yes; Member Wade, yes; Member Sullivan, yes; and Chair Saba, yes. All members of the Atkinson Zoning Board of Adjustment agreed that the criteria for Article IV Section 410:5(1) have been met. Vote: 5/0/0. The vote is unanimous.

2) The spirit of the ordinance is observed because:

The Court has stated that the spirit of the ordinance is closely connected to the public interest. Again, for the reasons stated above, the applicant does not believe that the variance is contrary to the public interest. Further, the granting of this variance will not injure the public or private rights of others.

Discussion: Chair Saba asked if the applicant would have stormwater management. Mr. Jordan replied yes and also state permit reviews and everything else.

Roll Call Vote: Vice Chair Connors, yes; Member Leondires, yes; Member Wade, yes; Member Sullivan and Chair Saba, yes. All members of the Atkinson Zoning Board of Adjustment agreed that the criteria for Article IV Section 410:5(2) have been met. Vote: 5/0/0. The vote is unanimous.

3) Granting the variance would do substantial justice because:

It would allow the applicant to construct a quality commercial/industrial development on this property that is otherwise burdened by these two, recently created man-made wetlands. There is no benefit to the public that would outweigh the hardship that would result to the Applicant if this variance were denied.

Discussion: Chair Saba agreed and stated that it is a valuable piece of land and a company would be relocating to Atkinson which would improve the tax base.

Roll Call Vote: Vice Chair Connors, yes; Member Leondires, yes; Member Wade, yes; Member Sullivan, yes; and Chair Saba, yes. All members of the Atkinson Zoning Board

of Adjustment agreed that the criteria for Article IV Section 410:5(3) have been met. Vote: 5/0/0. The vote is unanimous.

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

The construction of a quality commercial industrial development on this property, a use allowed by right, will increase the Town's tax base, will improve a property that has been subjected to land clearing and earth moving activities over the last few years and therefore will not diminish the value of the surrounding properties.

Discussion: Chair Saba stated that it is not up to the Board to determine diminution of value of surrounding properties and no abutters have stated so. Chair Saba has driven by the property many times and wondered what was going on. He believes it will be a beautiful project for the Town.

Roll Call Vote: Vice Chair Connors, yes; Member Leondires, yes; Member Wade, yes; Member Sullivan, yes; and Chair Saba, yes. All members of the Atkinson Zoning Board of Adjustment agreed that the criteria for Article IV Section 410:5(4) have been met. 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 public purposes of the Wetlands Zoning are listed in Section 410:1. Mr. Jordan did not restate those in the application. The applicant feels that because these two wetlands are man-made, they do not contribute to the functions and values listed in that section.

Discussion: Chair Saba stated he had nothing to add and asked the Board if they had anything to add. All agreed.

Roll Call Vote: Vice Chair Connors, yes; Member Leondires, yes; Member Wade, yes; Member Sullivan, yes; and Chair Saba, yes. All members of the Atkinson Zoning Board of Adjustment agreed that the criteria for Article IV Section 410:5(5a) have been met. Vote: 5/0/0. The vote is unanimous.

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

The filling of these two, isolated, manmade wetlands will allow the applicant to develop this property with a quality commercial/industrial development that otherwise conforms to all zoning requirements.

Discussion: Chair Saba stated that Atkinson is getting a good business from Salem.

Roll Call Vote: Vice Chair Connors, yes; Member Leondires, yes; Member Wade, yes; Member Sullivan, yes; and Chair Saba, yes. All members of the Atkinson Zoning Board of Adjustment agree that the criteria for Article IV Section 410:5(5b) have been met. Vote: 5/0/0.

Chair Saba requested a motion.

Member Leondires made a motion to approve the Application for Variance from Article IV Section 410:5 submitted by Marquis Management LLC (applicant), as authorized by Ruby Holdings, LLC (owner) to allow the filling of 2 wetland areas (1,708 sq ft and 1,940 sq ft) to construct a building and parking lot, a non-permitted use in a designated wetland area. The property is located off Hall Farm Road (Map 16 Lots 9-2, 9-3, 9-4, 9-5, 9-6, 9-7 & 9-8) in the CI Zone. Member Sullivan 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 motion was approved. Chair Saba informed the applicant that there is a 30 day appeal period.

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.

Approval of Minutes: February 10, 2021

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

Correspondence: none

Member Sullivan made a motion to adjourn the March 10, 2021 meeting of the Atkinson Zoning Board of Adjustment at 8:08 pm. Member Leondires 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 8:08 pm.