

ATKINSON ZONING BOARD OF ADJUSTMENT
21 Academy Avenue
Atkinson, New Hampshire 03811
Public Hearing Meeting Town Hall
Wednesday, March 11, 2020

Members Present

Glenn Saba, Chair

Sam Zannini, Vice Chair

Arthur Leondires

Kevin Wade

David Farris

Others Present

Tim Lavelle, Lavelle Associates

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: February 12, 2020

Chair Saba, Members Farris, Leondires and Wade of The Atkinson Zoning Board of Adjustment reviewed the minutes of the February 12, 2020 meeting, the Board made corrections and amendments.

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

- 1) 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.

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

Tim Lavelle, James Lavelle Associates came before the Zoning Board of Adjustment (“ZBA”) to represent the applicant. Mr. Lavelle explained that 4 Industrial Way is a seven and a half acre lot. The applicant proposes to build a building in the front, close to Industrial Way. The building will be used for storage for Palmer Gas. The applicant has digging equipment and trucks that are not used in the winter. He also explained that the proposed garage would have a septic system, an underground water tank for a sprinkler system, an underground propane tank proposed and an underground holding tank in case an oil truck were placed inside.

Mr. Lavelle stated that the applicant has met with the Conservation Commission several times. Chair Saba stated he did not get a letter from the Conservation Commission. Mr. Lavelle informed Chair Saba that he had a letter and presented the letter from the Conservation Commission to the ZBA. Chair Saba read stated that a copy of the letter dated March 4, 2020 from the Conservation Commission and the May 11, 2019 Conservation Commission minutes are attached to the application. Chair Saba read the letter and the minutes from the May 11, 2019 meeting of the Conservation Commission into the record.

To sum, the Conservation Commission March 4, 2020 letter:

It was stated that Mr. Lavelle appeared before the Conservation Commission to present a development plan for 4 Industrial Way, Map 16, Lot 4 on behalf of Bill Irma of Palmer Gas and Oil on April 1, 2019 and again on May 6, 2019.

Further, the plan presented requested a variance for a garage to be placed 28.42 feet from a wetland where zoning requires a 100-foot setback. At both of these meetings, the Commission pointed out that the setback variance requested is over 70 feet larger than would be typically approved. It also stated that in the past, the Commission has treated wetlands on Industrial Way the same as wetlands in the rest of the Town.

The letter also stated that at both of the above meetings, Mr. Lavelle stated that the applicant would be willing to donate a deeded conservation easement for the back of the property to the Town if approval were granted for the requested variance.

The letter goes on to say that, subsequently, at a special meeting of the Commission on May 11, 2019, members of the Commission walked the land in question. A summary of the minutes to the May 11, 2019 meeting was included.

To summarize the minutes of the May 11, 2019 Conservation Commission meeting:

It was stated that the Members expressed concern that the proposed setback was exceptionally large, much larger than other setbacks for which the Commission has recommended approval. It was also noted that denying this variance did not seem to be a hardship because the proposed project was new construction, not an addition to an existing structure.

Mr. Lavelle then stated that his client was willing to donate a conservation easement to the Town on the entire back portion of the lot in order to preserve it as open space for wildlife habitat in perpetuity. Members expressed great interest in this possibility and suggested that this would be a good deal for the Town if the area could be preserved as a condition of granting the variance.

Chair Wainwright gave Mr. Lavelle a copy of a conservation easement granted on property on Willowvale Ave that had been donated to the Town about 10 years ago and suggested that a similarly worded easement would be considered favorably by the Commission. Other members were in consensus.

Mr. Lavelle returned to the regular meeting of the Commission held on February 2, 2020 and presented the final plan which still had the building 28.42 feet from the wetland and stated that he would be appearing before the ZBA in March seeking approval. No draft easement was presented.

Summary of the minutes of the February 2, 2020 Conservation Commission meeting:

The Commission noted that this is a much larger variance than the Commission is normally comfortable with recommending to the ZBA but sees it as a fair deal if the Conservation Easement is watertight on the rest of the land. Chair Wainwright stated that the Commission would right a letter of recommendation but it would be contingent upon completion of the conservation easement deal. The Commission voted to approve a letter.

On February 26, 2020, Mr. Lavelle requested another sample easement for the applicant stating that he had lost the earlier example given to him May 19, 2019. Another example in Word format was emailed to him on that day. To date, the Conservation Commission has not been presented with a draft conservation easement for the area discussed and therefore it is not in a position to recommend approval at this time.

It seems to us that a continuous or future meeting of the ZBA might be appropriate in order to give Mr. Lavelle more time to respond. Also, our next meeting will not be scheduled for April 6, 2020. Also, since a review of the Town Attorney will be needed, we encourage Mr. Lavelle to send the Conservation Commission a draft copy of the easement as soon as possible.

Chair Saba stated that the documents have been read into the minutes.

Mr. Lavelle then informed the ZBA that his client has not submitted a draft conservation easement but hopes to do so. He has been working with the Conservation Commission and

he is hoping a draft easement document will be prepared-submitted before the April 6, 2020 meeting of the Conservation Commission for their review at that time.

He stated that although the draft conservation easement had not been submitted, he is appearing before the ZBA to review the application for variance rather than not show up and went on to present the application.

The proposed parcel is a large piece of land. Unfortunately, it would be necessary to cross the wetlands in two areas to get to the larger, buildable portion of the parcel in the back. Rather than do that, as shown on the plan, the Applicant is proposing to put 6.07 acres of the property into a Conservation Easement in perpetuity. The proposal is to put the building close to the street so it will not be as close to the wetlands. All drainage is close to the street. The applicant is aware that the easement language was not prepared in time for this meeting. Also, the Applicant's an attorney would need to look at the sample prior easement and prepare a new draft easement. The only difference between the prior proposed easement and the sample easement given to the applicant by the Conservation Commission presently being proposed would be a change of names from the sample easement to the proposed draft easement. Mr. Lavelle is appearing before the ZBA to inform them of the application and request that the ZBA do a site walk. Mr. Lavelle went on to say that it might be strange to give up over six acres, but after the Conservation Commission walked the lot, they could understand why.

Mr. Farris stated that he looked at the lot from the street, there were a lot of concrete pillars in the front of the lot so he did not walk it and did not realize how far the parcel extended in the back. Mr. Lavelle stated that the pillars were there when the applicant purchased the property and the applicant would clean up the pillars in the front. He is proposing that, rather than cross the wetlands and run driveways through them, to the larger portion of the lot, to build a structure 30 feet from the road.

Chair Saba stated that in 2002 a frontage variance was granted to allow a building 33 feet from the front yard setback, but it was a 17-foot17-foot variance at the time because there was a 50-foot50-foot setback requirement at that time. Mr. Lavelle stated that the variance requested at that time was for a frontage setback and the requirement has not changed, it is still fifty feet from the street. Chair Saba stated it was his error. Vice Chair Zannini asked if a wetlands variance was requested at that time. Mr. Lavelle stated no, the wetlands were mapped twice since that variance was requested, and now the original plan would not work.

Member Farris asked if the building could be reoriented 90 degrees, and lessen the impact on the wetlands. Mr. Lavelle stated that it could lessen some of the impact but not much. The parking would have to be in the front and the setback requirement for parking is 70 feet rather than 50 feet. Member Farris asked that, since it was storage, if that much parking would be needed. Mr. Lavelle stated that the parking is for vehicles and is required by the size of the building. Another reason is to allow the larger trucks access to the building. Mr. Lavelle stated that the applicant also considered a plan to have the building at 90 degrees but it was determined that it was a little further from the wetland and another variance that would be required because of the parking setback requirement of 70 feet.

Vice Chair Zannini asked about impact on residential abutters and stated that this proposal would have less impact on the residential zones. It creates the largest buffer possible for the residential neighborhood behind it.

Mr. Lavelle stated that with the proposed orientation, the runoff would be lessened as well and pointed to the drainage on the plan.

Chair Saba asked the size of the building and Mr. Lavelle replied that it is 52 feet wide and he did not know the exact length. Chair Saba asked if it would go before the Planning Board and Mr. Lavelle replied yes, it would have to go before the Planning Board for drainage design and to finalize the septic design, landscaping and lighting.

The Board discussed the proposed size of the building and Member Farris stated that in the plan the proposed building appeared to be approximately 50 by 80 feet. Mr. Lavelle stated that it might be 60 feet wide but he does not have his scale.

Chair Saba opened the discussion to the public.

Greg Emerson, 12 Theodore Avenue Salem, asked about reorienting the building and the size of the parking lot. He also asked about storing gas trucks. Mr. Lavelle stated that propane ~~and oil~~ trucks cannot be stored inside with the exception of an occasional oil truck. It would be used for storing an excavator, a dump truck and a trailer. There is ~~aa proposed~~ an underground tank proposed-shown on the second sheet of the plan in case an oil truck would need to be brought in. It is State and Federal law that if an oil truck is stored in the garage, there must be an underground tank that can hold more than the contents of the truck.

Mr. Emerson asked about hours of operation and Mr. Lavelle replied that it would be operated from 7 AM to 7 PM. Vice Chair Zannini informed Mr. Emerson that the issue of hours of operation would be discussed when the applicant went before the Atkinson Planning Board.

Mr. Lavelle stated that the next set of plans would show details such as hours of operation and lighting.

Vice Chair Zannini also informed Mr. Emerson that if the applicant crossed the wetlands, he believed that there would be more of an impact on the residential area. Mr. Emerson agreed that it makes more sense for the proposed structure to be right on Industrial Way. The Board looked at the proposed plan in relation to abutters. Member Leondires stated that it appeared that the distance from the back of the proposed structure to the Town Line is about 350 feet. The ZBA continued to look at abutting residences on the plan in relation to the proposed structure.

Cheryl Malley, 29 Hall Farm Road, stated that Palmer Gas already has property in other areas and asked if the proposed structure could go on their other property. Chair Saba replied that that is not the concern of the ZBA. Also, why the applicant can't wait for the new Industrial Park. She is concerned about wetlands and water in her basement. She is already having problems with blasting from the other industrial park and is getting water in her basement. Chair Saba asked if Mr. Lavelle had done test pits. Mr. Lavelle stated yes, there is no ledge on that property and there would be no blasting. Everything would be fill. It would be a slab on grade. Ms. Malley's property is 20-30 feet above the proposed building.

Chair Saba explained that the proposed structure is a slab on grade, there would be no foundation with a basement. The test pits indicate that there is no ledge. Mr. Lavelle stated that no test pits were dug in the vicinity of Ms. Malley's property.

Chair Saba stated her concerns are understood and would be considered.

Carol Malley is also concerned about hours of operation, and others that do not comply. Chair Saba asked her to talk to the new Code Enforcement Officer.

Chair Saba asked if there were more questions.

Mr. Emerson asked if the next step would be a Planning Board meeting. Mr. Lavelle informed him that he would get another notice.

Mr. Lavelle stated that he was hoping to get the easement document before tonight's meeting and asked if the ZBA would like to walk the site.

Carol Malley asked when the applicant planned to start construction if the application is approved. ~~and~~ Mr. Lavelle stated the best case scenario would be midsummer but would probably not be until next spring.

Member Farris asked if it would be a metal building and Mr. Lavelle replied yes, but there would be brick siding four feet up. He would have a picture of the proposed structure at the next meeting.

Chair Saba asked about gradient. Mr. Lavelle informed him that there would be swale.

Chair Saba asked about access to the garage and Mr. Lavelle pointed it out on the plan. There would be access from the parking lot and from Industrial Way.

Chair Saba stated if asked if there will be access on the front towards the middle. Chair Saba then remarked that if the Applicant proposes to fill 6 feet and the building is 28 feet, and the side of the proposed structure then there would need to be either a big fill or a big cut for the parking lot. Mr. Lavelle responded that there would be fill for the parking lot. Chair Saba remarked that if the applicant proposes to fill six feet and the building is 28 feet from the wetland it could be an issue. Mr. Lavelle stated that the applicant may propose a retaining wall. Chair Saba stated he would like to see the proposed plans for the parking lot, it is critical to the relief. Mr. Lavelle also stated that the stormwater management will be under the parking lot.

Chair Saba asked about the holding tank, and Mr. Lavelle explained that it is in case an oil truck has to be put into the proposed garage. Any holding tank will have to be larger than the truck, probably about 3,500 or 4,000 gallons. Member Farris asked if it was cubic feet rather than gallons because it could be measured in cubic feet as well. Vice Chair Zannini stated that he was sure it was gallons. A holding tank would have to have State and Federal approval.

Vice Chair Zannini asked if there would be a full-time mechanic, and Mr. Lavelle responded he did not know at present.

Chair Saba asked if the septic system would need setback relief and Mr. Lavelle responded no.

Chair Saba would like a grading plan because the proposed structure would be so close to the wetland and Mr. Lavelle agreed.

The ZBA discussed a site walk. Chair Saba stated that he did not think it was necessary without approval from the Conservation Commission because it is such a substantial variance.

The Board discussed a date for a site walk. The Conservation Commission meeting would be April 6, 2020 and the next ZBA meeting would be April 8, 2020. The Board discussed walking the site on their own. Mr. Lavelle stated that there is an area to walk through and the area behind the wetlands is very nice.

Mr. Lavelle noted that the proposed plan is the best alternative to changing the orientation or going through the wetlands. Other wise there would be more dredge and fill and a long driveway to get to the buildable portion of the lot.

Chair Saba stated that it has been almost a year since the easement was proposed. Mr. Lavelle explained that when he first met with the applicant, they did not own the property. Chair Saba stated that as soon as the Chairman of the Conservation Commission contacted him and informed him that the easement was approved, Chair Saba would contact the ZBA members regarding a site walk.

Mr. Lavelle stated that the proposed easement documents should be prepared before the April 6, 2020 meeting of the Conservation Commission.

Member Farris would like to walk the site on his own. Chair Saba asked if there was any staking, and Mr. Lavelle responded, no, other than wetland flags and it is open because the property was logged. There are also neighboring parking lots.

Mr. Lavelle then stated that the building is 50 feet by 104 feet.

Mr. Lavelle requested to continue the hearing.

Chair Saba stated that the public hearing is still open and that there is a request to continue from the applicant and asked if there were any discussion. There was none.

Chair Saba requested a motion to continue the public hearing.

Member Farris made a motion to continue the public hearing for an 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 at 4 Industrial Way, Map 16 Lot 4 in the CI Zone.

Discussion: Chair Saba requested that the Public Hearing be continued to the May 13, 2020 meeting. The applicant agreed. _____

The Public Hearing will be continued to the May, 13, 2020 meeting of the Atkinson Zoning Board of Adjustment. ~~Vice Chair Zannini~~Member Leondires seconded the Motion.

All members of the Atkinson Zoning Board of Adjustment present voted in favor. Vote: 5/0/0. Unanimous.

Chair Saba asked if there was any more discussion. Chair Saba requested a motion to close the public hearing.

Member Leondires made a motion to close the public hearing. Vice Chair Zannini seconded the motion. All members of the Atkinson Zoning Board of Adjustment present voted in favor. Vote: 5/0/0. Unanimous.

Chair Saba requested a motion to adjourn.

Member Farris made a motion to adjourn the March 12, 2020 meeting of the Atkinson Zoning Board of Adjustment. Member Wade seconded the motion. All members present voted in favor. Vote: 5/0/0. Unanimous.

Chair Saba adjourned the meeting at 8:15 pm.