

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

**Public Hearing Meeting Town Hall**  
**Wednesday May 12, 2010**

Present: Hank Riehl, Vice-Chairman; Sandy Carter; Sam Zannini; Glenn Saba (8:25)

**Mr. Riehl called the meeting to order at 7:30 p.m.**

**Correspondence**

Incoming

- 1) April Publication: Town and City from LGC
- 2) April 19 Letter from TA: re procedures for Boards
- 3) April 15 Letter from Sumner Kalman re Atkinson v. Mason
- 4) Monthly Expenditures report
- 5) May 3 Letter from Sumner Kalman re: Atkinson v. Osborn counterclaim

Outgoing

- 1) 4/15/10 Decision Letter to Dube Plus Construction
- 2) 4/15/10 Decision Letter to Erickson

Approval of minutes of February Mr. Saba made a motion to accept the minutes. Mr. Zannini seconded and the motion was approved.

Approval of Minutes of April- deferred

**PUBLIC HEARINGS: 7:30 P.M.**

**Carl Bohne request for a Variance from Article IV Section 410:8 to allow the construction of a deck 54 feet from wetlands (46 foot variance) on property located at 18 Winslow Drive, Map 13 Lot 29-7 in the RR2 Zone.**

Abutters list was read with the following present:

Carl Bohne

Mr. Riehl explained that because there was only a three member Board; the vote would have to be unanimous. The applicant agreed to proceed.

The Board reviewed the file and noted that a variance was granted on July 12, 2006 for the foundation. Mr. Bohne indicated that the lot was very restrictive. He wanted to expand the existing deck. There seemed to be a discrepancy in the dimension of what he was looking for. After reviewing the foundation certification ~~and after Mr. Bohne~~ rescaled, it was determined that he was looking for a 45' +/- variance.

- ~~1. There is no roof covering. The proposed deck is no closer to the wetlands than the~~

- foundation is. There has already been a variance granted for the foundation. The wetlands are of low impact and the deck will not impact them further. ~~The Board agreed this criterion was met.~~
- ~~2. The Board agreed this was met as stated.~~
  - ~~3. The harm to the homeowner would be greater. The Board agreed this criterion was met.~~
  - ~~4. There is no significant change. The Board agreed this criterion was met.~~
  - ~~5. (a & b) A deck is a reasonable request. The Board agreed this criterion was met.~~

~~Mr. Saba made a motion to grant the request for a variance as stated, 45' +/- based on all of the criteria having been met and also approved per the plan submitted. Mr. Carter seconded the motion and it was unanimously approved.~~

**PUBLIC HEARINGS: 7:50 P.M.**

**~~Nancy Raczka request for a Variance from Article IV Section 400:4 and Article V Section 530 to allow the construction of stairs off a deck 13 feet from the side lot line, on property located at 47 Boulder Cove Road, Map 23 Lot 79 in the RR3 Zone.~~**

Abutters list was read with the following present:

Tim Lavelle for James M. Lavelle LLC; Nancy Raczka; Big Island Pond Corp by Noreen Mercier

In reviewing the application it was determined that one of the variances needed was under Article IV, Section 410:8(a) as well as Article IV, Section 400:4. An amendment was made and approved by the Board to reflect this change.

Mr. Lavelle explained that the house is new construction and was granted a variance to build 50' from (Big) Island Pond in September, 2009. The stairs coming down from the deck were overlooked. They reviewed a couple of options and due to the topography and the steepness of the lot the stairs would have to be twice as long to get off the deck if they were in another location. There is a 15' setback requirement and the variance needed is 2' +/- . The deck is open and the stairs go away from the lake. They built in a little buffer and are proposing the stairs to be a little under four feet wide and that would get them 13 feet from the lot line. The existing structure is 17 feet from the lot line. The property to the north is a couple of hundred feet away from this lot line. The stairs are going down and going away from the lake. Mr. Riehl asked if there was a reason that the stairs had to go all the way up to the end of the deck closest to the lake and not be set back. Mr. Zannini stated that would create a need for a landing at the top. The deck has not been started. Mr. Carter asked what the drop was from the corner of the deck. Mr. Lavelle said it would be 8-10'. They discussed moving the stairway back a little and could construct a landing. The structure was more than 50' from the lake. Mr. Saba asked if the plan was to have a landing and then the stairs. Ms. Raczka does not want to see the stairs from the lake. It is an aesthetic thing. Mr. Lavelle said they could move the stairs back to make it more conforming. He amended the plan to reflect the changes.

The Board reviewed the criteria

1. The houses in the area are much closer to the lot lines than this one. Based on the discussions and as stated, the Board agreed this criterion was met.
2. This provides additional egress from the structure. The house already has a drainage system and the 13' request is reasonable. There are already Shoreline Protection permits in place for this lot. Based on the discussions and as stated, the Board agreed this criterion was met.
3. Denial to the applicant does not benefit the Town. Based on the discussions and as stated, the Board agreed this criterion was met.
4. Based on the discussions and as stated, the Board agreed this criterion was met.
5. The topography of the lot makes it unique and the proposed use is reasonable. Based on the discussions and as stated, the Board agreed this criterion was met for both A and B.

*Mr. Saba made a motion to approve both variances as stated, a 41' +/- variance from the lake/wetlands to allow for construction of deck stairs 2' +/- from the sideline as shown on amended and signed plan submitted. A revised plan will be submitted. Mr. Carter seconded the motion and it was unanimously approved.*

**PUBLIC HEARINGS: 8:25 P.M.**

**David and Susan Coppeta request for a Variance from Article IV Section 410:8b to allow the construction of a detached garage 50 feet from wetlands on property located at 5 Murray Drive Map 19 Lot 82**

Abutters list was read with the following present:

Susan Coppeta

Mr. Riehl read a letter from the Conservation Commission which recommended the proposal and indicated it was the only place to put the garage.

Mrs. Coppeta said there is no place to park and that they wanted to be able to store all of their lawn equipment, cars and other things in the garage. She recently had a survey done and all of the wetlands were flagged. There has been no work started. This would be straight on where the driveway ends. The area is currently grass and there are only one or two trees that may need to be removed. There will be a second level.

The Board discussed the height issue, and based on an applicant last month that was denied a building permit from the building inspector. Mrs. Coppeta said she received conflicting information on that issue. Ms. Killam had mentioned it to her, but when she approached Mr. Jones, he indicated that it did not apply to a garage and did not deem it to be an accessory building. The Board tried to find the definition of a garage. Mr. Carter read the definition of an accessory building under the Town's ordinances. He believed a garage fell under the definition. Mr. Saba thought it was a grey area. Mr. Carter thought because there was no specific definition of a garage, this fits and there was a height restriction, Mr. Saba did not agree. Mr. Riehl said this was not before the Board and believed they needed to act upon the application and the applicant would still need to get

a building permit. If she were denied then it would come back before the Board for that variance. Mrs. Coppeta asked if the application could be amended to include that. Mr. Riehl said the applicant would still need to be denied first and that if the Building Inspector issued a building permit then it would be moot. Mr. Carter believed there was representation from the applicant, that included pictures and a rendition of the proposal and one could clearly see it would not meet the height requirement. The Board discussed whether the use determined whether it was an accessory building. Mr. Saba thought in years past a garage was considered a free standing building. Mr. Carter said there is no definition and since the zoning is exclusionary, if it is not in zoning it is not allowed. He believed since there was recently a denial by the Building Inspector on an application that was before them a couple of months ago, the Board was now aware and could not ignore it. Ms. Killam thought there were legal issues regarding public notification if this were amended to include a variance for the height restriction. Mr. Carter believed the Board could not be blind to the issue because the same issue was just before them. After further discussion the Board determined they could only proceed on the matter before them tonight. They wanted to proceed with the wetlands variance and she would then ask the building inspector about the height restriction and if she needed to she would apply for the variance.

The Board reviewed the criteria

1. This proposal does not affect the wetlands and there could be conditions placed on the approval for maintaining the buffer. **The Board agreed this criterion was met.**
2. The vehicles and lawn equipment would be in covered facility instead of being out in the buffer zone. **The Board agreed this was met as stated.**
3. The harm to the homeowner would be greater. **The Board agreed this criterion was met.**
4. There is no significant change and the Conservation Commission recommended it. **The Board agreed this criterion was met.**
5. (a & b) The garage is a practical request. There is no other place to put the garage. **The Board agreed this criterion was met.**

*Motion to approve the variance as stated 50' +/- was made by Mr. Zannini based on all of the criterion having been met and based on the buffer staying intact with no further cutting between the proposed site and wetlands, a minimum of 40 feet. Mr. Carter seconded the motion and it was unanimously approved.*

#### **PUBLIC HEARINGS: 9:10 P.M.**

**Scott Dufresne and Yva Gallant request for a Variance from Article IV-Section 410:8 to allow the construction of a portico addition to an existing dwelling 38 feet from high water line of Big Island Pond on property located at 22B Water's Edge, Map 23 Lot 8 in the RR3 Zone.**

Abutters list was read with the following present:

Scott Dufresne, Yva Gallant; Big Island Pond Corp.

The Board discussed the need for the applicants to get approval from DES because of the Shoreland Protection Act. Ms. Gallant explained that she had been in contact with DES and they told her to come before the Board and ask for approval first and then her application would be submitted to DES. She had email correspondence which was given to the Board. Mr. Carter asked if the little deck portion was impervious and Ms. Gallant said that it was. Ms. Gallant conferred with Meisner Brem Corporation and they had suggested gutters along the front and down the side with a ground infiltration system installed. The plan shows a proposed drainage site. If the proposal was approved they would hire them to design and install the system.

Mr. Carter asked how long the house had been considered year-round and Ms. Gallant believed it was in 2001. They are not sure when or how it became a two-story house. She indicated she had a copy of the occupancy permit and there was a variance granted at some point. Ms. Killam retrieved the file and the proper permits were in place. There were no stipulations or conditions placed on the variance. Mr. Riehl said that when there is an issue with DES the Board usually tries to get the State to act first, but there is no reason why it had to be. Mr. Carter reiterated there is no clear definitive rule or regulation so the Board should proceed. Mr. Riehl did ask the applicants if they had asked the Conservation Commission for their input, although they were not under obligation to do so or if they would be willing to consider asking the Conservation Commission and continuing the hearing. Mr. Dufresne said they wanted to proceed with what they had. Mr. Riehl asked how the portico relates to what is currently there now. He wanted to know what the dimensions were of the proposal versus what was currently there. Ms. Gallant indicated that from the furthest part of the portico it was probably about 4 feet in width and approximately about 2-3' longer than what is there now. Mr. Riehl estimated it was about 45 square feet. Mr. Saba indicated the addition also added mitigation to the drainage problem. Ms. Gallant showed the Board via the pictures how the water currently comes off the roof directly into the water. The infiltration system would significantly improve what is there now, as they plan to address all the drainage from the house.

Ms. Gallant indicated that the length of the portico was approximately 24 feet long. They are changing two windows and the roof, which does not require any relief and they have received building permits for that. They will address the drainage on the entire house. The drainage currently runs on to the deck on the lake side of the property and was improperly designed.

Doreen Mercier looked at the plan and had no objections for this proposal, but asked about a buffer next to the driveway. The applicants indicated they will be addressing all of the water issues on the property. Mrs. Killam wanted to remind the Board that DES also had final say, so this would all be subject to that. Mr. Riehl stated that no part of this is any closer to the lake than the corner of the house is now. They are adding drainage mitigation, which is critical in protecting the lake.

The Board reviewed the criteria

1. The lake would be protected. There would be wetlands mitigation with the installation of a drain infiltration system. The water would flow to the opposite side of the house away from the lake. ~~The Board agreed this criterion was met.~~
2. This would be contingent upon approval from DES's acceptance of the drainage system. ~~The Board agreed this was met as stated.~~
3. The harm to the homeowner would be greater. There will be improved drainage which is critical. ~~The Board agreed this criterion was met.~~
4. The drainage system again is a big factor. ~~The Board agreed this criterion was met.~~
5. (a & b) Makes the property better, with significant structure improvements and the drainage is being corrected. Offers much better protection for the lake. ~~The Board agreed this criterion was met.~~

~~Mr. Saba made a motion to approve the request as stated, 62' +/- as submitted on plan based on all of the criterion having been met and based upon mitigation of the installation of a drainage system to correct water run-off. This approval is also subject to final approval by DES. Mr. Carter seconded the motion and it was unanimously approved.~~

~~Motion to adjourn was made and seconded. Mr. Riehl adjourned the hearing at 9:45 P.M.~~

~~Respectfully Submitted~~ \_\_\_\_\_

~~Minutes transcribed from tape~~ \_\_\_\_\_ ~~Rebecca Russo~~