

**ATKINSON ZONING BOARD OF ADJUSTMENT
21 Academy Avenue
Atkinson, New Hampshire 03811
Public Hearing Meeting Town Hall
Wednesday, May 13, 2020**

Members Present

Glenn Saba, Chair

Sam Zannini, Vice Chair

Arthur Leondires

Bob Connors

David Farris

Others Present

Paul Wainwright, Conservation Commission Chair

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 was conducted via Zoom.

Chair Saba, Vice Chair Zannini, Member Connors, Member Farris, and Member Leondires of The Atkinson Zoning Board of Adjustment stated they were present and indicated no one else was in the room with them.

Other Business: none

Correspondence: none

Approval of Minutes: March 11, 2020

Chair Saba, Vice Chair Zannini, Member Farris, Member Leondires and Member Wade of The Atkinson Zoning Board of Adjustment were present at the March 11, 2020 meeting. Chair Saba, Vice Chair Zannini, Member Farris, and Member Leondires are present at the May 13, 2020 meeting, reviewed the March 11, 2020 minutes, and made corrections and amendments.

Member Farris made a motion to approve the minutes of the March 11, 2020 meeting as amended. The motion was seconded by Vice Chair Zannini. Roll Call, Vice Chair Zannini, Member Farris, Member Leondires and Chair Saba, the members of the Atkinson Zoning Board of Adjustment present who were at the March 11, 2020 meeting voted in favor. Vote: 4/0/0. The vote is unanimous.

Public Hearing – 7:30 P.M.

Prior to the hearing opening, Member Connors asked about the location of the wetlands for Murray Drive. Mr. Wainwright asked to speak and informed him that the Murray Drive wetland is a seasonal stream, back in the woods. Mr. Wainwright took a look at the 1987 plan that had

the wetland flagged and it is not significant at all. Also, he stated that what the applicants planned would not cause any harm. Chair Saba requested that he wait until the hearing opened and inform the Board again.

Chair Saba opened the public hearing at 7:30 PM, May 13, 2020.

Chair Saba informed the Board that there were two applications. The first application was continued from the March 11, 2020 meeting and there is a request for a continuance (of the first application) to the June 10, 2020 meeting.

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. (cont'd from March 11, 2020).

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)

Chair Saba also stated that before he reads that request, the Board has a letter from the Conservation Commission addressed to the Board that he will read into the minutes.

In summary, the letter states that the Conservation Commission has been studying the request for setback relief for the past year. It goes on to state that although the size of the variance request is larger than what the Conservation Commission would normally recommend to the Board, the offer of a Conservation Easement on a large portion of the parcel seems to us to mitigate any negative impact on the wetland. At the Conservation Commission meeting of February 3, 2020, the Conservation Commission voted unanimously to recommend approval of this variance contingent upon completion of a Conservation Easement as described in that meeting. This easement deed and its corresponding notations on the plan have now been completed to the satisfaction of the Conservation Commission and they recommend approval of the wetland setback variance. This is contingent upon filing of the easement deed and plan with the Registry of Deeds. The letter is signed by Paul Wainwright, Chair Atkinson Conservation Commission.

The above letter is in regards to the application for 4 Industrial Way.

Chair Saba then read a letter from the applicant into the record requesting a continuance of the May 13, 2020 hearing to the June 10, 2020 meeting of the Zoning Board of Adjustment due to scheduling conflicts.

Before discussing the continuance request, Chair Saba asked to discuss a site walk and reminded the Board that, upon receipt of a recommendation of approval for the application by the Conservation Commission, at the March 13, 2020 meeting, the Board had discussed conducting a site walk. He stated that a formal site visit may not be needed and suggested that the Board members could go out and visit the site on their own. He asked if there was discussion. Member Leondires asked if that was what the Board planned at the last meeting and Chair Saba replied that the Board decided to wait to discuss a site walk until the letter of recommendation from the Conservation Commission was received. Vice Chair Zannini stated that he would do a site walk.

Chair Saba asked the Board for discussion. Vice Chair Zannini requested to make a motion for continuance of the application.

Vice Chair Zannini made a motion to grant the continuance of the public hearing for an Application for Variance from Article IV 410:8 submitted by James Lavelle Assoc. for Four Industrial Way, LLC., to the June 10, 2020 meeting, and continued from the February 2, 2020 meeting to the March 11, 2020 meeting. The motion was seconded by Member Bob Connors. Chair Saba conducted a roll call vote. Vice Chair Zannini, Member Bob Connors, Member Dave Farris, Member Art Leondires and Chair Saba were present and voted in favor. Vote: 5/0/0. The motion passed unanimously.

Chair Saba stated that the application is continued to the June 10, 2020 meeting and the public hearing is still open.

Chair Saba requested to open the hearing for the next application.

2. Application for Variance from Article IV 410:8b submitted by Richard & Noriko Travers to permit construction of a detached garage 60' from Wetland where 100' is required (40' variance) on property located 1 Murray Dr., Map 14 Lot 79 in the TR2 Zone.

Abutters: Travis Richard and Yoshida Travis (present), George and Hope Murray, Joanne and William Erickson, Christopher and Nicole McGee, Robin Lemenire, Craig and Barbara Rose, Brian Caldwell, Peter and Deborah Breen

Chair Saba asked if there was anyone who was not called and there was no one.

Chair Saba read a letter from the Atkinson Conservation Commission into the minutes.

In summary, the letter states that the Atkinson Conservation Commission met in special session on Sunday, May 10, 2020 to perform a site walk of the above referenced variance application. The proposal is to construct a detached garage partly in the 100-foot setback from a low value wetland. This variance is similar to many for which we have recommended approval in the past. The request for a 40-foot variance seems more than adequate for the project. The homeowner has submitted a perfectly acceptable plan. The fact that more exact measurements were not shown on the plan did not concern us. We did review the original 1987 subdivision plan for this lot and as far as the variance is concerned, we did not feel that the homeowner needs to reflag the wetland or provide a plan with more precise measurements. A quorum was present at the May 10, 2020 site walk and the special meeting

was legally posted. The Commission voted unanimously to recommend approval of this variance. Although not part of the permitting process it would be good if tree removal be kept to a minimum. No further landscaping other than required for safety will be done in the setback zone. Signed by Paul Wainwright, Chair Atkinson Conservation Commission.

Mr. Travers appeared before the Atkinson Zoning Board of Adjustment to present the application. He informed the Board that he requested a variance for an extra 40 feet. He would like to construct a 24 x 24-foot garage. He may make the structure smaller to keep tree removal to a minimum. He is attempting to keep the vehicles out of the driveway. There is a tractor and a snow blower. When he put in the application, he stated that he would try to have the proposed garage match the house as much as possible.

Chair Saba informed the Board that Sue Coppeta would post the pictures that Mr. Travers submitted with his application.

Ms. Coppeta stated that she would run the slide show and asked Mr. Travers to do the narrative. Mr. Travers stated he took some snapshots of garages and placed them on the slides to see how a garage would look placed on the lot in order to make it aesthetically pleasing. Mr. Travers stated that the one-hundred-foot setback is shown on slide six. The proposed garage may be sited closer to the house than shown on that slide. The last slide is an aerial view.

Member Farris asked if the applicant needed to clear trees. Mr. Travers informed the Board that there may be some trees that he may have to clear because the Conservation Commission informed him there could be no trees within 10 feet of the garage. There is also a stone wall in the vicinity which is why he is proposing the garage be placed on the side towards the house so as not to encroach on the stone wall. He also stated that he is flexible regarding the dimensions of the garage in order not to take out trees.

Chair Saba stated that the applicant does have the recommendation of the Conservation Commission. The Board members present then discussed the application and whether we can work with it without engineer plans.

Vice Chair Zannini asked how the Board could make a motion when they don't know the exact dimensions because they don't know what they are approving or denying. Chair Saba suggested that the Board request it be certified. Vice Chair Zannini agreed that something would be needed either now or later.

Member Farris asked if there would be electricity or plumbing and Mr. Travers replied that the proposed structure would only be used for storage.

Member Leondires referred to the plan and asked if the line going through the garage were the 100-foot line. Member Travis responded yes, the one going through the corner of the garage.

Vice Chair Zannini asked again how the Board could make a motion for a specific distance of relief without a specific distance. Member Connors stated that the ZBA could make a motion for a 40-foot variance, he could not have any more than a 40-foot variance, but if it is less it would not be a problem. Chair Saba stated that as part of the approval, the Board should state that based on the Conservation Commissions findings, the wetland is insignificant and a more

precise plan was not necessary but the Board is not granting any more than a 40-foot variance. Chair Saba noted that no survey was in the application. The Conservation Commission has stated that they are not concerned. Also, in future proposals or variance requests, the Board has to be aware that it would be more necessary to have an engineered plan.

Member Connors asked if there would be any gas or hazardous material stored in the shed. The Board continued the discussion. Chair Saba responded that it is normal to store a can of gas with lawn equipment. Member Connors stated that he meant commercial amounts. Mr. Travers replied no, there would be no commercial use, there is not even electricity. It is just for storage.

Chair Saba opened the discussion to the public.

Paul Wainwright stated that he has a copy of the site shown from the 1987 site division plan and it has the wetlands flagged on it. It is where the setback line on the sketch came from. Mr. Wainwright stated that he was able to take the sketch that the applicant submitted, rotate it and make it the same scale as the subdivision plan and it looks like the wetlands is 70 feet from the garage rather than 60 feet. He stated that from a Conservation Commission point of view, exact measurements would not be needed.

Chair Saba stated that the Board is attempting not to set a precedent.

Chair Saba asked if there were more discussion. There was none. Chair Saba requested the applicant go through the criterial

The Applicant went through the criteria:

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

Additional storage for vehicles and lawn garden equipment would reduce outside storage, reducing potential ground contamination from fluid leaks. Lower vehicle use due to moving vehicles to allow access to the street, reducing exhaust pollutants.

Discussion: In light of Conservation Commission recommendations and letter, Chair Saba stated that he agreed, they are the authorities on environmental impact.

Vice Chair Zannini, Member Connors, Member Farris, Member Leondires and Chair Saba agreed. 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:

The garage requested will only be used for storage. No heating or electrical will be supplied to this structure, keeping environmental impact to a minimum.

Discussion: Member Connors stated that he looked at the aerial view and agreed that there is no visible impact. Mr. Travers stated that there is a slight slope which would probably need to be leveled a little. There was no other discussion.

Vice Chair Zannini, Member Connors, Member Farris, Member Leondires and Chair Saba agreed. All members of the Atkinson Zoning Board of Adjustment present agreed that the conditions of Article V Section 510b(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:

Less cars in driveway, keeping property visually more appealing to neighbors. Reducing vehicle use and potential leaks on ground surface for less environmental impact. Storage of lawn and garden equipment/tools again to minimize environmental impact and improve property aesthetics.

Discussion: Chair Saba stated that it is a 3 acre plus lot, mostly treed and the landowner has the right to the enjoyment of his property and there would be no injustice to the general public.

Vice Chair Zannini, Member Connors, Member Farris, Member Leondires and Chair Saba agreed. All members of the Atkinson Zoning Board of Adjustments present agreed that the conditions of Article V Section 510b(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:

Keeping vehicles stored in a garage and matching the garage to the house siding will make the property more aesthetically in line with other properties in the neighborhood.

Discussion: Chair Saba stated that here are no abutters and keeping stuff indoors is a positive.

Vice Chair Zannini, Member Connors, Member Farris, Member Leondires and Chair Saba agreed. All members of the Atkinson Zoning Board of Adjustment present agreed that the conditions of Article V Section 510b(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;

Need space for vehicles and lawn/garden equipment. Now the applicant has no adequate storage for these items.

Discussion: Chair Saba stated that it is a 3 acre plus lot, there is an insignificant wetland that conflicts, the Conservation Commission has ruled that they are not concerned about this variance and they would much rather see indoor storage than outdoor storage in this instance.

Vice Chair Zannini, Member Connors, Member Farris, Member Leondires and Chair Saba agreed. All members of the Atkinson Zoning Board of Adjustment present agreed that the conditions of Article V Section 510b(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;

- Keep vehicles off driveway and lawn area,
- Store tractor and attachments for garden, lawn and snow removal
- Reduced impact to environment, less vehicle use and eliminate potential fluid leaks on ground.

Discussion: There was no discussion.

Vice Chair Zannini, Member Connors, Member Farris, Member Leondires and Chair Saba agreed. All members of the Atkinson Zoning Board of Adjustment present agreed that the conditions of Article V Section 510b(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 approve the Application for Variance from Article IV 410:8b submitted by Richard & Noriko Travers to permit construction of a detached garage 60' from Wetland where 100' is required (40' variance) on property located 1 Murray Dr., Map 14 Lot 79 in the TR2 Zone.

Discussion: Chair Saba stated that he would like to include that the proposed structure be no more than 24 x 24 feet and that upon erection, a certified plan must be submitted. Mr. Travers agreed. Member Farris asked if it should be before construction. Vice Chair Zannini informed the Board that the Building Inspector would require a certified plan before he issues the building permit. Chair Saba informed the applicant that it would go from foundation permit to building permit and requested that the applicant have a licensed surveyor certify that the foundation is no less than 60 feet from the wetland and no greater than 24 x 24 feet.

Mr. Travers asked if he wanted to encroach less on the wetlands and changed the proposed building size to 20 feet and a little deeper or longer, would it be a problem.

Member Connors informed the applicant that the Board is approving 24 feet by 24 feet so it would not be the same approval. Mr. Travers agreed.

Chair Saba requested more discussion.

Member Leondires asked if it could be up to a 40-foot variance, and does it have to be exactly 60 feet. Chair Saba stated it had to be no closer than 60 feet from the wetland. Member Leondires stated it could be up to a 40-foot variance.

Member Connors stated that the applicant was requesting to adjust the size of the structure. Chair Saba suggested proposing the structure could be 26 x 26 feet and asked the applicant if that were fair. Member Leondires stated that the applicant was requesting 24 x 24 feet and it should be no greater than 24 x 24 feet. Mr. Travers agreed that he was considering making the proposed garage longer but less width, possibly 20 x 28 feet.

Vice Chair Zannini pointed out that with a 20-foot width, the applicant would have a tough time with two cars.

Member Leondires suggested making the motion state that the proposed structure could be no more than 600 square feet and use square feet in the motion rather than actual dimensions.

Chair Saba requested that the motion be restated.

Member Connors made a motion to approve the Application for Variance from Article IV 410:8b submitted by Richard & Noriko Travers

Discussion: Vice Chair Zannini interjected, stating that no greater than 600 square feet is 24 x 24 feet and he wants to give him an opportunity, the applicant stated that he might want to construct a little longer garage and that 20 feet is not wide enough for a garage. Member Leondires stated he could go 30 feet x 20 feet and it would be 600 square feet.

Member Connors continued the motion.

Member Connors made a motion to approve the Application for Variance from Article IV 410:8b submitted by Richard & Noriko Travers to permit construction of a detached garage 60' from Wetland where 100' is required (40' variance) on property located 1 Murray Dr., Map 14 Lot 79 in the TR2 Zone and the structure will be no more than 600 square feet. A certified plan is required at the foundation. Vice Chair Zannini seconded the motion. Vice Chair Zannini, Member Connors, Member Farris, Member Leondires and Chair Saba voted in favor. Vote: 5/0/0. The vote is unanimous.

Chair Saba informed the applicant that the application is approved and that there is a 30-day appeal period. Anything done prior to that is at the applicant's risk.

Member Leondires made a motion to close the public hearing. Member Connors seconded the motion. Vice Chair Zannini, Member Connors, Member Farris, Member Leondires and Chair Saba 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 May 13, 2020 meeting of the Atkinson Zoning Board of Adjustment. Member Leondires seconded the motion. Vice Chair Zannini, Member Connors, Member Farris, Member Leondires and Chair Saba All members present voted in favor. Vote: 5/0/0. Unanimous.

Chair Saba adjourned the meeting at 8:07 pm.