

ATKINSON ZONING BOARD OF ADJUSTMENT
21 Academy Avenue
Atkinson, New Hampshire 03811
Public Hearing Meeting Town Hall
Wednesday, June 13, 2018

Members Present

Glenn Saba, Chair
Will Stewart
Shane Keating
Vice Chair Sam Zannini

Others Present

James Lavelle, Lavelle Associates

Work Shop 7:00 PM

Call to Order: Chair Glenn Saba called the meeting to order at 7:10 PM.

Other Business:

Correspondence:

Approval of Minutes: April 11, 2018

The Atkinson Zoning Board of Adjustment reviewed the minutes of the April 11, 2018 meeting.

Member Stewart made a motion to approve the minutes of the April 11, 2018 meeting as amended. The motion was seconded by Chair Saba. Vice Chair Zannini, Member Will Stewart and Chair Saba voted in favor. Vote: 3/0/0.

Public Hearing – 7:30 P.M. - Chair Saba opened the public hearing at 7:30 PM June 13, 2018 – Chair Saba, Vice Chair Zannini, Member Will Stewart and Member Keating present

- 1. Application for Variance from Article V Section 530 submitted by James Lavelle Associates for Joseph Wyatt to allow the reduction of frontage on a preexisting undersized lot from 175.02' to 150' (where 200' is required) on property located at 9 Hemlock Heights Rd, Map 22 Lot 5 in the RR3 zone.**
- 2. Application for Variance from Article V Section 530 submitted by James Lavelle Associates for J & J Realty Trust, Jean and James Foley, Trustees to allow the creation of a lot with a total of 129.14' frontage (104.12' on Chase Island Rd and 25.02' on Hemlock Heights Rd.) where 200' is required (70.86' variance) on property located at 5 Chase Island Rd, Map 22 Lot 12 in the RR3 zone.**

Abutters: Town of Atkinson, Joseph Wyatt, Lisa Wyatt (present) Budzyna Trust, Jeffrey and Robert Cronk, Jeffrey Meany, Lorraine Gorrow, Diane Gorrow (present) Susan Beckhorn, John Palmer (present), JJ Realty Trust (present), G. Rocker Nelson, Carol Davis, Justin Craig, Catherine Rockford (present) Susan Collette, Chase Island Association, Laura Listrow (present) Hemlock Heights (present) James Lavelle Associates (present), Bruce Gilday

James Lavelle, licensed land surveyor, came before the Board to represent the applicants. The Foleys will be subdividing the property, which is the second variance on the agenda. The Wyatts presently own .47 acre and would like more land behind their home. The Foley's are proposing a subdivision of two lots. They have 6 acres. They are proposing a shorter entrance to the subdivision from Hemlock Heights Road rather than Chase Island Road. They are proposing an exchange of land. The lot will remain the same size. However, the frontage requirement is 200 feet. There is presently 175.02 feet and with the proposed variance, there will be 150 feet. Mr. Lavelle gave the Board copies of the proposed subdivision and a copy of the tax map. Most of the homes in that area have less frontage and it will be a benefit to the Foleys and the Wyatts. The applicant feels that reduction of frontage from 175 feet to 150 feet, about twice the frontage size of most of the lots in the area, is not overcrowding. It will help the Foleys with more convenient access to the buildable area of the land.

Chair Saba asked about the existing house which is outlined on the plan and if the applicant wishes to subdivide it into two lots with two houses. Chair Saba informed the applicant that he looked at the property and asked if the applicant has a topography map. Mr. Lavelle replied that there is one.

Vice Chair Zannini asked about a building envelope for the proposed new lot. Mr. Lavelle informed him that the proposed new lot will be 2.62 acres and 2.06 acres of upland???. The requirement is for 2 acres of high and dry soil. Vice Chair Zannini stated that he would like to see a building envelope.

Chair Saba stated that he would like to see a building envelope for the proposed home and a topography map and asked if the lot could be accessed as it exists. Mr. Lavelle showed the Board a topography map and the buildable area of the proposed new lot and the proposed driveway for the proposed new lot. It is possible to access the proposed new lot from other areas, but the applicant would like to come in from Hemlock Heights Road.

Vice Chair Zannini asked about the proposed septic area and Mr. Lavelle showed him on the plan. It would be over 100 feet from the wetland area.

Chair Saba pointed out that no matter how the proposed lot is accessed, there still would not be enough frontage and asked why the applicant didn't take more frontage. The existing lot has over 400 feet of frontage.

Chair Saba stated further that the ZBA is charged with the responsibility to interpret and apply the Zoning Regulations, with the understanding that there are certain lots with certain criteria that need some relief from the regulations yet keeping the intent of those regulations intact. Not all lots are the same. The Board is charged with the duty to say that because of unique circumstance of the lot, a variance can be granted.

Mr. Lavelle explained that the second request for a variance is for frontage for the Foleys. The applicant is proposing to reduce the frontage for the Wyatts from 175 feet to 150 feet.

Chair Saba opened the meeting to the public.

Karen Rockford, 7 Hemlock Heights Road, has significant concerns. She showed them her house. It is built into the side of the ledge. That part of the house is on a hill, there is a culvert under the road, and when it rains, it runs into either the Wyatt or Foley property. The proposed driveway could cause more drainage problems. There is rock and ledge everywhere, if they build a driveway will there be any blasting. Chair Saba stated that if there is blasting, a pre-

blast survey has to be done. Ms. Rockford also stated that there is a tree farm bordering the Foley property and there is conservation land.

Diane Gorrow, 10 Hemlock Heights Road, is across the street from the proposed subdivision. The application states that the property is located in the RR3 zone and looking at the table, the minimum frontage is 250 feet and the minimum lot size is 3 acres. James Lavelle reexamined the zoning map. He informed the Board that he thought the proposed subdivision was in the RR2 zone. Ms. Gorrow has the assessor cards which state that it is in the RR3 zone.

Chair Saba stated that he would have to address the application as a subdivision in the RR3 zone which requires 250 feet minimum frontage and a minimum lot size of three acres.

Ms. Gorrow pointed out that the proposed new lot of 2.6 acres meets neither frontage requirements nor minimum lot size requirements. Ms. Gorrow also had a question about the sheds and boats stored on the Wyatt property. Ms. Wyatt explained that they are getting rid of one of the boats, they use the other boat and it will be stored elsewhere in the winter. The trailer belongs to a friend who will pick it up and the shed will go in the back yard.

Chair Saba asked the applicant what he wished to do regarding the RR3 zoning requirements.

Mr. Lavelle would like to request a continuance based on the zoning issue. Chair Saba stated that he would like to hear what all the abutters in attendance have to say before he granted the continuance.

Ms. Gorrow stated that the application states that the reason for the variance is more convenient access. The applicant already has an access. Chair Saba explained that to grant a variance New Hampshire law states that the request just has to agree with the intent of the regulation. Ms. Gorrow stated that the frontage variance is unnecessary and is contrary to the public interest. The problem she has is the proposed access is at the bottom of a hill which is probably access for 80 families already. It is very narrow and is a blind hill. It is difficult to stop when going down the hill. The entrance creates a safety hazard. Substantial justice is not done, both lots already have houses. She does not believe it is a reasonable use, it is for the convenience of the lot owner and does not relate to special conditions of the land. Mr. Lavelle replied that he could answer the objections, but tonight is not the time. He would like to state that the frontage requirement is to prevent overcrowding. The applicant could purchase an easement from the Foleys and have access.

Ms. Rockford also stated that the proposed driveway is located at the school bus stop. The bus stop is on Hemlock Shore Drive.

Mr. Foley requested to speak and informed the Board that there will be no blasting. He agrees that there is a runoff problem and he will address that. There is no issue with the conservation land. The proposed driveway will not worsen traffic near the school bus stop. As for the frontage, it may create a hardship for some people but his goal is to subdivide the property and build a retirement home on the hill. The property could be subdivided so that each lot has three acres. There is a half-acre of flat land on the top of the hill with plenty of room for a home and septic.

Chair Saba stated that he would like to see the best proposed subdivision put on paper. Mr. Foley informed the Board that there is another option, which he does not want to pursue, where he does not have to go before the Board at all.

Chair Saba stated that there were many different options that could be taken. Chair Saba and Mr. Foley continued to discuss the issue of making a nonconforming lot more nonconforming.

Mr. Lavelle stated that preexisting construction goes by the rules date back to when the lot was created, but that is not the case with this application.

Dottie Goldstein requested to speak. She informed the Board that there used to be a road to Chase Island. Mr. Foley informed the Board that the road was along the rock wall on his property. When the Weber estates property was developed, the road went away when Hemlock Heights Road was built.

Chair Saba informed the audience that the plan is drawn and stamped by a licensed land surveyor, and if there's a road or ROW it's up to him to find it and label it. Mr. Lavelle stated that it's history.

Chair Saba asked if there was anyone else who would like to speak. There were none. Chair Saba informed the audience that he is not closing the public hearing if the applicant requests a continuance.

Ms. Gorrow asked if a new application and plan would be required. Chair Saba agreed, the present application requests 150 feet of frontage where 200 feet is required, but with RR3 requirements, 250 feet are required and the applicant is proposing a 2.6 acre lot where 3 acres is required.

Mr. Lavelle requested to withdraw both applications before the Board without prejudice. The applicant will either submit a new application or go another route.

Vice Chair Zannini made a motion to accept the request of the applicant to withdraw without prejudice the Application for Variance from Article V Section 530 submitted by James Lavelle Associates for Joseph Wyatt to allow the reduction of frontage on a preexisting undersized lot from 175.02' to 150' (where 200' is required) on property located at 9 Hemlock Heights Rd, Map 22 Lot 5 in the RR3 zone and the Application for Variance from Article V Section 530 submitted by James Lavelle Assoc. for J & J Realty Trust, Jean and James Foley, Trustees to allow the creation of a lot with a total of 129.14' frontage (104.12' on Chase Island Rd and 25.02' on Hemlock Heights Rd.) where 200' is required (70.86' variance) on property located at 5 Chase Island Rd, Map 22 Lot 12 in the RR3 zone. Member Keating seconded the motion.

Discussion: none

All members of the Atkinson Zoning Board of Adjustment present voted in favor. Vote: 4/0/0

Vice Chair Zannini made a motion to close the public hearing. Member Stewart seconded the motion. All members of the Atkinson Zoning Board of Adjustment voted in favor. Vote: 4/0/0

New/Old Business: Next Regular Zoning Board Meeting is scheduled for July 11, 2018

Chair Saba requested a motion to adjourn.

Member Keating made a motion to adjourn the June 13, 2018 meeting of the Town of Atkinson Zoning Board of Adjustment at 8:30 PM. The motion was seconded by Member Stewart. All members of the Atkinson Zoning Board of Adjustment present voted in favor. Vote: 4/0/0