

ATKINSON ZONING BOARD OF ADJUSTMENT
21 Academy Avenue
Atkinson, New Hampshire 03811
Public Hearing Meeting Town Hall
Wednesday, September 12, 2018

Members Present

Glenn Saba, Chair
Member David Farris
Member Bob Connors

Others Present

Sue Killam, Chair, Planning Board
T. Mooney
Anthony Augeri, Esq.
Chris Mulligan
Michael Green, Green and Company
Joe Coronati, Jones and Beach Engrs.

Work Shop 7:00 PM

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

Other Business: none

Correspondence: not reviewed

Approval of Minutes: July 11, 2018

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

Member Farris made a motion to approve the minutes of the July 11, 2018 meeting as amended. The motion was seconded by Member Connors. All members of the Atkinson Zoning Board of Adjustment present voted in favor. Vote: 3/0/0.

Public Hearing – 7:30 P.M. - Chair Saba opened the public hearing at 7:30 PM, September 12, 2018. Chair Saba, Member Robert Connors, and Member David Farris were present. Chair Saba explained that only three members are present and all three have to vote in the affirmative for a variance to pass.

- 1. Application for Variance from Article V Section 530f submitted by T. Kenneth Mooney to allow construction of an addition to a detached garage 7' from the side lot line where 15' is required (8' variance) on property located at 41 East Rd, Map 14 Lot 82 in the RR2 zone.**

Abutters: Caroline D'Angelis, Kenneth Mooney, Chien Mai Bui and Julie Mai Nguyen, Mary E. Ordway and Dennis K. Ordway, Richard Russell, Jr., Bruce D. LaCreta and Robin Plachowicz

No abutters were present.

The applicant came before the Atkinson Zoning Board of Adjustment to present his application. He would like to build an addition to his garage for his new motor home. The addition would be 16 feet by forty-two feet. The existing building is 28' by 42'. It would place the addition seven feet from the side lot line and would require an eight-foot variance. The applicant pointed out the abutting lot to the Board. The portion of the lot that belongs to the abutters cannot be used but has to be maintained to allow them the 2 acres of dry land necessary for a house lot.

Chair Saba informed the applicant that he did a drive by and understands what the applicant is attempting.

Chair Saba opened the hearing to the public. There were no questions from the public.

Member Connors asked about the setback. Chair Saba asked the size of the lot and the applicant responded that it is just over an acre.

There were no other questions from the Board. Chair Saba informed the applicant that they would go through the criteria step by step, as stated before, since there are three sitting members, the vote would need to be unanimous; the applicant would read the application starting with the criteria and the response, there will be a discussion and a vote.

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

It would not alter the character of the neighborhood, threaten the health, safety or general welfare of the public and will not violate the base objectives of the zoning ordinance

Discussion: Chair Saba stated he drove by and did not think that the addition would make the neighborhood look any more densely populated, the houses are fairly far apart and the neighbors are not present or complaining.

There were no more comments on Criteria 1.

All members of the Atkinson Zoning Board of Adjustment present agreed that the conditions of Article V Section 530f (1) are met based on the application and the discussions as presented. Vote: 3/0/0. The vote is unanimous.

2) The spirit of the ordinance is observed because;

The specific purpose of the side setback requirement is to prevent overcrowding which would detrimentally affect the health, safety, convenience and welfare of the residents of Atkinson. Granting the variance is not contrary to the spirit of the ordinance.

Discussion: Chair Saba stated that it could be argued that the ordinance is to prevent overcrowding. Due to the unique situation with strip of land belonging to the neighbor who cannot build on it, he believes the spirit is intact. There was no more discussion.

All members of the Atkinson Zoning Board of Adjustment present agreed that the conditions of Article V Section 530f (2) based on the application and the discussions as presented. Vote: 3/0/0. The vote is unanimous.

3) Granting the variance will do substantial justice because;

Any loss to an individual that is not outweighed by a gain to the general public is an injustice. Denial of this variance will result in no gain to the general public and granting of this variance will have no negative effect on the present use and atmosphere of the neighborhood.

Discussion: Member Farris stated that it would be a positive because the motor home is not parked in the middle of the driveway. Member Connors agreed.

All members of the Atkinson Zoning Board of Adjustment present agreed that the conditions of Article V Section 530f (3) based on the application and the discussions as presented. Vote: 3/0/0. The vote is unanimous.

4) The values of surrounding properties are not diminished;

The property values of the surrounding properties would increase with the variance approval as well as the property value of 41 East Road. Being able to keep the motor home in the garage would be more visually pleasing rather than parking it in a driveway or under a cover.

Discussion: Chair Saba stated that he drove by and did see the motor home parked outside. The applicant stated that he would keep the motor home inside. Member Connors agreed that in his opinion the values of the surrounding properties will not be diminished.

All members of the Atkinson Zoning Board of Adjustment present agreed that the conditions of Article V Section 530f (4) based on the application and the discussions as presented. Vote: 3/0/0. The vote is unanimous.

5) Owing to special conditions of the property that distinguishes it from other properties in the area, denial of the variance would result in unnecessary hardship because;

(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;

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 no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of the provision to the property because the area proposed is already developed and no further development is possible.

Discussion: Chair Saba asked the applicant to clarify if denying the ordinance would result in unnecessary hardship to the applicant because it is not detrimental to anyone in the surrounding area, and the applicant agreed.

There was no further discussion.

All members of the Atkinson Zoning Board of Adjustment present agreed that the conditions of Article V Section 530f (5a) based on the application and the discussions as presented. Vote: 3/0/0. The vote is unanimous.

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

The purpose of the structure is to keep and protect what some passerby might think unsightly out of sight so as not to give an appearance of a backwards nature and to maintain a well-kept property for the applicant and for the community itself.

Discussion: Chair Saba remarked that it is a nice motor home.

All members of the Atkinson Zoning Board of Adjustment present agreed that the conditions of Article V Section 530f (5b) based on the application and the discussions as presented. Vote: 3/0/0. The vote is unanimous.

Member Connors made a motion to allow the Application for Variance from Article V Section 530f submitted by T. Kenneth Mooney to allow construction of an addition to a detached garage 7' from the side lot line where 15' is required (8' variance) on property located at 41 East Rd, Map 14 Lot 82 in the RR2 zone. Member Farris seconded the motion. All in favor. Vote: 3/0/0.

2. Application for Variance from Article VI Section 600:11b submitted by Christopher P. Mulligan, Esq for Midlands Investment LLC to allow construction of a service road within the 100' Buffer of the Page Farm Development on property located at Main St and Knightland Rd, Map 13 Lot 87 in the RR2 zone.

Chair Saba informed the Board that applications two and three are somewhat attached but they will be kept in order. Only three members were present and the vote would need to be unanimous in order for the application for variance to be approved. The applicant stated that they were prepared to proceed.

Abutters: Paul and Jean Banville, Midland Investment LLC, (present), Shane and Michelle Keating Revocable Trust, Patrick O'Keefe and Judith Ruth, 138 Realty Trust, John Feuer, Trustee, Lincoln Jackson, Town of Atkinson, Scot Willette, Winslow Drive Realty Group, LLC Jameson Ridge Homeowners Association c/o Sharon Boyle, Peter and Nancy Hart, Martin and Eleanor Feuer, David and Judith Karam, Gove Environmental Services Soil Scientist and Jones and Beach Engineers

Chris Mulligan came before the Board to represent the applicant. Micheal Green, Green and Company and Joe Coronati, Jones and Beach Engineers came before the Board.

Mr. Mulligan explained that the applicant plans to add seven additional units to the Page Farm development. In order to do that, the applicant needs to construct an access road that would run through the 100-foot landscape buffer for the units.

Chair Saba interrupted and stated he thought the application was for a service road to a water tank. Mr. Mulligan replied that it would be a service road to the seven units to be build. Because it is a service road through the 100-foot landscape buffer, it requires a variance from Section 600.11.

As part of the proposal, the applicant is also seeking to relocate the existing access easement to the nearby Town Forest land, which is the abutter to the buffer, from an area that is away from the units that have been built and would be closer to the forest land and would be much more desirable location. The applicant has received positive feedback and a letter recommending the relocation from the Conservation Commission.

Chair Saba read the letter into the record. The letter states that the Conservation Commission voted unanimously to recommend allowing the relocation of the proposed service road. The decision was based on the fact that if the road were placed outside the buffer, it would have to go through the wetland. Also, by placing the road close to the Town Forest property line, there is a good opportunity to provide parking close to the Town Forest trail. This is not an endorsement of the proposed seven units. The letter is signed by Paul Wainwright, Chair, Atkinson Conservation Commission.

The current proposed access to the Town Forest is between units 34 and 35 of the present development. That part of the road has not been constructed, it is a planned access.

Chair Saba asked about the width of the proposed service road and the applicant responded that it would be 24 feet wide.

Mr. Green explained that the Conservation Commission would like the applicant to relocate the present proposed access and move it to the border of the Town Forest. The applicant would cut through to the area where the parking would go in the Town Forest and put down crushed stone for parking.

Chair Saba stated that the development was before the Board earlier with a request to put septic systems in the 100-foot buffer. Member Farris informed the applicant that it was decided not to allow the septic systems because the Board did not feel there was justification for the applicant not to readjust the development profile rather than place the septic systems in the buffer. The applicant responded that it must have been the previous developer who came before the Board regarding the septic systems. Mr. Mulligan informed the Board that the road could be moved out of the buffer, but in order to do that, it would have to go through the wetlands.

Member Farris discussed primary access roads and service roads. The road would be the only access to the proposed seven units. The applicant informed the Board that according to Atkinson Zoning Regulations, if the road were considered a primary access road, then it would be allowed. When it was previously discussed, the road was not allowed because the proposed homes are 25 feet from an historic stone wall.

The applicant stated that the buffer is between the proposed units and Town Forest. It would be counterintuitive to protect the buffer and invade wetlands. Chair Saba explained that the buffer is there because compensation has been awarded the developer and in return the Town gets open space and it is a buffer from the Town to the development.

Mr. Green agreed and stated that in meeting with the Planning Board and the Conservation Commission, the buffer is to protect development to development. Since the buffer is between Town Forest and the development, it would be more beneficial to protect the wetland.

Mr. Connors asked the location of the property line. The applicant pointed out that the road could cross the buffer or the wetland. The road could go through the wetlands, but the access to Town Forest would be lost.

Chair Saba asked about possible access to the Conservation land. Mr. Mulligan explained that the access is not on the present plan. The Board asked about the size of the parking area requested by the Conservation Commission. The applicant pointed out that the proposed roadway would increase open space. If the roadway were to go along the property line, significantly more roadway would have to be constructed. Chair Saba asked about the lines. Mr. Mulligan explained that one line is the property line, 100 feet from that line is the buffer, one line delineates the new open space line. When the development was originally approved, there was 44 acres of open space, there was a parcel of contractible land. An additional 14 acres of land are going to be put into open space under the current proposal.

The applicant explained that Tuck Realty developed the property and sold it to Midlands Investment to build it out. Chair Saba expressed concern that the location of the proposed seven units was open land and asked the Planning Board Chair to clarify.

Chair Killam explained that convertible land is a condominium term which states that there is some land labeled convertible, meaning that the condominium documents can be amended and the use can change. The seven additional units were allowed in the original proposal based on soils-based lot sizing. Chair Killam explained that no units have been added that have not been approved, the question is access to the lots. At the time the Page Farm development was approved, there was discussion with the Conservation Commission regarding purchasing some of the convertible land.

Member Farris asked about adjacent land and the developer responded to their knowledge it is Conservation Land.

Member Farris asked how close the road is to Conservation Land. The applicant responded that it is 10.5 feet from the Conservation land.

Chair Saba opened the meeting to the public. There was no comment. Chair Saba explained that he has an issue because access to Town Forest is not shown on the plan. The only reason to entertain the variance is because it abuts Town Forest and the benefit to the Town would be access to the Town Forest. The applicant agreed and stated that it is also to avoid the wetland.

Mr. Mulligan explained that access to the Town Forest is shown on the plan, but it is a different location than the Conservation Commission would prefer. If it is determined through the site review process that this is the preferred access, then the developer would agree. Ms. Killam explained that the developer went to the Planning Board for a design review and in that discussion the Planning Board informed the developer that a variance would be needed for the road to go through the buffer. Any detailed plans or engineering still have not been considered.

Member Farris asked what would be involved for the road to go through the wetlands. Chair Killam informed Member Farris that approval from the State would be difficult to obtain.

Chair Killam explained that the primary access road comes from Main Street, it goes through the buffer and also crosses wetlands. Anything appended off of Wild Pasture Lane is a service road. The applicant agreed that if it were a primary road then no variance would be required and the current primary road does go through setback and crosses the wetlands.

Mr. Mulligan stated that the applicant is before the Board to avoid a wetland crossing.

There was no more discussion.

Five criteria are necessary to grant a variance. The Zoning Board of Adjustment reviewed the requirements for approval with the application and voted.

- 1) Granting the variance would not be contrary to the public interest;

The applicant stated that under New Hampshire State Supreme Court case law, the first two criteria should be considered together. The essential characteristics of the neighborhood would not be altered.

Chair Saba requested that the applicant start with the first criteria. The applicant proceeded with the first criteria.

As far as the public interest, the test is if the variance is granted, would it alter the essential characteristics of the neighborhood or threaten the health, safety or general welfare of the public. Here, the applicant would say that the essential characteristics of the neighborhood would not be threatened. The residential density with the proposed seven units was already contemplated when the development was originally approved. The residential character of the Page Farm Development would not be substantially altered in any way. The character of the abutting adjacent land would not be substantially altered by the small incursion into the required buffer. Health, safety and welfare of the public are not threatened, in fact, it would be improved, the existing wetlands would not be impacted and the proposed road would improve access to Conservation Land.

Discussion: Chair Saba agrees that based on the unique situation, granting the variance would not be contrary to public interest.

All members of the Atkinson Zoning Board of Adjustment present agreed that Article VI Section 600:11b (1) interest based on the application and the discussions as presented. Vote: 3/0/0. The vote is unanimous.

2) The spirit of the ordinance is observed because;

Once again, public interest and spirit of intent should be considered together under Supreme Court precedent, therefore the same criteria should be used; whether there is substantial change or alteration to the neighborhood or would the health, safety and welfare of the general public be threatened. Neither are the case so the Board would have to find that the applicant meets the criteria of spirit and intent.

Discussion: Member Farris asked where it was stated in the memo and the applicant explained that the tests for Criteria One and Two are the same under NH law. Chair Saba agrees that it is the unique situation of the land that allows the application for variance to qualify.

All members of the Atkinson Zoning Board of Adjustment present agreed that the provisions of Article VI Section 600:11b (2) are met based on the application and the discussions as presented. Vote: 3/0/0. The vote is unanimous.

3) Granting the variance will do substantial justice because;

The hardship to the applicant against benefit to the general public has to be balanced. Here, there is no benefit to the general public that would outweigh the hardship to the applicant. The hardship to the applicant is that they would have to relocate the road to go through the existing wetlands which would be the hardship.

Discussion: Chair Saba agreed that going through the wetlands would also be a hardship to the public.

All members of the Atkinson Zoning Board of Adjustment present agreed that the provisions of Article VI Section 600:11b (3) are met based on the application and the discussions as presented. Vote: 3/0/0. The vote is unanimous.

4) The values of surrounding properties are not diminished;

The road could be constructed through the wetlands and/or the buffer if it were connected to another town road and it were a primary access road. The values of surrounding properties would not be affected. Again, the property most impacted is town conservation land.

Discussion: Member Farris agreed that the proposed service road would allow better access to the public. There was no more discussion.

All members of the Atkinson Zoning Board of Adjustment present agreed that the provisions of Article VI Section 600:11b (4) are met based on the application and the discussions as presented. Vote: 3/0/0. The vote is unanimous.

5) Owing to special conditions of the property that distinguishes it from other properties in the area, denial of the variance would result in unnecessary hardship because;

(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;

The special conditions of the property have been discussed. It abuts conservation land and is burdened by the wetlands. The piece of the project requiring relief would be permissible if the road were designated a primary access road rather than a service road. These are all unique conditions of the property that distinguish it from others in the nearby area. The proposed use is reasonable, it is a residential use in a residential zone, it is permitted and has been contemplated under the overall Page Farm Development. It is on convertible land within the condominium development.

The applicant believes that there is no fair and substantial relationship between the purpose of the ordinance and its application to this property. The ordinance describes the purpose of the 100-foot buffer is to insure an adequate division of transition between abutting lands and adjacent Town roads (Section 600.11). The applicant believes that if that is the purpose and intent of the 100-foot setback, there is no fair substantial relationship between that purpose and this particular project. Otherwise the applicant would have to disturb wetlands. It would be counterintuitive that the goal of the ordinance is to ensure an adequate buffer between uses, the use being Town Forest, but in order to protect the buffer, the applicant would have to invade the wetlands to access the proposed development. Therefore, there is no substantial relationship between the ordinance and its application to this property.

Discussion: Chair Saba agreed that the property has a unique hardship and the proposed access is a better alternative.

All members of the Atkinson Zoning Board of Adjustment present agreed that the provisions of Article VI Section 600:11b (5a) are met based on the application and the discussions as presented. Vote: 3/0/0. The vote is unanimous.

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

It is proposed use is residential in a residential zone.

Discussion: none

All members of the Atkinson Zoning Board of Adjustment present agreed that the provisions of Article VI Section 600:11b (5b) are met based on the application and the discussions as presented. Vote: 3/0/0. The vote is unanimous.

Chair Saba requested a motion. Member Farris asked to clarify if the motion should include a condition for the proposed parking lot.

Member Farris made a motion to approve the Application for Variance from Article VI Section 600:11b submitted by Christopher P. Mulligan, Esq for Midlands Investment LLC to allow construction of a service road within the 100' Buffer of the Page Farm Development on property located at Main St and Knightland Rd, Map 13 Lot 87 in the RR2 zone with the provision that access to the Atkinson Town Forest and parking are included and agreed upon with the Town and developers. Member Connors seconded the motion. All members of the Atkinson Zoning Board of Adjustment present voted in favor. Vote: 3/0/0.

3. Application for Variance from Article VI Section 600:11b submitted by Anthony Augeri for Winslow Drive Realty, LLC- Jameson Ridge Homeowners' Assn to allow construction of a service road within the 50' Buffer of the Jameson Ridge Development on property located at Winslow Drive, Map 13 Lot 29 in the RR2 zone.

Abutters: Steven Cummings, Gove Environmental, Hampstead Water Company (present) Winslow Drive Realty Group, Sharon Boyle, Josh Manning (present), Paul and Stacy Marcotte, Jason and Brindlen Stover, Richard and Jessica Oliveri, Leonard and Joan Hall, Trustees, John and Hale Lyon, Jason and Katelyn Hilbert, Sharon Boyle, Robert Stoddard, Francis Keegan Stoddard, Joseph and Linda Willette (present) Elizabeth and Daniel Fusco, Eric and Jennifer Youngrin (present) John and Lisa DiNapoli, Michael and Theresa Bodenaro, Jeffrey and Karen Favor, Matthew and Colleen Roy, Ryan and Cara Bloom, Alan and Juliana Hill, Mark and Ellen Grenadetti, William and Patricia Lee, Keith and Amy Maglio, Alfred Terisi, Alan Cormier, Brett and Theresa Shaveri, Lisa Sarcia, David and Melissa Newman, James and Judith Kalm (present), Todd and Carla Dulin, Lisa Wheaton, Robert and Elizabeth Liberatori, Kuldip and Pinderpal Baner, John Mercier, Town of Atkinson, Paul and Alaine Antwiak, James and Judith Cobb (present), Midland Investment (present) Lincoln Jackson, Laurie and Paul Rumpf, Nicholas Trombetta, Timothy and Gloria Dziechowski, David and Laurie Pancoast, Robert and Kelly Hawks, Michael and Candice Colizzi

Chair Saba informed the applicant that only three members were present and the vote would need to be unanimous in order for the application for variance to be approved.

Attorney Augeri, representing the applicant, came before the Board. He explained that the application originally filed was for two parcels. The ZBA representative thought Item 2 on the agenda had been filed. The applicant has authorizations. The original application included the Jameson Ridge side and the Page Farm side.

Chair Saba asked who approves the variance for Jameson Ridge. The applicant responded that it comes from two people. Originally, they thought the homeowners would have control and authority. However, upon further examination of the Town tax records and the Attorney General records, they discovered that no filing was done on behalf of an association which means that the original LLC, which is the Winslow Drive Realty Group LLC, is still listed as the owner of the common area on the Jameson Ridge side to which this would apply.

The applicant has included everything in the application. There is an association authorization that was signed by Brian Boyle, President of the Jameson Ridge HOA. The Town tax card references Winslow Drive LLC. The applicant could not locate a filing of the homeowners'

association for Jameson Ridge. Therefore, the applicant has obtained an authorization from the manager of the LLC, Winslow Drive Realty Group, Brian Boyle. Chair Saba stated that Sharon Boyle is registered with the State, but if the applicant believes that their application is in order, he is willing to go forward.

Chair Saba stated that he would feel better if the President were present. The applicant responded that the manager would be considered the President of the LLC. The member is Sharon Boyle. The applicant stated that he has the authorization from the manager of the LLC, Brian Boyle. Chair Saba allowed the applicant to go forward.

The applicant explained that he is requesting a variance for an access road between both parcels for a water tank. The applicant has conditional approval for the tank subject to a variance for access to it.

The applicant explained that it would take about a month to build the tank and after that, the road would be used approximately weekly to maintain the tank.

There is an application for two variances, one for a fifty-foot buffer and one for a one-hundred-foot buffer.

Chair Saba asked where the access road would be in relation to the Page Farm Development.

Josh Manning, Hampstead Water Company, pointed out the Page Farm Development, Jameson Ridge and the proposed tank on the map. Mr. Manning explained that the proposed tank would be accessed from the Hale property driveway, Map 13, Lot 29-19. The previous proposed access would have required a hairpin turn to get up the hill and would disturb a lot of soil. The new proposed access is the least disruptive. It is at the back end of the lot, concealed from view and would be the shortest point.

Chair Saba asked about the tank and how visible it would be. Attorney Augeri explained that the tank is sticking out of the ground, it is not above the tree line and the area around it has vegetation. Mr. Manning explained that it is all existing hardwood vegetation. There are enough trees so that it would be partially concealed even in winter. The buffer is being maintained on both sides. Member Farris asked about using a private driveway. Mr. Manning explained that the driveway belongs to the Hales and they are present at the meeting. The road itself is 12 feet wide, but the total area is 20 feet. It will be gravel. Given the topography and development, the most efficient access would be through the Hale property. It would have to go through the two buffers and go right up to the tank.

Member Farris asked if there would be gates and locks around the tank and Attorney Augeri responded that there would be a gate and a chain link fence around the tank. Attorney Augeri explained that the orientation and topography are key factors. The Board asked about the structures on the proposed plan. Power will be underground and there is no backup generator. The closest property would be the Hale residence. The tank would be slightly below the Hale residence and is recessed into the ground. The tank would not solely support Page Farm, it will service the community. The water would come through wells throughout the area. A new well is being permitted at this location, but it is not specific to this tank. The water line would come down the hill, through the Page Farm Development and then to the rest of Atkinson. It is a gravity fed tank. There are pump stations all over Town; Settlers Ridge, Midpoint, Bryant Woods...

Chair Saba opened the hearing to the public.

James Cobb, Maple Avenue, asked about the source of the water. Mr. Manning replied that it is Hampstead Area Water Company and would come from bedrock wells. Mr. Cobb asked if any of the wells would be from Maple Avenue or from wetlands near Main Street. There would not be

Eric Cummings, Winslow Drive asked about the purpose of the tank. Mr. Manning replied that water pressure and additional water capacity are the main purposes. In the event of a power outage, there will be one million gallons of water available to Hampstead Area Water Company customers. Mr. Cummings asked if the tank would benefit Winslow Drive. Mr. Manning replied that the tank would allow Winslow Drive access capacity. Mr. Cummings explained that without generators, there would be no benefit to Winslow Drive. Winslow Drive would be able to see the clear cut and the tank. Mr. Manning explained that it is a narrow road and there is no clear cut so residents of Winslow Drive would not be able to see the tank or the road. The Hales are the highest point above Winslow Drive. The tank is eight feet below the Hale property. Chair Saba stated that it would benefit Winslow drive and Mr. Manning agreed that the water pressure in the tank so it will get to Winslow Drive. It will pressurize the entire system. The abutters on Winslow Drive disagreed.

Mr. Cummings stated that the Winslow Drive water system is independent to the rest of the Town so there will be no benefit. Mr. Manning informed him that it is connected to the core system. There are two pumping stations, one behind the development and one on Meditation Lane. Mr. Manning will investigate pressure to Winslow Drive further.

There is static pressure in the tank, no air pressure.

Chair Saba asked if the tank would increase the line pressure for Winslow Drive, the development most impacted by the proposed tank and proposed service road. Mr. Manning responded that he would have to check further.

Mr. Cobb asked about construction which means that Winslow Drive will get all the construction equipment. The applicant replied that it would be 3-4 months. Mr. Manning explained that it is a regional need. The only water tank currently in they system is in Hampstead so a tank centrally located in Atkinson will allow better water access to the Town. Chair Saba explained that the issue before the Board was the road so issues about water pressure and safety cannot be discussed further.

Member Connors asked if the Board were here for the tank or the road. The tank is not the jurisdiction of the Zoning Board of Adjustment. Chair Saba explained that a use for the road had to be decided first. The application for the tank has been conditionally approved by the Planning Board, conditioned on the access road.

There was no more discussion.

Chair Saba requested that the applicant go through the five criteria.

- 1) Granting the variance would not be contrary to the public interest;

This application is for the access road, but it is tied directly to the tank. The applicant has a strong interest in providing a stable source of drinking water. Water is currently taken from ten miles away. This has a direct impact on pressure for the entire core system. The Planning Board has conditionally approved the tank. It is a gravity dependent tank and based on that it has to be located at the proposed location. It is a water pressure dependent tank. The tank

would benefit the entire core system of Hampstead Water Company. The pressure also helps with safety. It will help maintain and stabilize the water supply in the event of low water pressure conditions. The proposed service road is a total of 20 feet wide, but the road itself, which will be gravel is 12 feet, it is minimally invasive and is the least visually disruptive given the topography and also the least intrusive.

Chair Saba asked about the application for the Page Farm and if notice was given to the abutters from the other developers.

The applicant explained that the application for the 100-foot buffer from Page Farm was submitted, but was not presented at the meeting.

Chair Saba asked if Attorney Augeri would agree that notification was given to all abutters and if the applicant was comfortable going forward. Chair Saba stated that he has the entire application in front of him and it does not mention a variance for the service road going through the 100-foot buffer to the Page Farm Development. Attorney Augeri stated that he would like the Board to accept the application as is and to proceed. If there are concerns, the applicant is willing to continue to the next hearing. Chair Saba responded that he is concerned for the applicant. Chair Saba asked the Planning Board Chair if legal notice was sufficient and read it aloud. Chair Saba stated that there is no mention of the Page Farm Development or the 100-foot buffer.

Chair Killam stated that an abundance of caution would be to continue and renotify. The applicant is looking for a variance on each of two properties.

Attorney Augeri requested that the application for variance from Jameson Ridge be decided at the present meeting and the application for variance from Page Farm be addressed later. The Page Farm variance would be deferred and if this variance is approved it would be contingent upon approval of a variance for the 100-foot buffer to the Page Farm development, Map 13, Lot 87. Lot 29 is Jameson Ridge.

The Board returned to discussion of Criteria 1.

Discussion: Chair Saba stated that the access road is a public necessity and would not be contrary to the public interest.

All members of the Atkinson Zoning Board of Adjustment present agreed that the provisions of Article VI Section 600:11b (1) are met based on the application and the discussions as presented. Vote: 3/0/0. The vote is unanimous.

2) The spirit of the ordinance is observed because;

Attorney Augeri stated that there is no population density, the tank is the furthest point from Main Street, it is not a primary access road and once the tank is constructed it will get minimal use and it is on the back boundary. The spirit of the ordinance would be preserved because it is providing such a good general public service.

Discussion: Chair Saba believes it is a benefit to the public and therefore the criteria is met.

Article VI Section 600:11b (2) are met based on the application and the discussions as presented. Vote: 3/0/0. The vote is unanimous.

3) Granting the variance will do substantial justice because;

Again, the tank is providing an essential service to the community and the road provides access, allowing the tank and the water supply to be properly maintained. Because it is targeted to the entire core water system not just to one particular development, it would do substantial justice, because it benefits the community as a whole.

Discussion: The gain to the general public would outweigh any hardship. Open space would not be lost, the tank would be accessed through buffer zones. Member Connors stated that the applicant should address concerns of public not getting water during an outage. An abutter stated that Winslow Drive would appreciate a generator.

Article VI Section 600:11b (3) are met based on the application and the discussions as presented. Vote: 3/0/0. The vote is unanimous.

4) The values of surrounding properties are not diminished;

The values of the surrounding properties would not be diminished. Stabilizing the water pressure and the gravity of additional water pressure would benefit. Being able to access the tank in a minimally invasive way would not diminish the value of the surrounding properties because the access road is on the back side of the property.

Discussion: Chair Saba reminded the applicant that it is the burden of the applicant to prove that property values have not been diminished. The Board has heard from the abutters and diminution of property values has not been mentioned

Article VI Section 600:11b (4) are met based on the application and the discussions as presented. Vote: 3/0/0. The vote is unanimous.

5) Owing to special conditions of the property that distinguishes it from other properties in the area denial of the variance would result in unnecessary hardship because;

(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;

The purpose of the ordinance provision is to provide a buffer with landscaping. The uniqueness of the topography. There is no density issue. The issue before the Board is just a 12-foot-wide gravel road with a 20-foot total swath to service the water tank.

Discussion: Chair Saba stated that the necessity of what is being built has been shown and the hardship has been shown due to the contours of the land.

The conditions of Article VI Section 600:11b (5a) are met based on the application and the discussions as presented. Vote: 3/0/0. The vote is unanimous.

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

It is the least disruptive, it is literally straight across, as narrow as needed to be and for all of the prior reasons in totality, it is almost a summary criterion, we believe that that has been met, it is a reasonable one in order to access the water tank in the least disruptive manner as possible.

Discussion: Chair Saba stated that he likes the bend in the road, it creates a visual break.

The conditions of Article VI Section 600:11b (5b) are met based on the application and the discussions as presented. Vote: 3/0/0. The vote is unanimous.

Member Connor made a motion to approve the Application for Variance from Article VI Section 600:11b submitted by Anthony Augeri for Winslow Drive Realty, LLC- Jameson Ridge Homeowners' Assn to allow construction of a service road within the 50' Buffer of the Jameson Ridge Development on property located at Winslow Drive, Map 13 Lot 29 in the RR2 zone; contingent upon approval of an application for variance for access through the buffer for Page Farm Development, to be used for access to the proposed water tank only, and to remain gravel, not paved. Member Farris seconded the motion. All members present voted in favor. Vote: 3/0/0.

Member Connors made a motion to close the public hearing. Member Farris seconded the motion. All members present voted in favor. Vote: 3/0/0.

Member Farris made a motion to adjourn the September 12, 2018 meeting of the Town of Atkinson Zoning Board of Adjustment at 9:23 PM. The motion was seconded by Member Connors. All members of the Atkinson Zoning Board of Adjustment present voted in favor. Vote: 3/0/0.