

**ATKINSON ZONING BOARD OF ADJUSTMENT**  
**21 Academy Avenue**  
**Atkinson, New Hampshire 03811**  
**Public Hearing Meeting Town Hall**  
**Wednesday, October 10, 2018**

Members Present

Glenn Saba, Chair  
David Farris  
Vice Chair Sam Zannini  
  
Bob Connors

Others Present

Tim Lavelle, James Lavelle Associates  
Paul Corbett  
Paul Wainwright, Conservation  
Commission Chair  
Joshua Manning  
Anthony Augeri

**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: September 12, 2018

The Atkinson Zoning Board of Adjustment reviewed the minutes of the September 12, 2018 meeting.

**Member Farris made a motion to approve the minutes of the September 12, 2018 meeting as amended. The motion was seconded by Chair Saba. Chair Saba and Member Farris voted in favor. Vote:2 /0/0.**

**Public Hearing – 7:30 P.M.** - Chair Saba opened the public hearing at 7:30 PM, October 10, 2018. Chair Saba, Member David Farris, Kevin Wade and Vice Chair Zannini were present.

- 1. Application for Variance from Article IV 410:8(a) submitted by James Lavelle Assoc. for Cor-A-Trust, Paul Corbett, Trustee to permit the construction of a dwelling 50' from wetland where 100' is required (50 foot variance) and also a Variance from Article V Section 530:d to permit the construction of same dwelling 38 feet from the road where 50 feet is required (12 foot variance) on property located at Maple Ave, Map 9, Lot 29 in the RR2 Zone.**

Abutters: Gary and Maureen Whitley, Maple Avenue Realty Trust, 13 Maple Avenue, Cor-A Trust, Estate of Clair Hamilton (present), Sheri Malo (present), Barbara and David Saba, Paul Corbett (present), Peter and Erica Corbett, Dennis and Lois Powers, James Lavelle Associates (present)

Chair Saba read two letters from the Conservation Commission regarding the application. The first was dated August 8, 2018. The letter stated that the Conservation Commission voted unanimously to recommend that the Zoning Board of Adjustment (“ZBA”) deny the wetlands setback variance for this project. The second letter, dated September 26, 2018, was a follow up to the August 8, 2018 and summarized the discussion of the August 6, 2018 meeting with

an explanation as to why the Conservation Commission recommended the variance be denied. A portion of the August 6, 2018 minutes containing the discussion was attached.

Tim Lavelle, James Lavelle Associates came before the Zoning Board of Adjustment to represent COR-A Trust. The proposal is on Map 9, Lot 29 which is an 8.38 acre lot with the bulk of Blunts Pond on the property. The applicant proposes to put the proposed dwelling on an area to the north and northeast that is high and dry.

Mr. Tim Lavelle represented that the proposed structure would be about 10 feet above the elevation of the wetland and about 12 to 15 feet above the pond itself. And also, the proposed structure would be about 5 to 6 feet below the road. The proposed septic system would be 8 feet higher than the lowest point of the proposed dwelling. The applicant is proposing 51 feet from the wetland and 38 feet from the road. The second sheet of the plan shows the entire lot. Mr. Lavelle stated that the dwelling to the north is 27 feet from the road, therefore the proposed dwelling would be in keeping with the neighborhood.

The applicant is also proposing dry wells attached to the roof gutters, which is taken from Town and State shoreland rules. Mr. Lavelle stated that Blunts Pond is not a great pond, but the applicant looked at siting a dwelling the property in the same way.

Mr. Lavelle represented that the septic system proposed would meet all the rules. The Atkinson Town Health Officer, Mike Dorman witnessed the test pit and the test pit information is part of the packet. It would be 100 feet from the wetland and would meet all State and Town regulations. The septic plan could not be signed because the setback variances for the proposed dwelling have not been approved. Mr. Lavelle showed the ZBA a copy of the design. It is included in the plan on page one.

Mr. Lavelle represented that the proposed home is small, only three bedrooms to minimize impervious surfaces. The proposed driveway has been changed to come straight in so as to have less impervious surface.

The proposed dwelling would be two story, 28 by 38 interior square footage. The footprint is 1000 square feet with a garage under.

There were no questions from the members of the ZBA.

Chair Saba opened the discussion to the public.

Mr. Bob Malo appeared before the Board on behalf of his daughter, Sheri Malo, 25 Maple Avenue and gave the ZBA a handout. Mr. Malo stated that most of the houses on Maple Avenue are large, with large lots. This house is very unlike most of the properties on the street and would reduce the value of neighboring properties. Also, the zoning laws are to protect the environment, the wildlife and the property values of the abutters, the neighborhood and the community. The Conservation Commission did a site walk and voted unanimously not to recommend the variance. Presently, the lot is heavily wooded. He stated that building a house, an artesian well and a septic system would require virtually all trees in the buildable envelope to be cut down. Also, the power lines run in front of the lot.

The lot has a very significant slope, so that fertilizer, salt from the driveway and possibly septic overflow could seep into the pond. The pond is part of the Little River watershed. The Little River flows through the City of Haverhill into the Merrimac River.

The most significant thing for the ZBA is that approval of these buildings and these variances would set a precedent and communicate to any landowner or contractor that all they have to do is appear before the ZBA and get a variance. Consistent with the Conservation Commission, Sheri and Bob Malo highly recommend the variance be denied.

Vin and Fran Fiorello, 13, Maple Avenue requested to speak and stated that they are super concerned about the lot and the loss of trees. Mr. Fiorello is concerned about the loss of trees and absorption of water in the lot. He agrees that it sets a precedent. He looks across the pond at the Christmas Tree Farm, and envisions seeing houses all along the pond. Also, when there is heavy rain water, the pond water has come up to the house. With another building and loss of trees, the consequence could be more flooding. Mrs. Fiorello stated that when it rains heavily, water comes into their lawn.

The applicant, Paul Corbett, came before the Board and stated that the proposed dwelling will not cause more flooding. There is another little pond that also drains into the brook. A lot of the issues with the pond are caused by run off. There are many properties on the brook and anything that gets used ends up in the other pond and drains into Blunts Pond.

Also, as far as the trees go, there is nothing to stop him from cutting all the trees on the lot. He is not planning to do that, although the Town allows it. The property was subdivided in 1957 and it passed the perc test. Any house along the brook could leach into the pond if the septic systems are not maintained. Because the proposed dwelling is new, it will have a better septic than some of the older homes. The applicant has made an effort to control runoff.

As far as depreciation of property, the proposed dwelling will be in keeping with the rest of the Town and should not cause depreciation. Mr. Corbett will be living across the street from the proposed dwelling and appreciates the pond as much as anybody.

Paul Wainwright, Conservation Commission Chair spoke. He stated that the Conservation Commission frequently reviews requests for wetland setback variances. Most of them involve construction of an addition to an existing property and/or involve a wetland that is rather insignificant. This application is for a new dwelling and Blunts Pond is a fairly significant wetland. The Conservation Commission discussed the fact that there is a lot of drainage and runoff already emptying into the pond but that was not a reason to recommend the variance.

The Conservation Commission is concerned about the situation of the pond 50 to 100 years from now. The proposed design is a good one, but he is concerned about what will happen to the drywells and the septic 50 to 100 years from now and if they will be maintained.

One other issue is that if the lot were part of a subdivision today, it would not be buildable. The Conservation Commission does not believe that there are two acres high and dry on the lot, but because it was subdivided in 1957, it is not necessary. Also, according to the assessor and tax collector cards, it has been noted as wetland and assessed at \$15,000 since it was subdivided.

Dennis Fair, 16 Maple Avenue. Blunt Pond is the jewel of Maple Avenue. He is concerned about what will happen in the future. He does not want a precedent set.

Linda Fair, 16 Maple Avenue asked about frontage. Mr. Corbett explained that the lot was subdivided in 1957 and has over 8.5 acres. There is only one possible place for a house. The lot has 585 feet of frontage. Even today, it meets many of the Atkinson Zoning Requirements.

Tim Lavelle requested to speak and stated that wondering what will happen and the possibility of variances granted on Blunts Pond in the future on preexisting lots of record is futile, because this is the only example. The other side of Blunts Pond has plenty of frontage and variances would not be necessary. Also, a lot of that property is very steep towards the pond. Mr. Lavelle passed around a photo which he received from Mr. Malo and shows that the property is not as heavily wooded or steep as stated.

Chair Saba asked about the slope and Mr. Lavelle agreed that it is 10 feet in 50 or a 20% slope. One section is approximately 30% slope but the rest is gentler thereafter. The total slope is 20%. One section is not wooded and there are pine trees along the pond that would not be cut. Questions of deforestation and precedent are concerns, but this lot has no effect on the other side of the pond. This is an existing lot of record, it is 8.33 acres, it has 545 feet of frontage and has a significant dry area in the front.

Chair Saba asked about the size of the upland and Mr. Lavelle stated that there are 28,000 square feet of upland or around .7 acres. This is why the septic has to be for a three-bedroom home. This limitation is set by the State. The lot was created in 1957. Mr. Lavelle stated that the regulation requiring 100 feet setback from the wetland is in essence a taking. The applicant feels that the lot can be developed in a safe manner by following shoreline protection rules, minimizing impervious areas and containing the water that comes off the roof. The septic system does not require a waiver. As far as the distance from the road the applicant tried to keep a balance between the setbacks for the wetland and the street. The houses along Maple Avenue are much closer than the 50 feet required in that zone.

Vice Chair Zannini asked if the two lots were in common ownership because it would have been merged. Mr. Lavelle replied no, not since 1957. The uphill lot was subdivided in 1957.

Vice Chair Zannini asked about the 200 foot setback for major wetlands and if the proposed dwelling would meet the minimum State requirement. Mr. Lavelle replied yes, the State requirement is 50 feet from a great pond. Mr. Lavelle informed the Board that the side setback is met, because of the age of the lot, it is fifteen feet.

Vice Chair Zannini asked about the issues in the Conservation Commission minutes. Chair Wainwright replied that he recalled that there was concern about runoff from the driveway and from fertilizers.

**Vice Chair Zannini made a motion for a five-minute recess to look at the Conservation Commission minutes of August 6, 2018. The motion was seconded by Member Farris. All Members of the Atkinson Zoning Board of Adjustment voted in favor. Vote: 4/0/0.**

Chair Saba granted a five-minute recess at 8:15 PM to look at the Conservation Commission minutes of August 6, 2018.

Chair Saba reopened the hearing at 8:20 PM.

Vice Chair Zannini asked if an alternative material proposed for the driveway to mitigate wetland. Mr. Lavelle replied that there was no alternative material in the plan. There was very little discussion with the Conservation Commission about the driveway. Mr. Lavelle stated that the driveway meets the rules. Vice Chair Zannini stated that runoff seemed to be the biggest problem.

Chair Wainwright stated that alternative material for the driveway would not change the recommendation of the Conservation Commission.

Vice Chair Zannini asked about the dry wells. Mr. Lavelle stated that dry well mitigation was discussed and stated that no drainage calculations were done for the proposed dwelling. Also, since the soils were so good, the dry wells would easily accept the runoff and allow the water to infiltrate into the soil.

Vice Chair Wainwright asked if there were other dwellings in the area that were located on small lots. Mr. Lavelle explained that yes, there was a house directly across the street with a small lot and a lot of wetland. There are other small lots on Maple Avenue.

Chair Wainwright explained that the 50-foot requirement by the State is for bodies of water. The 100 foot Atkinson Zoning Regulation is for wetlands. Wetlands are not bodies of water. The Board discussed when the 100-foot setback requirement to wetlands was passed.

There was no more discussion.

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

Chair Saba stated that there are two requests for variance, the Board needs to consider each one independently and asked the board to start with the wetland variance. It is for 50 feet from wetland where 100 feet is required and is Article IV Section 410 8(a).

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

It would allow for the construction of a home on the preexisting, nonconforming lot which is 8.33 acres, causing no detrimental effect to the neighborhood or the abutting wetlands for the reasons previously stated.

Discussion: Chair Saba stated that there are zoning laws in place. The members of the Zoning Board are volunteers and rely on the Conservation Commission for advice on wetlands. The ZBA has sent applicants to the Conservation Commission before a ruling by the Zoning Board in the past. It has been said that the Conservation Commission had decided prior, but Chair Saba does not agree, this issue has been in discussion for quite a while, he has done a site walk twice. The Conservation Commission has done significant due diligence. With that said, it is difficult for him to recommend anything contrary to the Conservation Commission.

There were no more comments on Criteria 1.

**The members of the Atkinson Zoning Board of Adjustment voted as follows: Vice Chair Zannini agreed that the conditions of Article IV Section 410:8a (1) are met based on the application and the discussions as presented and Chair Saba, Member Farris and Member Wade did not agree. Vote: 1/3/0.**

2) The spirit of the ordinance is observed because;

The newly installed septic system for the proposed dwelling would protect the wetlands and the rule came into effect after the creation of this lot.

Discussion: Chair Saba agreed that an updated septic would be much better than some of the older systems nearby. For him, the spirit of the ordinance is not that, it is a setback from a wetland and what that means has been clearly explained by the Chairman of the Conservation Commission. The Board has given variances for garages and maybe for additions but never for new construction. For him, the spirit of the ordinance is not being observed.

**All members of the Atkinson Zoning Board of Adjustment present agreed that the conditions of Article IV Section 410:8(a) (2) are not met based on the application and the discussions as presented. Vote: 4/0/0. The vote is unanimous.**

3) Granting the variance will do substantial justice because;

It would allow for productive use of the lot, which was created in 1957 and would avoid a taking by the Town.

Discussion: Vice Chair Zannini stated that the applicant is not here asking for subdivision approval to create another lot to build a house. He believes that if a lot is subdivided in good faith and then the Town tells them that the land is basically useless, it is a land taking. Chair Saba stated that the lot was never intended to be developed. At one time, the lot was offered to the Conservation Commission for free. The owners have always taken advantage of that because of the lower tax rate.

Member Farris agreed that the entire property was at a substantially lower tax rate than a buildable lot.

Chair Saba stated that for this unique situation, he cannot agree that this would be a land taking.

Vice Chair Zannini stated that the lot was subdivided in good faith, a 2018 standard septic system and leach field and if the owner has made an effort to mitigate the issues with the structure. He understands the reduced tax rate, but does not agree.

Chair Saba stated that the question is whether it is a hardship, is it a taking or if it was never intended to be developed in the first place.

Vice Chair Zannini stated that people donate land all the time, appreciates everyone's concerns and the work of the Conservation Commission but it is a constitutional issue. The lot was subdivided in 1957.

**The members of the Atkinson Zoning Board of Adjustment voted as follows: Vice Chair Zannini, Member Farris and Member Wade agreed that the conditions of Article IV Section 410:8(a) (3) are met based on the application and the discussions as presented. Chair Saba disagreed. Vote: 3/1/0.**

4) The values of surrounding properties are not diminished;

A new home would be constructed with a modern septic system, a modern home on a large lot. It has proven time and time again, that a new house on the street will not adversely affect property values.

Discussion: Chair Saba agrees that a new home will enhance the values of abutting property, but that is on a lot that is deemed buildable. Vice Chair Zannini stated that it would not

diminish property values. Member Farris stated that from driving by, he would not be able to tell the size of the lot due to the amount of area next to it.

**All members of the Atkinson Zoning Board of Adjustment present agreed that the conditions of Article IV Section 410:8(a) (4) based on the application and the discussions as presented. Vote: 4/0/0. 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 ordinance is in place to protect the wetlands. The applicant believes that the design, the placement of the house and the septic 100 feet from the wetlands would protect the wetlands. This lot was created well before the 100 foot setback requirement and the applicant feels that the proposed dwelling has been sited properly. The ordinance came into effect well after the creation of this lot.

Discussion: Chair Saba stated that the spirit of the ordinance for protecting the wetland in Atkinson is there for a purpose and that due to the uniqueness of the lot, the slope and the proximity to the wetland and the amount of relief requested, he does not believe that the spirit of the ordinance to protect the wetlands is being observed.

Vice Chair Zannini stated that if you have an existing lot or house and are requesting a variance you are looking at every option. For instance, if an applicant is trying to put in an addition on one side of the house but it is not possible due to a septic and leach field. He feels that given the lot, the proposed dwelling is the best case scenario given the challenges presented. He believes it is a hardship based on the lot itself.

Chair Saba stated that he looks at it as “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 general public purpose of the ordinance is to protect the wetlands. The Board has been told that this is a substantial wetland and it knows that it is absorbing quite a bit of runoff from lower Maple and the surrounding watershed. The runoff would be greater with the proposed house. Without the proposed house, at least this lot gives 28,000 square feet of vegetated land to protect the wetland. If the house existed in the ‘50’s and an addition were proposed, it would be different. The applicant could cut the trees and sell the wood, but he could not legally dig up the stumps.

Vice Chair Zannini asked if it would be a problem if a plan were brought with plantings and other mitigation. Chair Saba stated that the Board is discussing hypotheticals, that it is not what is before the Board.

There was no further discussion.

**All members of the Atkinson Zoning Board of Adjustment present agreed that the conditions of Article IV Section 410:8(a) (5a) are not met based on the application and the discussions as presented. Vote: 4/0/0. The vote is unanimous.**

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

It allows for productive use of the property, which is an existing, nonconforming, 8.33-acre lot and it is allowed in the zoning.

Discussion: Vice Chair Zannini stated that it would be reasonable otherwise it would be a land taking. Chair Saba stated that the question is whether the use is reasonable for what is in front of the Board. Atkinson is probably the most lenient. This lot is unique and he does not think it is reasonable.

**The members of the Atkinson Zoning Board of Adjustment voted as follows: Vice Chair Zannini and Member Farris agreed that the conditions of Article IV Section 410:8(a) (5b) are met based on the application and the discussions as presented and Chair Saba and Member Wade disagreed. Vote: 2/2/0.**

**Member Farris made a motion to deny the Application for Variance from Article IV Section 410:8a submitted by James Lavell Assoc. for Cor-A-Trust, Paul Corbett, Trustee to permit the construction of a dwelling 50' from wetland where 100' is required (50-foot variance) on property located at Maple Avenue, Map 9, Lot 29 in the RR2 Zone. Member Wade seconded the motion. All in favor of denying the variance. Vote: 4/0/0.**

The Zoning Board went through the second application for a Variance from Article V Section 530:d to permit the construction of same dwelling 38 feet from the road where 50 feet is required (12 foot variance) on property located at Maple Ave, Map 9, Lot 29 in the RR2 Zone.

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

The 38 foot setback proposed is larger than many of the other homes along Maple Avenue. It fits in with the neighborhood, there are many homes that are much closer to the road than the 50 foot setback required.

Discussion: Chair Saba agrees that there are many homes closer to the road than the 50 foot required setback. It is in character with the neighborhood. Member Wade agreed that there is nowhere else to put it.

**All members of the Atkinson Zoning Board of Adjustment present agreed that the conditions of Article V Section 530:d (1) are met based on the application and the discussions as presented. Vote: 4/0/0. The vote is unanimous.**

2) The spirit of the ordinance is observed;

The setback is in keeping with the neighborhood and is far enough off the road that it does not interfere with public travel.

Discussion: Chair Saba agreed that based on the character of the neighborhood and the size of the lot, the spirit of the ordinance is observed.

**All members of the Atkinson Zoning Board of Adjustment present agreed that the conditions of Article V Section 530:d (2) are met based on the application and the discussions as presented. Vote: 4/0/0. The vote is unanimous.**

3) Granting the variance would do substantial justice;

The owner is requesting a setback variance and is asking no more than what now exists in the neighborhood, therefore doing substantial justice to the applicant.



Discussion: Chair Saba agreed that the guiding rule is that any loss to an individual that is not outweighed by a gain to the general public. There are several homes that are just as close.

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

4) The values of surrounding properties are not diminished;

It would allow the owner of the property to enjoy his property with a new home and a new home in an area has never been shown to reduce property values.

Discussion: Chair Saba agreed.

**All members of the Atkinson Zoning Board of Adjustment present agreed that the conditions of Article V Section 530:d (4) are met based on the application and the discussions as presented. Vote: 4/0/0. 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;

Again, many other homes on Maple Avenue exist closer than 50 feet from the front property line, the general purpose is to not crowd the road and in this case the applicant does not feel that it would.

Discussion: Chair Saba stated that if it were not for the steep slope and the wetland behind it, it would not be an issue.

**All members of the Atkinson Zoning Board of Adjustment present agreed that the conditions of Article V Section 530:d (5a) are met based on the application and the discussions as presented. Vote: 4/0/0. The vote is unanimous.**

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

Placement of a new home at the 38 foot mark keeps it a reasonable distance from the road and the use is allowed in the zone, it is a single family home.

Discussion: The notes say wetland, but it is a typing error.

**All members of the Atkinson Zoning Board of Adjustment present agreed that the placement of the proposed dwelling 38 feet from the road meet the conditions of Article V Section 530:d (5b) based on the application and the discussions as presented. Vote: 4/0/0. The vote is unanimous.**

**Member Farris made a motion to allow the Application for Variance from Article V Section 530:d to permit the construction of same dwelling 38' from the road where 50' is required (12' variance) on property located at Maple Ave, Map 9, Lot 29 in the RR2 zone. Member Wade seconded the motion. All in favor. Vote: 4/0/0.**

**2. Application for Variance from Article VI Section 600:11b submitted by Anthony S. Augeri, 2<sup>nd</sup> general counsel for Hampstead Area Water Company, Inc., 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.**

Abutters: Paul and Jean Banville, John Feuer Realty Trust, John Feuer, Trustee, Midland Investment LLC, Shane and Michelle Keating Revocable Trust, Patrick O'Keefe and Judith Ruth, 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, Steven Cummings, Joshua Manning (present), Hampstead Water Company, Gove Environmental Services Soil Scientist

No abutters are in the audience.

Attorney Anthony Augeri appeared before the Board to represent the applicant. He stated that the applicant was before the Board September 12, 2018 to request a variance for the other side of an access road that was conditionally approved.

There were three conditions to the approval; to appear before the Board for a variance for the buffer from the Page Farm Development, two, that the road be used only to access and service the water tank and three, that the road only be gravel and not be paved.

The applicant is present to meet the first condition of the approval, for a variance for the buffer from the Page Farm Development. There are two buffers where variances are sought. The Jackson Ridge variance from the buffer has been conditionally approved. This application for variance is requested on the same basis as the request for variance from the buffer from Jackson Ridge.

Member Farris asked if there was any change. Attorney Augeri responded no. Chair Saba asked when construction would begin. Mr. Manning responded that the applicant is waiting for one more state permit. It could be 60-90 days, site work could begin in the winter, but the tank construction would wait until spring.

Chair Saba stated that the slopes are steep and asked about erosion control. Mr. Manning responded that they would put in winter stabilization, swales, and stone check dams. This is all subject to Town Engineering review. Member Wade agreed that the tank would benefit the entire town. Mr. Augeri stated that the water tank would benefit the entire core system.

There was no more discussion.

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

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

There is a strong interest in a stable and safe supply of drinking water. This variance would allow construction of a road to the tank. It will only be used for that and is minimal traffic. The purpose of the variance is a buffer between land and the other side has already been conditionally approved. There is only one potential property owner that would be affected. It is on the back part of the lot and is as far away from Main Street as possible. It would support the core system by stabilizing drinking water supply and fire suppression.

Discussion: none

**All members of the Atkinson Zoning Board of Adjustment present agreed that Article VI Section 600:11b (1) are met based on the application and the discussions as presented. Vote: 4/0/0. The vote is unanimous.**

2) The spirit of the ordinance is observed because;

The proposed service road will be 12 feet wide and 20 feet wide with the fill and grading. The location is at the safest and the least visually invasive part of the lot. Again, the spirit is to have some buffer from land owners, it will not be that wide, it will be gravel.

Discussion: Chair Saba stated that the 90 degrees helps break up the line of sight.

**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: 4/0/0. The vote is unanimous.**

3) Granting the variance will do substantial justice because;

The water tank is an essential service to the community, providing potable drinking water, emergency suppression services and stabilizing the water supply for the core system as a whole. It is not just for these particular landowners. There would be substantial justice because the proposed access road is designed to have minimum visual impact and to take advantage of the best of a tough situation with the topography.

Discussion: Chair Saba asked about traffic. Mr. Manning responded that short of an emergency, there might be traffic every couple of weeks for maintenance. The water treatment facilities are inspected weekly but there are fewer moving parts, so it will be every couple of weeks. A pickup truck will be used for inspection.

**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: 4/0/0. The vote is unanimous.**

4) The values of surrounding properties are not diminished;

The applicant believes that a continuous water supply would benefit if not increase the value of the surrounding properties. The water tank is placed as far away as possible from the surrounding properties. A stable supply minimizes the risk of contamination, helps with fire suppression and so on.

Discussion: There is 400,000 gallons of water storage in Hampstead which loses pressure by the time it gets to Atkinson. The present system is a series of generator operated pumps. This is an atmospheric tank and it is all gravity.

**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: 4/0/0. 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 proposed variance accomplishes the main goal of providing access to the tank. There is no other feasible location given the topography. The tank has already been approved, and the buffer for the other side of the access road has been conditionally approved. The purpose of the ordinance is not designed to restrict water access and fire suppression for surrounding properties. Page Farm is being developed and Winslow Drive is a substantial development. For all of those reasons, the applicant believes that 5(a) has been met.

Discussion: Chair Saba agreed that it is a municipal need. Putting in the bend to eliminate the line of site might compromise the buffer, but Chair Saba thinks it helps the design.

**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: 4/0/0. The vote is unanimous.**

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

The proposed access road has been bent so that the visual impact is minimized. Both Page Farm and Jameson Ridge representatives support the variance. That is an important factor in considering the reasonableness.

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: 4/0/0. The vote is unanimous.**

Chair Saba requested a motion.

**Member Farris made a motion to approve the Application for Variance from Article VI Section 600:11b submitted by Anthony S. Augeri 2nd general counsel for Hampstead Area Water Company, Incorporated, 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 provisions that: (1) the proposed access road be used only for access to the proposed water tank for service and maintenance; and (2) that the proposed access road remain gravel, not paved. Member Wade seconded the motion. 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 Farris seconded the motion. All members present voted in favor. Vote: 4/0/0.**

**Member Farris made a motion to adjourn the October 10, 2018 meeting of the Town of Atkinson Zoning Board of Adjustment at 9:15 PM. The motion was seconded by Member Wade. All members of the Atkinson Zoning Board of Adjustment present voted in favor. Vote: 4/0/0.**