

**ATKINSON ZONING BOARD OF ADJUSTMENT
21 Academy Avenue
Atkinson, New Hampshire 03811
Public Hearing Meeting Town Hall
Wednesday, October 14, 2020**

Members Present

Glenn Saba, Chair
Bob Connors
Kevin Wade
Art Leondires

Others Present

Christine Cornelius
Steven Nasser (on Zoom)
Sue Coppeta (on Zoom)

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 will be conducted via Zoom which is authorized pursuant to the Governor's emergency order. The public access to listen and/or to participate by telephone or by Zoom. If the public is unable to access the meeting, it will be adjourned and rescheduled. All votes will be taken by roll call vote.

Roll Call Attendance: Chair Saba, present; Member Connors, present; Member Wade, present; and Member Leondires, present

Correspondence: none

Approval of Minutes: September 9, 2020

Chair Saba, Vice Chair Zannini, Member Connors, Member Farris and Member Leondires of The Atkinson Zoning Board of Adjustment were present and voting at the September 9, 2020 meeting. Chair Saba, Member Connors, and Member Leondires are present and voting at the October 14, 2020 meeting, reviewed the September 9, 2020 minutes, made corrections and amendments.

Member Connors made a motion to accept the minutes of the Town of Atkinson Zoning Board of Adjustment, Wednesday, September 9, 2020 meeting as amended. The motion was seconded by Member Leondires. Roll Call: Member Connors, Chair Saba and Member Leondires, the members of the Atkinson Zoning Board of Adjustment present and who were at the September 9, 2020 meeting voted in favor. Vote: 3/0/0. The vote is unanimous.

New/Old Business: November Meeting Date – The 2nd Wednesday in November is Veteran's Day (Nov 11, 2020) and Town Hall is closed. There are applications. The Board agreed to meet Thursday, November 12th.

Public Hearing – 7:30 P.M.

Chair Saba opened the public hearing at 7:30 PM, October 14, 2020.

Application for Appeal from an Administrative Decision – Zoning, submitted by Christine Cornelius, 52 Island Pond Road, Map 21 Lot 2. She appeals the Code Enforcement decision, dated September 3, 2020 regarding her complaint regarding perceived Zoning and Site Plan violations at 56 Island Pond Road, Map 20 Lot 2, in the CI Zone. Dispute relates to Site Plan sections 690 Screening & Buffering (4 & 5).

Abutters: Malone Living Trust, John Malone; Rockingham Realty, LLC.; Water Wheel Estate, Frank Leary; M&M DaSilva Realty; Southern New Hampshire Commons, LLC; Industrial Village, LLC; Tetlet and Company, New Hampshire, LLC; Susan Sandon, Christine Cornelius (present)

Chair Saba invited Ms. Cornelius to speak to the Zoning Board of Adjustment.

Chair Saba informed the Board that this is an appeal to an administrative decision by the Code Enforcement Officer, Steve Nasser. In this appeal, all the Board can discuss is the Code Enforcement Officer's response to his visits and his answers to the applicant.

In this appeal, the applicant has the burden to prove the code enforcement decision was erroneous, illegal or unreasonable. The ZBA has no jurisdiction to appeal a decision that has not been made. Code Enforcement Officer, Steven Nasser sent Ms. Cornelius a letter dated September 3, 2020 outlining the alleged violations and his response.

Chair Saba read the letter into the record. The alleged violations cited and the responses are summarized below:

1. Wooden structure (large box) located in the buffer zone. The owner has confirmed that the box has been removed from the buffer so this is no longer an issue.

Discussion: The issue is resolved.

2. Buffer zone entrance does not meet New Hampshire wetlands setback: Mr. Nasser met with the Conservation Commission Chair and he has confirmed that there are no wetlands issues at the property.

Discussion: Ms. Cornelius asked the Chair if he has the site plan and stated that the wetlands is on the site plan, it shows a line where the wetlands are located. Chair Saba stated that wetlands change over years. A project should be built based on what the current zone is at the time of the project. If the zoning changes or the wetland changes or if the setbacks change the project is grandfathered. What the plan says and what exists today, is irrelevant. Ms. Cornelius stated that at the time it was not wetland, it's called a pond or stream, but if you looked at it you would swear it was.

The Chair stated that the Conservation Commission Chair reviewed the site and stated that there are no wetland issues.

Ms. Cornelius stated that it is irrelevant. The whole point is that there is not enough setback. A 150 foot buffer is needed. Chair Saba replied that all the Board can do is go by what is in front of it.

Ms. Cornelius replied that she did not know why the Board is talking about wetlands, that is totally irrelevant.

Chair Saba asked if number two was fine. Ms. Cornelius replied that it is on the plan, if you want to talk about wetlands, but what is the point. She met with the Conservation Commission and it isn't even part of the issue.

Chair Saba asked again if number two was resolved.

Ms. Cornelius responded that the issue is the structure sitting 30 feet within the buffer zone.

Chair Saba responded that the Board has five items that can be addressed and he does not see anything in her complaint about the structure sitting 30 feet within the buffer zone.

Ms. Cornelius replied that a special exception was given to the structure allowing it to be 30 feet within the buffer zone.

The Chair reiterated that her statement is irrelevant to what is being discussed at the present hearing. Ms. Cornelius responded again that the wetlands are not even an issue, the issue is the buffer zone.

Chair Saba stated that the complaint before the Board is that the buffer zone entrance does not meet New Hampshire wetlands setback requirements.

Ms. Cornelius stated no, and read that below she made a statement that:

“regardless, that side of the building was allowed a special exception to sit 30 feet within the buffer with the stipulation there be no business on that side of the building. Agreement attached. It actually sits just 76 feet or so from the residential property line. This current business already sought approval to alter the buffer side of the building and it was denied (by the Board).”

Chair Saba asked if the entrance was changed. Ms. Cornelius stated that she had some photos and the Board responded that they have the photos. Member Connors stated that Ms. Cornelius added some extra language to the application for hearing that was not in her complaint to the Code Enforcement Officer.

Chair Saba reiterated that the ZBA can only look at what the Code Enforcement Office responded to, so if you do not agree that he was not focused on her problem, then she needs to go back to the Code Enforcement Officer and have him focus on a problem and if she does not like the decision, she can come back to the ZBA.

Ms. Cornelius stated it was because he is new and the Chair disagreed. She stated that she told him that that side of the building was not to be developed and she went through it with him.

Chair Saba asked what has been done and Ms. Cornelius stated that Mr. Malone had developed the entire side of the building. It is supposed to be a blank façade that sits within the buffer. Chair Saba responded that at one time there was a big door in the back. Ms. Cornelius responded yes, the white garage door. The Chair stated that the large garage door is gone, there was always a shed, if you look at the site plan.

Ms. Cornelius stated that he constructed the shed this winter. Chair Saba asked if she recognized that the outcrop exists on the approved site plan and she agreed. The Chair asked what else has the property owner done. Ms. Cornelius stated that the allowance was for an oil tank. Chair Saba stated that the plan does not state that the outcrop is for an oil tank. It is an addition to the building that juts out beyond that side of the building, it exists, it is on the approved plan and it is there now. Ms. Cornelius replied that it was never discussed and would have required a special exception. Not only that, it was done this winter, it should have been done years ago when it was allowed.

Member Connors asked if the wetlands being discussed were the dried up stream between the two properties. Also, if she knows what is in the box. She replied no. It was constructed this winter. Member Connors stated that the box is on the plan.

The Chair read the letter from the Chairman of the Conservation Commission into the record concerning the wetland between 52 and 56 Island Pond Road. In the letter Chair Wainwright states that as he understands it, first, it regards a State of New Hampshire 100 foot wetland buffer. This buffer requirement applies to prime wetlands only. The Town of Atkinson has no jurisdiction over State regulations so this complaint should have gone to NH DES not the Atkinson ZBA. Second, if the alleged violation existed at the time the State accepted the Hog Hill Brook as a prime wetland in 2009, it is grandfathered, it would not have received much attention from DES. Third, the Hog Hill Brook prime wetland as approved at Town meeting in 2009 did not include the wetland north of Island Pond Road. He has attached the map of the 2003 prime wetland study and which the Town approved in 2009 and which the State subsequently accepted. Signed by Paul Wainwright, Chair.

Chair Saba stated that based on the Conservation Commission and the Code Enforcement Officer, there are no wetlands violations on the property.

Chair Saba stated that he would take a roll call vote on whether the ZBA agreed that item number two has been answered correctly by the Code Enforcement Officer within his jurisdiction and abilities:

Roll Call: Member Connors, yes; Member Leondires, yes; Member Wade, yes; and Chair Saba, yes. The Atkinson Zoning Board of Adjustment unanimously

agreed to affirm the Code Enforcement Officer's response to Item 2. Vote: 4/0/0.

3. Miscellaneous complaints regarding screening and items in buffer (i.e., grill, small table, two chairs, air conditioner, etc.)

Discussion: The Chair stated that the letter from the Code Enforcement Officer, states that 690:4 references screening and ground cover. He does not believe there are any screening or ground cover violations.

690:5 states that parking, traffic circulation, loading and unloading operations or signs are not permitted within the buffer. Essential services within the buffer will be subject to Planning Board approval. He does not see a small table, two chairs and an air conditioner, etc. as violating 690:50.

The Chair stated that he did a drive by and saw a little table and a couple of chairs. He requested the Board decide if the Code Enforcement Officer erroneously decided they were not an issue. Member Connors stated that the Code does not say anything about removable items there.

Ms. Cornelius stated that it is 30 feet within the buffer, there is not supposed to be a door 30 feet within the buffer, you are not supposed to have a door 30 feet from the buffer. The Chair asked where she was reading her statements. It was mentioned that people have grills and other items within their buffers all over town.

Ms. Cornelius stated that it is a zone line buffer and read the regulation. She stated that he has expanded his use and he has developed the whole side of the building and it was supposed to stay blank. He put in a door, windows, an air conditioner and lights. It is only 70 feet from her property line. The buffer doesn't change.

Chair Saba agreed that the buffers need to be monitored. Right now, all he sees is a table and a chair where people can have a picnic or a break.

Ms. Cornelius stated it is bringing activity closer to her property. Chair Saba stated that there is already a driveway there. The screening that exists, and the fencing are far from the building and in the woods. The pavement and the area have existed from the beginning. There is nothing that has been changed since the last time Ms. Cornelius was in front of the Board. Ms. Cornelius disagreed.

Chair Saba informed her that if the Code Enforcement Officer has not addressed her complaint correctly the Board cannot deviate from what is ruled on. Ms. Cornelius stated that a door and two windows were added this winter. Chair Saba stated that the property owner took the barn doors off and put in a window, took off the porch and added a single door.

Chair Saba stated that the Board needs to focus on the complaint and what the Code Enforcement Officer has written and asked if the Board has had a chance to review the documents. Member Connors looked at the picture and stated that the grill, small table and two chairs are on the pavement, not the buffer. Ms. Cornelius stated that there was

supposed to be louvers on the windows and they are in the agreement. Chair Saba pointed out that the agreement was thrown out by the Court and the Board cannot look at it.

Chair Saba requested the Board decide whether the decision of the Code Enforcement Officer was wrong, illegal or unreasonable in line item three and asked if there were discussion.

He asked the Board if anyone believes that having a chair, a small table or an air conditioner violates Section 690:50 which states that parking, traffic, loading or unloading, and signs are not permitted in the buffer. The Board discussed whether the items were in the buffer since they were on the pavement. Ms. Cornelius stated that only essential use is allowed in the buffer. The Board discussed whether the temporary grill that would probably come in within a few weeks was unacceptable.

Chair Saba asked if there were more discussion. Member Wade asked about Planning Board approval. Member Connors stated that since these items are all temporary, going before the Planning Board is not necessary. He has been to the site several times and has not seen any evidence that any business is being conducted. Member Leondires stated that he did not see an issue.

Chair Saba stated that the Board needs to decide if the Code Enforcement officer was erroneous, unreasonable or illegal. The vote is if the Board would uphold his decision.

Roll Call: Member Connors, yes; Member Leondires, yes; Member Wade, yes; and Chair Saba, yes. All members of The Atkinson Zoning Board of Adjustment present agree to uphold the decision of the Code Enforcement Officer in line item 3. Vote: 4/0/0.

4. Potential apartment on the second floor: The Code Enforcement Officer has spoken with the owner and he has denied having an apartment on the second floor. The Fire Department will do an inspection in the November timeframe to confirm.

Discussion: Chair Saba has spoken with the owner who denies having an apartment. An inspection by the Fire Department will be done in the November time frame to confirm. He stated that a discussion was not necessary until the Fire Department inspected the building for a potential apartment on the second floor.

Ms. Cornelius reiterated that a use was being established in the buffer.

Chair Saba asked if the Board agreed to wait until the inspection by the Fire Department. Member Connors stated that an apartment on the second floor of the business was not the issue of the ZBA, if an inspection found an apartment, it would be an issue for the Code Enforcement Officer.

The Board agreed that the Code Enforcement Officer will follow up with the Fire Department to confirm whether or not there is an apartment on the second floor and then follow up with the Zoning Board of Adjustment. Roll Call: Member Connors, yes; Member Leondires, yes; Member Wade, yes; and Chair Saba, yes.

All members of The Atkinson Zoning Board of Adjustment present agree to wait until the Fire Department inspects and the Code Enforcement follows through that there is no apartment on the second floor. Vote: 4/0/0. Unanimous.

5. Large wooden structure added next to the ramp: There is a wooden shed type attachment there which complies with the most recent site plan for the property. This is not a violation.

Discussion: Chair Saba asked if her complaint is the large wooden structure added next to the ramp. Ms. Cornelius responded yes. Her complaint is the one they keep seeing on the site plan. She stated that the structure brings his business to the buffer side of the building. Chair Saba read from the letter. He asked again if the wooden shed type attachment on the approved site plan is the issue being addressed. He stated that on the approved site plan, there is a bump out on that side which complies with the approved site plan. The Board agrees.

In the picture, there is a bump out. The Board agrees.

Ms. Cornelius replied that the wooden structure was never discussed and would never have been allowed by the Planning Board because it is further encroaching into the buffer.

Chair Saba read the statement by the Code Enforcement Officer.

Chair Saba asked if there were discussion from the Board. Member Wade pointed out that the structure is on the site plan. Chair Saba agreed. Also, as a Board, they must decide whether the Code Enforcement Officer was erroneous, illegal or unreasonable in his decision. There is a bump out on the approved site plan, there is a picture of a bump out. The Board must rely on the Code Enforcement Officer to say that it is the issue.

Chair Saba asked if there was more discussion. Member Connors stated that the instructions for the Board are to look at the Code Enforcement ruling and look at the plan. There is a bump out on the plan and the Code Enforcement Officer stated the bump out was there, it's a shed, not a 60 foot add on which would be unreasonable.

Ms. Cornelius stated that no business is supposed to occur on that side of the building. Mr. Connors asked if she had observed any use on the buffer side of the building. She stated that a person would need to go back there to get his stuff. Ms. Cornelius stated that she has children playing and no one should see them.

Chair Saba informed Ms. Cornelius that if she thinks the wooden structure is not in compliance with the approved site plan, she would need to get it surveyed. She would need to get the original site plan and get the actual size on the site plan in order to state it is not in compliance. Until that, all the Board can do is go by what the Code Enforcement Officer has responded to and how he has responded.

Chair Saba requested a vote affirming the decision of the Code Enforcement Officer in Item 5.

Roll Call: Member Connors, yes; Member Leondires, yes; Member Wade, yes; and Chair Saba, yes. All members of The Atkinson Zoning Board of Adjustment present agree to affirm the decision of the Code Enforcement Officer in Line Item 5.

Ms. Cornelius stated that her complaint states that according to Section 700:1 a special permit would have been needed, no special permit was given and would have expired long ago.

Chair Saba stated that the wooden structure is on the recorded site plan that went to the Court and the Court agreed with it. She could be right but it is not the jurisdiction of the Zoning Board of Adjustment. All the Zoning Board can do is review the appeal to the Code Enforcement findings as written. If she does not agree with his response or if the response did not reflect her complaint, then she must submit another complaint to the Code Enforcement Officer so he can respond to it. If she does not agree with his response to a new complaint, then she can come back to the Zoning Board of Adjustment.

Ms. Cornelius stated that no permit was given.

Chair Saba responded that he is looking at the approved plan, he sees the bump out and the addition matches what is in the site plan. Chair Saba stated that if Ms. Cornelius has any further complaints, she needs to go back to the Code Enforcement Officer.

Chair Saba requested a motion to uphold, not uphold or partially reject the response of the Code Enforcement Officer.

Member Connors made a motion to uphold the ruling of the Code Enforcement Officer on the Application for Appeal from an Administrative Decision – Zoning, submitted by Christine Cornelius, 52 Island Pond Road, Map 21 Lot 2. She appeals the Code Enforcement decision, dated September 3, 2020 regarding her complaint regarding perceived Zoning and Site Plan violations at 56 Island Pond Road, Map 20 Lot 2, in the CI Zone. Dispute relates to Site Plan sections 690 Screening & Buffering (4 & 5).

Discussion: Chair Saba asked if Member Connors uphold in entirety. Member Connors responded it is being upheld in its entirety and restated the motion.

Member Connors made a motion to uphold in its entirety the ruling of the Code Enforcement Officer on the Application for Appeal from an Administrative Decision – Zoning, submitted by Christine Cornelius, 52 Island Pond Road, Map 21 Lot 2. She appeals the Code Enforcement decision, dated September 3, 2020 regarding her complaint regarding perceived Zoning and Site Plan violations at 56 Island Pond Road, Map 20 Lot 2, in the CI Zone. Dispute relates to Site Plan sections 690 Screening & Buffering (4 & 5). Member Wade seconded the motion.

Roll Call Vote: Member Connors, yes; Member Leondires, yes; Member Wade, yes; and Chair Saba, yes. All members of The Atkinson Zoning Board of

Adjustment present agree to uphold the decision of the Code Enforcement Officer in its entirety. Vote: 4/0/0. Unanimous.

Chair Saba informed Ms. Cornelius that the Board has upheld the decision of the Code Enforcement Officer in its entirety. She can appeal or she can go back to the Code Enforcement Officer to address any new grievance that was not part of this complaint.

Member Connors made a motion to close the public hearing. Member Leondires seconded the motion.

Roll Call: Member Connors, Member Wade, Member Leondires and Chair Saba voted in favor. Vote: 4/0/0. The vote is unanimous.

Chair Saba requested a motion to adjourn.

Member Leondires made a motion to adjourn the October 14, 2020 meeting of the Atkinson Zoning Board of Adjustment. Member Connors seconded the motion.

Roll Call: Member Connors, Member Leondires, Member Wade and Chair Saba all voted in favor. Vote: 4/0/0. The vote is unanimous.

Chair Saba adjourned the meeting at 8:11 pm.