

Atkinson Zoning Board of Adjustment
21 Academy Avenue
Atkinson, NH 03811

**Public Hearing Meeting Town Hall
Wednesday December 8, 2010**

Present: Hank Riehl, Chairman; Sanford Carter, Glenn Saba; Alternate; Sue Miner

Mr. Riehl called the meeting to order at 7:00 p.m.

Correspondence

Incoming

- 1) Letter from Mrs. Friel that she would not be present for the hearing
- 2) Deed Addendum for Special Accessory for Paul Donovan of Deer Run Road
- 3) Monthly Expenses
- 4) Zoning Calendar from the RPC
- 5) NH Town & Country, Nov/Dec

Outgoing

none

Approval of Minutes of November 10, 2010

- 1 add "for a Special Exception" after variance under Public Hearing for Matthew R. Paquin.
- 2 change Peter Schuler to Peter Schauer
- 3 change "the in-law" throughout minutes to read "the in-law unit"
- 4 page 2, bottom of 6th paragraph change "decline" to "steep incline"
- 5 page 3, 2nd paragraph
 - 1 first line; add ",abutter," after Jacobs
 - 2 2nd line; add "the" before new
 - 3 6th line; add "Mr. Jacobs, abutter" after Mr. Saba reiterated to
 - 4 9th line; add after spirit "of the ordinance in that he felt living unit was not wholly separate.
 - 5 14th line; after "any other" add "unit"
 - 6 24th line; change "o" to "of"
 - 7 26th line change "the provision" to "this provision"
 - 8 31st line change to "sell this house with a pre-approved in-law unit."
- 1 page 4 under the Mr. Waldron motion change "There will" to There must also be.."

Mr. Riehl asked for a motion to accept the minutes as amended and Ms. Miner moved the motion; Mr. Carter seconded the motion the Board voted unanimously to accept the minutes as amended

PUBLIC HEARINGS: 7:30 P.M. - Continued from October 13 and November 10, 2010:

David Royce, request for a Special Exception as specified in Zoning Ordinance Article IV, Section 460: 1 and 2 to permit Accessory Family Living Unit in residence at 4 Sawmill Road, Map 8 Lot 64 in the TR2 Zone

Applicant requests a continuance until the January meeting.

Based on the applicant's request for a continuance, Ms. Miner made a motion to approve a continuance to the next regularly scheduled hearing. Mr. Carter seconded; it was unanimously approved.

PUBLIC HEARINGS: 7:35 P.M. -Continued from October 13, 2010 and November 10, 2010:

Matthew R. Paquin, submission of an Application for a Variance from Atkinson Zoning Ordinance Article IV Section 460:2 to allow an extended family living unit in a space containing 946 square feet where ordinarily 750 square feet is permitted; and an Application for a Special Exception under Article IV, Section 460:2 to allow the use of an extended family accessory living unit at property located at 6 Indian Ridge Road, Map 5 Lot 54 in the TR2 Zone.

Mr. Riehl made a note to clarify that 2-3 months ago the variance request portion of the application was denied and that they are now working on the Special Exception based on some amended plans. The Board acted on most of the criteria but there were some inspection issues that needed to be dealt with by the Paquin's.

Mr. Richard Paquin stated that he was there to represent his son and himself. Mr. Paquin stated that they are currently working to add a hallway to make that common area to fall under the Town guidelines of 750 sq. ft. as permitted by the Accessory Family Living Unit ordinance. Work is progressing. Contractor had some family issue which caused some delays. The Inspector was out and did a "rough" inspection. It was o.k. Electrical Inspector was out and ok'd the new electrical work that was done. Doors are to be installed; 2 French doors and 2 additional doors for an entrance and an exit. There was an issue from the last hearing. A comment made by Code Enforcement that while the Inspectors are out looking at the common area the Paquin's should have the Inspectors look at the in-law unit Kitchen area for any improprieties that maybe there from 1992. The Paquins received a call from Code Enforcement stating that the in-law unit would need a fire, electrical and plumbing inspection and to pull some new permits for the work. The Paquin's met with all the inspectors and they, the Inspectors, would like all new permits pulled on the in-law apartment. Also, the Inspectors want an Electrician and a Plumber to come and look at the in-law apartment and pull the permits based on 1992 codes. The applicant is having no luck finding either a Plumber or an Electrician to pull a permit for work not performed by them. The Paquin's were under the impression that the intent of the Board was that while the Inspectors were out looking at the new common area, that they were to also look at the in-law unit. Mr.

Paquin is unable to find an Electrician or a Plumber who will sign off on 1992 work done by someone else. The Paquin's are here tonight to ask for two things, 1) for another extension to complete the renovations and 2) looking for guidance as how to go about getting the inspections. Mr. Riehl tried to clarify that the Inspectors do not work for the Zoning Board and that the place to go to seek a resolution is to the Board of Selectmen, who are ultimately the inspectors' bosses, to get some guidance for either the Paquin's or the Inspectors. Mr. Carter tried to expand on Mr. Riehl's explanation to help Mr. Paquin understand. Mr. Paquin contends that the in-law unit was built at the same time the house was; he also contends that the entire house/complex was inspected by the Building Inspector, the Wiring Inspector, the Fire Inspector, and Plumbing. According to the Mr. Riehl, the Building Inspector, on the Official record, could not recall all the kitchen fixtures that were present at the time. Mr. Riehl asked the applicant to go before the Board of Selectman to help come up with a decision. Mr. Carter stated to the applicant that the plans are not kept in the Town's files forever. Under the *Haines case* a piece of the documentation is missing. So as to what was inspected is not there; the record also shows that it could not have been properly signed off at the time by an inspector because there was no provision for in-law units. Which brings up the dilemma that what was there was inspected and was properly done or it needs to be inspected now to assure that it was done properly. Mr. Riehl stated that the Board needs to be assured that the Inspectors are satisfied. The applicant provided the Board with an Assessor's Card that shows the in-law unit was there in 4/1992. Mr. Riehl pointed out that the in-law unit appeared 4 months after the occupancy inspection.

Based on the applicant's request for a continuance, Mr. Saba made a motion to approve a continuance to the next regularly scheduled hearing. Mr. Carter seconded; it was unanimously approved.

Public Hearing 8:00 p.m. - New Application

Lavelle Associates representing Gordon Allen, Executor for the Estate of Justin Allen, request for a Special Exception as specified in the Zoning Ordinance Article VII, Section 700:2 to allow Conversion from a Seasonal to Year-round/Primary use. Also, the Application for a Variance to replace the existing dwelling (which is 10 feet from the water) with a new dwelling and deck that is 22.5 feet from Big Island Pond (77.5 ft. variance), on Property located at 37 Boulder Cove Road, Map 23, Lot 75, RR3 Zone.

List of Abutters were read and the following were present:

Town of Atkinson - present

Sandra Fuhs, Revocable Trust - present

James Lavelle & Assoc. -Tim Lavelle - present

Big Island Pond Corporation - present - represented by Denise Legault for Noreen Mercier

Estate of Justin Allen Jr. - represented by Lavelle & Associates

Ralph Menier - present

Tim Lavelle of James Lavelle & Associates, regarding tax map 23. Lot 75, 37 Boulder Cove Road. In the packet of plans, there are 1) Existing Condition Plans, 2) Proposed Condition Plan and 3) the Shoreline Impact Plan. As well as a septic plan. The first 3 plans are what was submitted to the DES. The proposal is to remove the existing camp with a deck that is 10 feet from the water and sliding the structure back 22 feet and the reason that the numbers don't correspond very well is that there is an inlet on the north side. The plan is to have the structure 30 feet from the water and 8 foot deck makes it 22 feet from the water. The applicant has received a Shoreline Impact Permit from the State. The applicant met with the Conservation Commission before application was submitted and was given some good advice. The structure is to be a 2 bedroom dwelling with an attached two-car garage. A new leach field would be constructed that meets all state and Town requirements and is over 75 feet from the water. There would be a new drilled well on the property. The existing property is drawing from the lake. The structure would have roof gutters that would be directed into mini dry wells. Which helps recharge the ground and prevents run-off into the lake and is required by the state DES. The driveway is to be paved with a porous or pervious pavement, which will allow the rain to be drained through the pavement and not into the lake. It's a bituminous concrete that UNH had a seminar on. The base is a little different and that you need to add sand beneath the pavement so the water has a place to run through. The cost is 10-15% more than pavement. A version is used on the highway in parts of route 495. Mr. Saba asked about the outlet of the property is just past the kayak/boat ramp and shares it's entrance with the property to the north, which belongs to the Henry's. In the proposal, there is a reduction of pervious surface on the property, which is recommended by the Shoreline people. The pre-construction impervious surface is 23% and when the construction is done it would be 17.5%. This is calculated by the footprint and is also done because the house is so close to the water there is more driveway surface. Mr. Riehl asked if a packed gravel driveway was considered impervious surface. The Shoreline Protection pointed out that if you get some good rain storms that the gravel driveways wash-out and they run in to the lake. Mr. Riehl asked if the plans show the proposed structure , it's floor plan, it's living space and such. Mr. Lavelle stated that he did not have the current floor plan but had photos and passed them to the Board to look at. Mr. Riehl asked where the current waste disposal system was located. Mr. Lavelle stated it was in the north portion of the property and it is a state approved pump system that was done in 1973 and approved in 1973. There is a pump chamber that is not shown on the sheet that is located just outside the door of the existing camp that is under the gravel driveway. The new system is to be a gravity feed and located further away. In the current home there are 4 levels. Mr. Menier stated that there is a crawl space, the main floor, bedroom (4 bedrooms) area and a walk up attic (full height). Mr. Riehl asked about existing sheds. Mr. Lavelle explained that there is an outhouse and a storage shed, both are to be removed. Mr. Saba asked about tree removal on property. Mr. Lavelle stated that on the sheet 3 the temporary impact portion shows the area of the tree removal. Mr. Saba asked if the DES approved of the tree removal. Mr. Lavelle stated that the approval is on the Temporary impact

form, it did not have to state the trees that are to be removed. Mr. Lavelle stated that after Mr. Carter had asked about tree measurements, that the trees were measured and cataloged and photos taken, so the State gave permission based on the information provided under the Temporary Impact Permit. Mr. Lavelle stated that they were waiting on the approval for the Shoreline Permit before they could approve the septic system. Mr. Lavelle had forgotten to put the test pit location on original plan, it was re-submitted and was hoping to have the approval number after 10 a.m., Thursday, December 10, 2010. Mr. Carter asked if the Board had the sheet that was modified. . Mr. Riehl asked for more insight to the home as it is being presented as a 2 bedroom home with 3 levels. Mr. Menier went to retrieve prints of the proposed house. Ms. Miner asked about a bedroom being located on the 1st floor and what rooms were to be on the second floor. Mr. Menier showed on the plans that there are 2 rooms on the second floor, one a bedroom with closets and the other room is to be an office without closets. There would also be attic storage as well, and a bonus room located out over the garage. The first floor has a great room with cathedral ceilings. The Master Bedroom would be located on the 1st floor. The basement will have a pool table and hold all the mechanicals. There was clarification that the deck is actually a porch, as it has a roof. Mr. Carter asked if it was to have 2 levels of garage then is essentially a 4-car garage. Mr. Menier stated that it is and there would be a boat storage on the bottom portion facing the lake. and a 2 car garage on the upper level. The area in the front facing the lake will be a lawn and only used to pull out or to store the boat.

Mr. Riehl stated there is both a special exception and a variance for the tear down. This was treated as one whole clean slate. The Board is taking into consideration the impact on the lake, neighbors, etc. Mr. Riehl opened questions and concerns to the abutters. Denise Legault, is both a proxy for the Big Island Pond Association as well as a neighbor on the lake, asked about the driveway and how natural it looks and about building it up and the impact on the lake. Mr. Menier stated that he wanted to build it up to be at the same level as the Henry's house and use the natural contour of the land in the front. A portion of the drive way will be removed. Ms. Legault had some concerns on the disturbances of the roots and that the trees are close. Mr. Lavelle stated that most would be loamed and seeded. The driveway has approximately 80-90 feet of drive way and when it's completed it would only be 30 feet and the rest to be grass or natural. Ms. Legault asked about the 50 foot for DES and the Town says 100 feet and wanted to know where it was included in the paperwork. Mr. Lavelle stated that it is included in the Shoreline Impact Permit. Ms. Legault asked if DES has not approved the septic request. Mr. Lavelle stated that they were confident they would have it in the morning and if the Board approved it would be conditional upon the State approved septic plan. Ms. Legault read from a note from Noreen Mercier that the Board please not approve the project until the DES has approved the septic system. There has been a history of buildings being built without pre-approval and not getting the approval after the Board has given approval. Ms. Legault stated that the building seems excessively large for the lot and that the garage would be a burden. Mr. Lavelle stated that the drainage would include the garage area and that the impervious area is also reduced with the new plan

because the building is further away from the lake and not spread out all over the lot. Ms. Legault asked if the whole structure was to be 1500 sq. ft. Mr. Lavelle stated that including the garage the structure would be 2400 sq ft. Ms. Legault asked about the present structure is 800 sq. ft., sheds would be 109 sq. ft. Mr. Riehl stated that there is 1500 sq. ft. on the main floor and close to that on the second floor. Mr. Lavelle stated it was closer to 800 sq. ft. because of the vaulted ceiling. Ms. Miner asked about the present structure being 800 sq. ft. and has 4 floors and that this new structure has 3. Mr. Riehl stated that they would be comparable in size; the foot print would be bigger but the impervious area is less. The Board needs to consider the general fit on the land. Ms. Legault has asked if a site walk has taken place. Mr. Riehl stated that there was not. A point was brought up by Sandy Fuhs, abutter, that 4 bedrooms to 2 bedrooms is much better from a septic stand point and also that cars being kept in a garage is better for the environment than being left outside.

Sue Killam brought some useful information to the Board, and asked that the Board be totally explicit in the final approval of the square footage of the foot print and square footage of living space. Which are two separate things and the Town has run into issues in the past without that not being completely clarified. Whatever is shown translate that into a footprint and living space. Mr. Riehl stated that plans have been lost and thinks that it's prudent advice. Mr. Lavelle stated that the State will hold the builder to the foot print but the Town is to look more closely at the living space. Mr. Riehl asked if Mr. Lavelle sought approval from the Conservation Commission. Mr. Lavelle stated that they met with the Commission and were given some good ideas that helped expedite the process. Ms. Legault, a member of the Conservation Commission stated that the applicant was not on the agenda the night that Mr. Lavelle came to seek some guidance. At the last meeting the Conservation Commission discussed the fact that the Commission did not have enough information to render an informed decision. The Commission would like to do a site walk to help make an informed decision.

The Board reviewed the criteria on page Z63, Section 700:2 which describes Special Exception; review by the Health Officer compliance with Sections WS 300 of the water supply and sewer disposal reg. and written consent by NH Water Supply and Pollution Control Commission

Mr. Lavelle stated that the Health Officer signs the forms before they are sent off to DES but does not have the approval for Septic System as of today and is confident that he will receive approval.

Ms. Miner questioned the part "shall include but not be limited to.." and how to interpret the fact finding. Mr. Saba stated that it is under 700:1E and describes the Special Exception along with 4 more criteria.

The Board reviewed the criteria under 700:2:

- a) The board discussed whether the merits of the Health Officer and his signature on the plans. 3 members of the Board voted affirmatively and 1 against.
- b) 3 members of the Board voted affirmatively and 1 against.

c) 3 members of the Board voted affirmatively and 1 against.

Discussion on whether the Board is voting on criteria without all the necessary documentation. Mr. Lavelle proposed that if the Board would be more comfortable to continue the Hearing until next month when all necessary documentation is in; along with approval letter from the Conservation Commission and a site walk if requested, the applicant would like to request a continuance. The Board would like more from the applicant as to what the attic storage is, i.e. heat/no heat, finished/not finished, etc.) The Board would like stipulated as to what is living and non-living space and the 2nd and 3rd floor plans be brought to the next meeting.

Mr. Riehl asked for a motion for a continuance for the applicant to provide the Board with written feedback from the State of approval from the Town Health Officer and the State, more distinction of living space and non-living space in the 3 levels of the home, looking for the 2 additional floor plans to be added to the packet, looking for an opinion from the Conservation Board and the foot print as well as broken down to the exact size of each . Ms. Miner moved the motion. Mr. Saba seconded the motion and the Board voted unanimously to continue the hearing until January 12, 2011

The Board took a 5 minute recess
Mr. Saba stepped off the Board.

Public Hearing 8:55 p.m. - Glenn Saba for Century Builders

Glenn Saba for Century Builders, Application for a Variance from Article IV, Section 410:8 to allow the construction of a deck attached to a dwelling approximately 90 feet from a wetland (10 foot variance) on the property located at 7 Black ford Drive, Map 9, Lot 49-3 in the TR Zone.

List of abutters were read and the following were present: none

Mr. Riehl noted that Glenn is a member of the ZBA and has stepped off the Board to act as an applicant. Mr. Riehl has no problem rendering an impartial decision even though Glenn is a Board member. Mr. Carter also has no issues with Glenn as an applicant. Ms. Miner, stated that she lives on Black ford Drive but is not an abutter and can also render an impartial decision and told Glenn if he had a problem that she would step down. Glenn had no problem with Ms. Miner and thanked her.

Century Builders, owned by Mr. Saba bought the land which has wetland in the rear of the property. It is new construction and the foundation is in. Mr. Saba passed out certified plans of the lot to the Board members showing where the actual foundation is. The house is more centrally located in the lot and the buildable area is long and narrow. If the house was moved west upgradient on the lot, trees would have been removed and the house would be closer to the adjacent neighbor by putting it more in the center less trees were removed and it's further away from the adjacent neighbor. Mr. Saba is

looking for a 10 foot variance to the wetland in the rear of the property and the lot does slope left to right as opposed to front to back. Mr. Saba went before the Conservation Commission and received a copy of their approval for a deck/open screen porch.

No abutters were present at the meeting. Mr. Riehl stated that he walked the property and the drainage does not go towards the wetlands anyway.

The Board went through the criteria:

- 1) met
- 2) met
- 3)met
- 4) met
- 5) met
 - a) met
 - b) met

Mr. Carter made the motion to grant a Variance of 10+/- from the 100 wetland setback requirement on the property located at 7 Black ford Drive, Map 9, Lot 49-3 in the TR2 Zone based on the fact that all the conditions necessary to support the findings of the variance have been proven to be met. Ms. Miner seconded the monition and the Board voted unanimously in favor.

Mr Riehl stated as with all cases this is subject to a 30 day appeal period, so any action you take premised on this approval are at your own risk.

Mr. Saba stepped back onto the Board.

Public Hearing - 9:10 p.m. - Home Business - Kathleen Friel

Kathleen Friel, Applicant, for a Home Business Permit to operate a single chair hair salon in the property located at 5 Kelly Lane, Map 9 Lot 78 in the TR Zone

The applicant has respectfully declined to be at the Public Hearing unless the Board feels it necessary per a letter written and submitted earlier today.

List of abutters were read and the following were present: none

Mr. Riehl read through 450:2

The Board read through the criteria:

- a) met
- b) met - N/A (single family unit)
- c) met
- d) met
- e) met

f) met
g) met
h) met
i) met
j) met

Board found that a-j have been met

Mr. Carter questioned if all necessary inspections have been met. Sue Killam stated that the Fire Department does it once a year. Mr. Riehl commented that it is not a pre-requisite and that the inspections are triggered by the ZBA approval.

Mr. Saba made the motion to grant a Special Exception to permit a one chair hair salon for a Home Business to Kathleen Friel, 5 Kelly Lane, Map 9 Lot 78 in the TR Zone as represented in the application. Mr. Carter seconded. The Board voted unanimously in favor.

Ms. Miner made a note that there is a letter in the application that the septic system is certified that it is able to handle the additional water usage.

This is subject to a 30 day appeal period.

The next Zoning Board Meeting is scheduled January 12, 2011

Mr. Riehl closed the Public Hearing at 9:35 p.m.

Ms. Miner made the motion to adjourn the Zoning Board meeting at 9:35 p.m.. Mr. Saba seconded the motion and the Board voted unanimously to adjourn.

Minutes respectfully submitted and transcribed from tape by Patty Power