

ATKINSON ZONING BOARD OF ADJUSTMENT

21 Academy Avenue

Atkinson, New Hampshire 03811

Public Hearing Meeting Town Hall

Wednesday, December 9, 2020

Members Present

Glenn Saba, Chair

Kevin Wade

Arthur Leondires

Bob Connors, Vice Chair

Scott Sullivan

Others Present

Tim Lavelle, Lavelle Associates

Paul Wainwright, Conservation Commission

Charlie Zilch, SEC & Associates

Joseph Barbone

Brian Boyle, Building Inspector

Sue Killam, Planning Board Chair

Sue Coppetta

Paul and Leann Moccia

Will Reddington, Wadleigh, Starr & Peters,
P.L.L.C.

Charles Cleary, Wadleigh, Starr & Peters,
P.L.L.C.

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 has 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, alone; Member Connors, alone; Member Wade, alone; Member Sullivan, alone; and Member Leondires, alone; all of The Atkinson Zoning Board of Adjustment members stated they were present.

Chair Saba welcomed the new member, Mr. Scott Sullivan in joining the Zoning Board of Adjustment. Chair Saba also thanked former Vice Chair Zannini for his service.

Approval of Minutes: October 14, 2020

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

Member Connors made a motion to approve the minutes of the October 14, 2020 meeting as amended. The motion was seconded by Member Wade. Roll Call: Member Leondires, yes; Member Connors, yes; Member Wade, yes; and Chair Saba, yes; the

members of the Atkinson Zoning Board of Adjustment present and who were at the October 14, 2020 meeting voted in favor. Vote: 4/0/0. The vote is unanimous.

Other Business:

Chair Saba reminded the Board members that at the October 14, 2020 meeting, it was noted that the Fire Department, with the Code Enforcement Officer, will inspect the building at 56 Island Pond Road to see if there was an apartment on the second floor per Ms. Cornelius complaint. Chair Saba read an email dated November 12, 2020 to Christine Cornelius from Steven Nasser, Code Enforcement Officer, into the record regarding the inspection. To summarize, the email states that he and the Fire Department inspected the building and he can confirm that the property does not have a residential apartment on the second floor. The entire second floor is one large, open room with no living quarters, bathroom or kitchen located there. He also discussed the matter with Officer Morgan. Any past reference regarding a tenant may have been concerning previous use as office space, but not residential. He now considers the matter closed.

The applicant had the opportunity to appeal her decision, but she has not. She has sent much correspondence to the Zoning Board through the Chair, which was not read into the record. She had an opportunity to appeal. She has an opportunity to state any new complaints through the Code Enforcement Officer. The Zoning Board has deliberated all the concerns in front of it at the last meeting and it considers this matter closed. Any new complaints should go through the Code Enforcement Officer. Member Connors informed the Board that he has driven by the site several times and has seen no activity on that side of the building.

Chair Saba informed the Board that the former Vice Chair, Sam Zannini has left the Board and requested volunteers for the position of Vice Chair. Member Connors volunteered, Chair Saba and the Board members present accepted the nomination. Chair Saba requested a roll call vote.

Roll Call Vote: Member Leondires, yes; Member Connors, yes; Member Wade, yes; Member Sullivan, yes; and Chair Saba, yes. The members of the Atkinson Zoning Board of Adjustment present all voted in favor. Vote: 5/0/0. The vote is unanimous.

Correspondence: none

Public Hearing – 7:30 P.M.

Chair Saba opened the public hearing at 7:30 PM, December 9, 2020. Chair Saba recused himself from the hearing as an immediate abutter and Vice Chair Connors conducted the first hearing.

- 1. Application for Variance from Article VI Section 600:8 b;5 submitted by S.E.C. & Associates, Inc for Joseph & Kathy Barbone to permit the construction of a Garage Addition, 17.6' from the front property line where 25' is required (7.4' variance) on property located 6 Heritage Lane, Map 4 Lot 16-10 in the RR2 Zone.**

Abutters:

Gary and Maureen Witley, David S. and Linda J. Marshall, Marshall Family Revocable Trust, Steven George and Kristine O'Leary Dardas, Joseph A. and Kathy M. Barbone (Joseph A. Barbone present), GSDC Development Corp. (Glenn Saba, present), S.E.C. & Associates, Inc. (Charlie Zilch, present)

Acting Chair Connors asked Mr. Barbone if he would appear. Mr. Zilch asked to come before the Board to represent the applicant and review the application.

Mr. Zilch asked if all members of the Board had a copy of the plan and read a summary of the application into the record:

The property is located at 6 Heritage Lane, the first lot on the right hand side, off Main Street. It is a 1.62 acre lot with 141.67 feet of frontage on Heritage Lane. This lot is within the recently approved and now mostly constructed "Heritage Estates", a rural cluster residential development. Upon the lot is the home of Joseph and Kathy Barbone. It is a four bedroom residence with an attached garage on the right hand side. As can be seen from the plot plan, abutting the lot to the left is a recently constructed home and abutting the lot to the right is the open space area. Within this open space is a detention pond. As the subdivision plan was approved, this development is served by a fire hydrant for fire protection. The setback to sidelines is 25' with this source of fire protection. Should the developer have elected to use fire suppression sprinklers, the side line setback would be subject to 15' for each home. This effectively creates a 50 foot separation when hydrants are used and a 30 foot separation when fire suppression sprinklers are used. The setback is driven by the fire suppression requirement.

As constructed, the Barbones' dwelling/garage is located about 30 feet from the right lot line. The intent of the application is to obtain a variance to allow for the construction of the addition which is a third garage bay to the right side of the existing dwelling within the 25 foot sideline setback adjacent to the open space and fire pond.

The applicant came before the Board to explain the application. He explained that the purpose is to create a third garage bay. It is for the convenience of this family. His daughter and three month old baby have moved in with him and he would like to add a third bay to the garage for his daughter to park in order to allow her to bring the baby in from the garage.

In order to maintain the character of the subdivision, the applicant plans to ensure that any materials used would match exactly the existing house in terms of manufacturer, model and color. The roof shingles, the vinyl siding, the garage doors, the windows and the side door would all match exactly so that the addition would look like part of the original build. The plan is to keep an attractive architectural look to the garage. The applicant is proposing to set back the new bay about 2.5 feet and the roof line will be turned 90 degrees and the new roof ridge will connect to the existing ridge at a 90 degree angle. This will be creating a nice architectural interest and maintain the character of the existing homes in the neighborhood. The gable end of the existing garage faces the street, while the gable end of the addition will face the retention pond. There is at least one other house in the neighborhood that has a three car garage, so this requested variance should not detract from the value of the other homes in the neighborhood.

Acting Chair Connors summarized that 600:8 states that there is a 15 foot side yard setback requirement unless there are no sprinklers in the home, then there is a 25 foot side yard setback. The applicant is looking for relief from that. The key point is there is no buildable lot abutting the proposed addition.

Acting Chair Connors asked if there were comments from the public.

Mr. Saba asked if the proposed addition would affect the drainage. Mr. Zilch informed him that it would not.

Acting Chair Connors asked if there were more comments from the public.

Acting Chair Connors requested the applicant read the criteria. The Board will discuss if necessary, and each will be voted on separately. An affirmative vote is required for the request to pass.

The Applicant went through the criteria:

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

The requested variance seeks relief from a greater side line setback driven by a fire suppression buffer requirement when utilizing a hydrant vs. fire suppression sprinklers. This greater setback ensures that dwellings will be spaced further apart to minimize potential damage or spreading of fire from one home to another. In this particular instance the sideline from which we seek relief is not encumbered by another abutting dwelling but open space and a drainage pond instead. The proposed addition is an additional garage bay on the side of the home for accommodating the resident of that dwelling. Considering the nature of the use and the location of the addition, there will be no negative effect to the general health, welfare and safety of the general public.

Discussion: Acting Chair Connors asked if there would be any impact to the detention pond that abuts the proposed garage addition. Mr. Zilch responded no, it will maintain at least the fifteen foot side line setback, it will be a 17.6 foot setback.

Acting Chair Connors asked if there were more discussion. There was none.

Roll Call: Member Leondires, yes; Member Wade, yes; Member Sullivan, yes; and Acting Chair Connors, yes. All members of the Atkinson Zoning Board of Adjustments voting agreed that the conditions of Article VI Section 600:8(1) are met based on the application and the discussion as present. Vote: 4/0/0. The vote is unanimous.

2) The spirit of the ordinance is observed because:

The intent of the ordinance is to protect the development from potential fire hazard from one residence to another by maintaining a greater setback. In this particular case, the setback from abutting dwellings will remain as intended by the ordinance. The side from which we seek relief would not be adversely affected by this proposal. Therefore, the spirit and intent of the ordinance, maximum fire protection, will be maintained by granting of the variance.

Discussion: Acting Chair Connors remarked that the point is to prevent fire from spreading to an abutting building and there is not one.

Acting Chair Connors asked for more discussion. There was none.

Roll Call: Acting Chair Connors, yes; Member Leondires, yes; Member Wade, yes; and Member Sullivan, yes. All members of the Atkinson Zoning Board of Adjustment voting agreed that the conditions of Article VI Section 600:8(2) are met based on the application and the discussion as present. Vote: 4/0/0. The vote is unanimous.

3) Granting the variance would do substantial justice because:

The homeowners would not be unduly harmed or restricted by an inappropriate application of the ordinance. Other neighboring property owners would benefit from the enhanced value of the property making it more consistent with the value and character of neighboring properties. As Mr. Barbone mentioned there are other homes with three bay garages within the development.

Discussion: Acting Chair Connors stated that a three bay garage certainly appreciates the value of the home.

Acting Chair Connors asked for more discussion. There was none.

Roll Call: Member Connors, yes; Member Wade, yes; Member Leondires, yes; and Member Sullivan, yes. All members of the Atkinson Zoning Board of Adjustments voting agreed that the conditions of Article VI Section 600:8(3) are met based on the application and the discussion as present. Vote: 4/0/0. The vote is unanimous.

4) For the following reasons, the values of the surrounding properties will not be diminished:

This is a proposal to add an improvement to an existing home in a development of similarly valued homes. Adding another bay to create a three bay garage would only add value to the property thus ensuring the values of the neighboring properties. This would also be consistent with the dwelling located directly across the street which contains a three bay garage. Granting the variance will not diminish the values of the surrounding property values.

Discussion: Acting Chair Connors asked for discussion. There was none.

Roll Call: Acting Chair Connors, yes; Member Leondires, yes; Member Wade, yes; and Member Sullivan, yes. All members of the Atkinson Zoning Board of Adjustment voting agreed that the conditions of Article VI Section 600:8(4) are met based on the application and the discussion as present. Vote: 4/0/0. The vote is unanimous.

5) 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 (answer a & b)

(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 because:

The ordinance is intended to protect abutting properties from the potential damage from fire spreading from the subject property to adjacent homes, thus the reduction to a 15 foot side line setback for sprinklered homes. In this case, the sideline for which we seek relief is unaffected by the greater setback whereas there are no existing homes, just a drainage structure. The ordinance does not consider this unique situation and the general purpose of the ordinance is unaffected by the request.

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

By granting the variance to allow for the addition, it would not compromise the intent of the zoning ordinance. Additionally, the fifteen foot sideline setback is maintained.

Discussion: Acting Chair Connors requested comments from the Board. Member Leondires asked if the house had a sprinkler system and the applicant replied no.

Roll Call: Acting Chair Connors, yes; Member Leondires, yes; Member Wade, yes; and Member Sullivan, yes. All members of the Atkinson Zoning Board of Adjustment voting agreed that the conditions of Article VI Section 600:8(5a,b) are met based on the application and the discussion as presented. Vote: 4/0/0. The vote is unanimous.

Acting Chair Connors informed the applicant that all criteria had been met and requested a motion.

Member Leondires made a motion to approve the Application for Variance from Article VI Section 600:8 submitted by S.E.C. & Associates, Inc for Joseph & Kathy Barbone to permit the construction of a Garage Addition, 17.6' from the front property line where 25' is required (7.4' variance) on property located 6 Heritage Lane, Map 4 Lot 16-10 in the RR2 Zone.

Discussion: Member Leondires confirmed that it is the side setback.

Member Wade seconded the motion.

Roll Call Vote: Member Leondires, yes; Member Wade, yes; Member Sullivan, yes; and Acting Chair Connors, yes. Vote: 4/0/0. The vote is unanimous.

Acting Chair Connors informed the applicant that the application is approved and that there are 30 days to appeal.

Acting Chair Connors stepped down and Chair Saba stepped forward to conduct the rest of the hearings.

2. Application for Variance from Article V Section 510 submitted by James Lavelle, Assoc. for Gilles Gagnon to permit the Use of an Industrial property for construction of a parking lot to be used for Storage & Sales of Construction Equipment, and Storage of Construction Material on property located at 19 Industrial Way, Map 16 Lot 56 in the CI Zone.

Abutters:

Town of Atkinson, Mya Victoria, LLC, Gagnon Realty Trust, Gilleys Realty, LLC, Kenneth L. Bucu, Tim Lavelle, Associates (present); TJW Survey, Amoskeag Engineering Consultants

Mr. Tim Lavelle came before the Board to represent the applicant and reviewed the application. The property is at 19 Industrial Way. It is the last lot on the right hand side of Industrial Way. At this point, it is undeveloped. He explained that he was before the Zoning Board 4.5 years ago for a very similar variance request. The applicant had requested and received a variance to allow the construction of a parking lot. The plan then was to store boats and things for a fee. The plan went to the Planning Board, given conditional approval and never fully acted upon. So, everything has since expired: the conditional approval from the Planning Board, the variance and so on. The property has since been sold to Gilleys Realty. Gilleys Realty with Kenneth Bucu, the owner of the equipment, would like to construct a parking lot and associated drainage structures, plantings and similar items. It is for the storage of construction equipment: bulldozers, excavators, dump trucks and the like. The applicant is going to maintain an office across the street at 24 Industrial Drive, so even though this use is not incidental to a building on the property, there will be an office across the street, similar to the situation with Mya Victoria next door and their lot without a building.

Chair Saba asked Mr. Lavelle if he was asking for a use that is not listed in the current uses. Mr. Lavelle answered yes. He also explained that the applicant went to the Planning Board and was informed that the earlier variance had expired and he would have to return to the Zoning Board. Chair Saba asked if the earlier variance was for the storage of construction equipment. Mr. Lavelle responded, no, that the earlier variance was storage of equipment, trucks, trailers and boats. It was a very similar variance and probably would have sufficed, but it had expired.

Chair Saba opened the hearing to the public. Chair Saba asked if anyone would like to speak. There was no comment.

Chair Saba returned the hearing to the Board. Chair Saba asked if once a variance was obtained, the applicant would return to the Planning Board with all the design work, drainage and so on. Mr. Lavelle replied yes. Chair Saba asked if it would be just for storage or if it would be a construction yard. Mr. Lavelle informed the Board that it will not be a construction yard, there will be some construction materials.

Chair Saba asked if there was any equipment on the lot at present. Mr. Lavelle informed him he had not driven by lately, but believes there is not. Mr. Lavelle also explained that no building is proposed but a fence will be erected. He explained that the property is wooded on three sides and there is a drainage swale in the front, so it is enclosed. There will be shrubbery.

Member Connors informed the Board that he drove by and there is an asphalt drive and a clear lot. The earlier plan had some shrubbery, but there is none on this one. Mr. Lavelle informed the Board that there are plantings on the current plan.

Member Connors asked if this plan was the same as the earlier one and Mr. Lavelle responded that it is essentially the same but some changes had to be made due to the earlier partial construction.

Mr. Lavelle also informed the Board that there may be some gravel stored in the back corner, but it is not intended to be a construction yard. The applicant wanted full disclosure, which is why the applicant states there will be sales, but it is not the main business of the applicant.

He explained that the business of the applicant is construction. Normally the equipment is on site, but occasionally some must be left on the lot. He may buy equipment and resell it but it is not his principal business.

Chair Saba stated that the application is for storage and sales of construction equipment but it appears as if it would be a contractors' yard. Mr. Lavelle replied that the purpose was to store equipment, there will not be a lot of materials there. Chair Saba stated that once the Board approves it, they can't limit the traffic flow of heavy equipment down the road. Also, it sounds like, the applicant will sell a little bit, store equipment there which means it has to come in and go out, and the reason that it is being stored is because the applicant will be running a contractors' yard. Mr. Lavelle reiterated that it is a contracting business, not a contractors' yard. Gravels will not be processed or stored, pipe and concrete structures and similar things will not be stored there. It will be used primarily for storage of equipment, such as excavators and bulldozers. Occasionally a piece of equipment will be bought or sold. Equipment will not be coming in and out all day. Some gravel may be dumped so there is an area on the plan. It is just a place to store their equipment.

Chair Saba asked if the Board had any questions.

Member Connors stated that he is concerned about what will be dumped and left. Chair Saba stated that he is not clear on the actual use. Mr. Lavelle reiterated that the applicant wants to store construction equipment, bulldozers, excavators and so on. There will be one spot to empty trucks and they will have occasional sales. Member Leondires stated that he is concerned about the two areas on the plan marked for gravel storage. Mr. Lavelle informed the Board that the wording should be changed to read "gravel surface parking lot storage area". It should be in the letter from Mr. Keach reviewing the plans submitted to the Planning Board.

Chair Saba asked if the office across the street was a sales office or an office for the construction company. Mr. Lavelle informed him that it would be both. Mostly construction company office, but if a buyer is found, it will be used for sales.

Chair Saba informed Mr. Lavelle that the way it is written, it is wide open. It is a proposal to construct a parking lot for storage, but it appears to be a contractors' yard to him. Equipment will be going in and out, and sales is minor. Mr. Lavelle agreed that sales is minor. Chair Saba cited Busby construction which has equipment in and out. Mr. Lavelle responded that the office across the street does not have a garage bay, it is simply an office so equipment will not be serviced there. It is for storage of equipment, so they don't need a big yard. There is a small area to store material. The applicant does not plan to store large amounts of materials.

Member Connors stated that all of Industrial Way is a mess, one site has dumpsters, another site has semi condex. He doesn't think that this proposed plan will change anything. His concern is what is going to be dumped from dumpsters and the traffic going back and forth.

Mr. Lavelle stated that the Planning Board has jurisdiction over material storage. After this evening, the applicant has to go through the Planning Board process. Member Connors stated that it appears that there will be equipment storage, material storage and sales. It is not static use. Mr. Lavelle agreed, and stated that material storage and equipment sales are minor.

Chair Saba informed him that he is concerned because he knows the yard in Massachusetts and the way this application is written it is wide open. Member Connors asked about adding some language stating that there would be minimal sales of construction equipment and minimal storage. Chair Saba replied that the Zoning Board could not adjust the application. Mr. Lavelle responded that he did not think the applicant would object.

Ms. Killam, Planning Board Chair, explained that the Planning Board has not heard the case yet because Atkinson Zoning defines parking as an accessory use. An accessory use has to be subsequent to a primary use. Because there is no building on the lot, there is no primary use. The Planning Board informed the applicant that they needed a variance because there is no building on the lot. The offices are going to be in a separate lot across the street. They need to have the freedom to have an accessory use without a primary. The proposed use is very similar to the lot up the street.

Chair Saba stated that the application for the site up the street was much clearer regarding use. This application is wide open as a construction yard. It is parking for equipment; it is parking for sales and an area for storage of materials.

Ms. Killam again informed him that she can't speak to the specifics of the case except why the Planning Board has not heard it yet, which is because it is an accessory use without a primary and needs a variance. Beyond that it becomes site plan considerations that will be discussed and heard before the Planning Board. The Planning Board can control what is on the site.

Chair Saba requested the applicant go through the criteria.

Mr. Lavelle went through the criteria:

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

The use is not listed as specifically allowed but it is not prohibited either. There is no primary use and this accessory use is on the list.

Discussion: Chair Saba stated that it is the industrial zone and it would be putting a vacant lot to use.

Chair Saba asked for more discussion. There was none.

Roll Call: Member Connors, yes; Member Leondires, yes; Member Sullivan, yes; Member Wade, yes; and Chair Saba, yes. All members of the Atkinson Zoning Board of Adjustments present agreed that the conditions of Article V Section 510(1) are met based on the application and the discussion as presented. Vote: 5/0/0. The vote is unanimous.

2) The spirit of the ordinance is observed because:

It would be an industrial/commercial use conducted in the commercial/industrial zone.

Discussion: Chair Saba asked for discussion. The Board members had no comment. Chair Saba stated he approved with the disclaimer that the Planning Board would be able to reel this in and not let it be a full blown contractors' yard with no control.

Roll Call: Member Connors, yes; Member Leondires, yes; Member Wade, yes; Member Sullivan, yes and Chair Saba, yes. All members of the Atkinson Zoning Board of Adjustment present agreed that the conditions of Article V Section 510(2) are met based on the application and the discussion as presented. Vote: 5/0/0. The vote is unanimous.

3) Granting the variance would do substantial justice because:

It would allow for productive use of the industrial property incidental to the office across the street.

Discussion: Chair Saba requested discussion. Member Connors asked if substantial justice was not necessarily just for the applicant. Chair Saba responded that it is any gain for the individual that was not outweighed by loss to the general public. That for the general public, as long as they are not contaminating wetlands and soils, and for the Town, it has a vacant lot that is being utilized.

Chair Saba asked for more discussion. There was none.

Roll Call: Member Connors, yes; Member Wade, yes; Member Leondires, Member Sullivan, yes and Chair Saba, yes. All members of the Atkinson Zoning Board of Adjustments present agreed that the conditions of Article V Section 510(3) are met based on the application and the discussion as presented. Vote: 5/0/0. The vote is unanimous.

4) For the following reasons, the values of the surrounding properties will not be diminished:

It would be an industrial use in an industrial zone and the use would be similar to uses in the surrounding properties, specifically Mya Victoria, the property immediately uphill, which is a storage yard as well.

Discussion: Chair Saba stated that there are no abutters complaining. There was no more discussion.

Roll Call: Member Connors, yes; Member Leondires, yes; Member Wade, yes; Member Sullivan, yes and Chair Saba, yes. All members of the Atkinson Zoning Board of Adjustment present agreed that the conditions of Article V Section 510(4) are met based on the application and the discussion as presented. Vote: 5/0/0. The vote is unanimous.

5) 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 (answer a & b)

(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 because;

The use is not specifically prohibited, it is allowed if there is a primary use, but there is no primary use on this lot.

Discussion: Chair Saba asked if a contractors' yard was allowed. Mr. Lavelle replied that the use of storage of equipment and sales is allowed with the primary use of a building. Chair Saba informed him that indoor storage is allowed, but not outdoor storage. Mr. Lavelle stated that certain outdoor storage is allowed with certain businesses. It goes on up the street. It is for the incidental storage of equipment. New England Seaboard has a building without offices and also stores equipment inside and outside.

Member Leondires asked Mr. Lavelle if his point is the primary use would be the office across the street and the proposed lot is available for them as a secondary use. Mr. Lavelle agreed.

Chair Saba informed him that outdoor storage as they are requesting is not a permitted use even with a structure. Mr. Lavelle pointed out that it is not specifically prohibited, it is not on the list.

Chair Saba asked for more discussion.

Member Connors asked if another application was before the Board requesting storage of equipment outside and the Board declined the variance because storage of motorized equipment outside is not allowed. Chair Saba stated that it would not be allowed even with a building, outdoor storage is not permitted. It is not specifically prohibited but it is not permitted either. Member Connors stated that he would have to rely on special conditions of the property that distinguish it from other properties in the area. Other businesses in the area store equipment outside so he can't say that this is prohibited, so he has to say yes on (a). Chair Saba agreed.

Roll Call: Member Connors, yes; Member Leondires, yes; Member Wade, yes; Member Sullivan, yes; and Chair Saba, yes. All members of the Atkinson Zoning Board of Adjustment present agreed that the conditions of Article V Section 510(5a) are met based on the application and the discussion as presented. Vote: 5/0/0. The vote is unanimous.

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

It would all be conducted within an industrial zoned area surrounded by industrial uses.

Discussion: Chair Saba asked for discussion. Member Connors stated that the Planning Board would put some boundaries on the use, so he would approve.

Roll Call: Member Connors, yes; Member Leondires, yes; Member Wade, yes; Member Sullivan, yes and Chair Saba, yes. All members of the Atkinson Zoning Board of Adjustment present agreed that the conditions of Article V Section 510(5b) are met based on the application and the discussion as presented. Vote: 5/0/0. The vote is unanimous.

Member Connors made a motion to approve the Application for Variance from Article V Section 510 submitted by James Lavelle, Assoc. for Gilles Gagnon to permit the Use of

an Industrial property for construction of a parking lot to be used for Storage & Sales of Construction Equipment, and Storage of Construction Material on property located at 19 Industrial Way, Map 16 Lot 56 in the CI Zone with the condition that there is limited storage of construction material in a predetermined location and on Planning Board approval. Member Leondires seconded the motion.

Roll Call Vote: Member Connors, yes; Member Leondires, yes; Member Wade, yes; Member Sullivan, yes and Chair Saba, yes. All members of the Atkinson Zoning Board of Adjustment present voted in favor. Vote: 5/0/0. The vote is unanimous.

- 3. Application for Variance from Article V Section 530a submitted by S.E.C. & Associates, Inc for Kevin & Tayla Swansen to reduce the total lot area of an existing non-conforming lot on property located at 67 Maple Ave Map14 Lot 8 in the RR2 Zone. This property is currently 1.2 acres and this reduction would make the lot more non-conforming at 1.18 acres (reduction of .02 acres (1047 sf). The variance is required to facilitate a Lot Line Adjustment application.**

Abutters:

Chad and Stacy Barrows; John Bowe(present), Ryan Kelleher and Tatum Mortimer, Richard Morell, Kevin Cormier, Tayla A. and Kevin Swansen, Gary Daigle, Judy Daigle, Deanna Bissonette and Andrew J. Borisko, Thea Valvanis, Trustee, The Valvanis Family Revocable Trust, Steven Chabot, S.E.C. Associates, Inc. (present)

Mr. Charles Zilch appeared before the Board to represent the applicant. He explained that this request for variance is for a lot line adjustment that would slightly diminish the area of an existing nonconforming lot of record (tax lot 14-8, 67 Maple Ave., the Swansen lot). Although it is a lot line adjustment, which requires two lots, the variance is necessary for only one lot. The two lots, one, tax lot 14-7, 13 Willow Vale Road, owned by John Bowe is 1.06 acres in size and has 180.03' of frontage on Willow Vale Road. The Swanson lot which is tax lot 14-8, 67 Maple Ave. is 1.20 acres in size and has a total of 461.87' of combined frontage on both Willow Vale Road and Maple Avenue. That is a corner lot and is the larger of the two lots. Both lots are located in the TR-2 Zone and support existing 3 bedroom residential dwellings and are served by their own individual onsite septic systems and wells.

Upon a recent boundary survey done for Mr. Bowe, it was found that the fence that runs from Willow Vale all the way to the back of the property, was in the incorrect position, it was mostly on the Swansens' lot. This application is to correct that by doing a lot line adjustment and getting the fence and the area utilized by Mr. Bowe onto his lot. Normally, he would suggest an equal area exchange. But in this case, even though an existing nonconforming lot is being diminished, the other nonconforming lot is being improved to the point that diminishing the other lot is offset. The plan is to transfer Parcel A (1,047sf), a pie shaped parcel, from tax lot 14-8 (Swansen) to tax lot 14-7 (Bowe). It would give Mr. Bowe a little bit of additional frontage and carve off a little of area from the Swansen lot.

Member Connors asked why not move the fence. Mr. Zilch replied that Mr. Bowe occupies right up to the fence, his vehicles pass by that side of the house to the back yard and he has

always maintained and utilized the area. It is not a dispute; it is just something that was revealed upon survey.

So again, as Chair Saba read, this is a request for variance to Article V, Section 530a where two acres are required. The existing lot size is obviously well below the required size, and will be diminished slightly. It is an existing, nonconforming lot that will be reduced from 1.2 to 1.18 acres.

Chair Saba asked if other than area, the lots are conforming as to frontage and setbacks. The engineer confirmed that.

Chair Saba asked the members of the Board for discussion. Member Connors stated that the parties agreed. Member Sullivan asked if the Board would be making Lot 14-8, a nonconforming lot less conforming. Chair Saba stated that it would be more nonconforming. Member Sullivan stated that since it is a lot of record, the 15 foot setbacks allowed are to give a property owner some relief compared to two acre lots with 30 foot setbacks. With this, the building envelope will move closer to the existing structure or the existing building envelope with the new, delineated lot line. It is not a large lot, there is a well, there is a septic system. To adjust the lot line for the one lot that it is getting smaller, it could cause hardship trying to develop, replace or upgrade septic or well. It's only a few feet, but it could be calculated against them. Chair Saba remarked that it is helping the other lot. Mr. Zilch responded yes. Now the house will actually meet the side line setback with the adjusted lot line and will pick up an additional 8 feet of frontage as well. It will gain the 15 foot side line setback. By diminishing the Swansen lot, it does not affect the lot sizing or the soil based lot loading, it is a 3 bedroom home, there is ample area to still continue the support of the three bedrooms, the 1000 square feet is not going to bring it down from a 3 bedroom loading to a 2 bedroom by State Statute, the lot line adjustment does not bring the lot line setback anywhere near the existing structure or well.

Chair Saba asked if it would change it from a possible four bedroom in the future. Mr. Zilch stated that it is a three bedroom home, it will possibly always be a three bedroom home. Mr. Bowe's home will probably also always be a three bedroom home. Mr. Zilch stated that he will gain additional frontage and it eliminates one nonconforming setback. The total frontage for Bowe is currently 108 feet, and he will gain 71 feet.

An equal area exchange was not done because the fence runs all the way from the front all the way to the back, if an equal area exchange is done, the area where the fence is and the area Mr. Bowe has occupied over time will be taken. The proposed variance will not diminish either lot and will improve the other.

Chair Saba opened the hearing to the public. There was no comment.

The Applicant went through the criteria:

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

The requested variance seeks relief from a lot area requirement established after the two existing lots were created. Granting the variance would not result in a greater density nor does it diminish the density. The lot line adjustment merely corrects an area of ownership between

two consenting abutting parties that has been long established. There will be no visible change to either property. The small transfer of land from one non-conforming lot to another will not conflict with the ability to maintain the three bedroom residential use nor will it allow additional bedrooms to be added. Considering the minimal amount of area exchanged, there will be no negative affect to the general health, welfare and safety of the general public.

Discussion: Member Sullivan is concerned that by downsizing the lot, it would diminish the septic loading for the lot. Mr. Zilch informed him that it would diminish loading by about 30 gallons a day less by State standards. Chair Saba stated that the concern is that the proposed variance will alter the general character of the neighborhood or affect health safety or welfare. The Board members agreed that it did not.

Chair Saba asked for more discussion. There was none.

Roll Call: Member Connors, yes; Member Wade, yes; Member Leondires, yes; Member Sullivan, yes; and Chair Saba, yes. All members of the Atkinson Zoning Board of Adjustments present agreed that the conditions of Article V Section 530a(1) are met based on the application and the discussion as presented. Vote: 5/0/0. The vote is unanimous.

2) The spirit of the ordinance is observed because:

The intent of the ordinance is to maintain a particular density within the zone. This lot line adjustment does not affect the density as currently established. It starts with two homes and remains two homes. Therefore, the spirit and intent of the ordinance, density is maintained by granting the variance.

Discussion: Chair Saba remarked that in the spirit of the ordinance, density is not being increased. The home was built before zoning, which is why it is so close to the lot line. By adjusting that, the offset is being relieved. Other than putting a strain on the Swansen lot, the change is minor.

Chair Saba asked for more discussion. There was none.

Roll Call: Member Connors, yes; Member Wade, yes; Member Leondires, yes; Member Sullivan, yes; and Chair Saba, yes. All members of the Atkinson Zoning Board of Adjustment present agreed that the conditions of Article V Section 530a(2) are met based on the application and the discussion as presented. Vote: 5/0/0. The vote is unanimous.

3) Granting the variance would do substantial justice because:

The homeowner(s) would be able to correct the issue by clearly maintaining ownership of each area rather than by easement. The benefit to lot 14-7 receiving the parcel, is it will now be slightly larger in size, will have an additional 8 feet of frontage, the dwelling will now meet the side line setback and the owner will now maintain the entire fence on the lot. The lot in which the parcel is to be transferred from, lot 14-8, the Swansen lot, will still meet frontage requirements, will still be a larger lot than the lot the parcel being added to and will still meet all setbacks. As such, granting the variance would do substantial justice.

Discussion: Chair Saba stated that substantial justice is any loss to the individual that is not outweighed by a gain to the general public. Denying the variance would cause not a loss to the applicant but what would the general public gain by denying the variance.

Chair Saba asked for more discussion. There was none.

Roll Call: Member Connors, yes; Member Wade, yes; Member Leondires, yes; Member Sullivan, yes; and Chair Saba yes. All members of the Atkinson Zoning Board of Adjustments present agreed that the conditions of Article V Section 530a(3) are met based on the application and the discussion as presented. Vote: 5/0/0. The vote is unanimous.

4) For the following reasons, the values of the surrounding properties will not be diminished:

This is a proposal to transfer a small area from one lot to another. There will be no other changes to the properties and dwellings as a result of this adjustment. Values of surrounding properties will not be affected by this action.

Discussion: Chair Saba asked for discussion. He stated that if the Board required them to move the fence line closer to the house, that might change the character of the neighborhood more than paperwork and leaving it the way it is.

Roll Call: Member Connors, yes; Member Wade, yes; Member Leondires, yes; Member Sullivan, yes; and Chair Saba, yes. All members of the Atkinson Zoning Board of Adjustment present agreed that the conditions of Article V Section 530a(4) are met based on the application and the discussion as presented. Vote: 5/0/0. The vote is unanimous.

5) 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 (answer a & b)

(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 because:

The ordinance is intended to establish a particular density in order to maintain the character of the zone. The ordinance does not consider this unique situation and the general purpose of the ordinance is not affected by the request. In addition, the condition is already established and present. This lot line adjustment would not affect it.

Discussion: Chair Saba asked for discussion and stated that the special condition of the property is the fact that the house is so close to the lot line. With the surveyor's testimony that changing the lot line will not substantially affect the capacity of either lot in a substantial way; the hardship of denying the variance is greater than allowing it; and there is no substantial gain to the public by denying it. There was no more discussion.

Roll Call: Member Connors, yes; Member Leondires, yes; Member Wade, yes; Member Sullivan, yes; and Chair Saba yes. All members of the Atkinson Zoning Board of Adjustment present agreed that the conditions of Article V Section 530a(5a) are met

based on the application and the discussion as presented. Vote: 5/0/0. The vote is unanimous.

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

By granting the variance to allow for the slight decrease in lot area it would not compromise the intent of the zoning ordinance. Additionally, the benefit to both lots and lot owners outweighs the strict adherence to the ordinance as it is defined.

Discussion: Chair Saba requested discussion and stated that hardship is the hardest to prove. The characteristics of the lot are clear, the lot line is pretty close to the lot, by adjusting it, it relieves the setback issue to the Bowe property with little effect to the Swanson property.

Roll Call: Member Connors, yes; Member Leondires, yes; Member Wade, yes; Member Sullivan, yes; and Chair Saba, yes. All members of the Atkinson Zoning Board of Adjustment present agreed that the conditions of are met based on the application and the discussion as presented. Roll Call Vote: 5/0/0. The vote is unanimous.

Member Leondires made a motion to approve the Application for Variance from Article V Section 530a submitted by S.E.C. & Associates, Inc for Kevin & Tayla Swansen to reduce the total lot area of an existing non-conforming lot on property located at 67 Maple Ave Map14 Lot 8 in the RR2 Zone. This property is currently 1.2 acres and this reduction would make the lot more non-conforming at 1.18 acres (reduction of .02 acres (1047 sf). The variance is required to facilitate a Lot Line Adjustment application. Member Connors seconded the motion.

Roll Call: Member Connors, yes; Member Leondires, yes; Member Wade, yes; Member Sullivan, yes; and Chair Saba, yes. Vote: 5/0/0. The vote is unanimous.

4. Application for Appeal of Administrative Decision submitted by Charles Cleary, Esq and Wadleigh, Starr & Peters, P.L.L.C. for Charles Kinney & Jeanine Kinney Living Trust, Charles Kinney Trustee related to a parcel of land at Map 17 Lot 62 in the RR2 Zone.

Member Connors asked if the Board should proceed because the application is not accurate. It is really an application for a variance. The entire packet is about an appeal from an administrative decision. Chair Saba responded that Member Connors is duly noted but would read the abutters list.

Abutters:

Centerview Hollow Land, Katherine and Lonnie Goodwin, SEC Associates (present), Diane Kinney, Charles Kinney (present) and Jeanine Kinney, Trustee Charles & Jeanine Kinney Liv Tr, Wadleigh, Starr & Peters PLLC, Attn. Charles F. Cleary(present), Huoth Pech, Paul and Leann Moccia (present), Will Reddington(present), Diane and Barry Mackin, (present) TTE , Diane Mackin Rev Trust and Barry Mackin Rev Trust

Chair Saba asked Mr. Reddington if he understood that it is an administration appeal. Mr. Reddington affirmed. Chair Saba then asked Mr. Reddington if he had the administrative

decision. Mr. Reddington informed him that he talked to Town employees who informed him that they were not able to issue a denial letter prior to the meeting.

Chair Saba informed Mr. Reddington that the application in front of the Board is for an administrative appeal. Mr. Reddington explained that the Town only has a certain amount of forms, and had to use the form for an administrative appeal. The applicant is requesting an exception under R674:41 Section II, which allows the Zoning Board to grant an exception to the road frontage requirement under that Statute. The Town does not have a form for it and the administrative appeal form seemed the most appropriate. Chair Saba asked if the applicant was asking for a variance. Mr. Reddington replied that it is not a variance request, it is a request for an exception under R674:41 Section II to the road frontage requirements. Chair Saba asked if it were a Zoning Board or Planning Board exception and Mr. Reddington replied that it is a Zoning Board exception.

Member Connors asked if the applicant were asking for a variance. Mr. Reddington stated that the applicant is requesting an exception under R674:41 Section II. Chair Saba asked if the RSA was included in the application and informed him that he is not familiar with the it.

Ms. Killam, Planning Board Chair informed the Board that these applications have occurred in the past, are always handled by the Board of Selectmen and become a recorded agreement between the Board of Selectmen and the applicant. There are certain things that the Town cannot do for someone who has no frontage on a classified road. Mr. Reddington responded that Ms. Killam is referring to an applicant who is trying to build on a Class Six or Private road. It is unique but the appeal is allowed under the statute.

Member Connors stated that the application is on Form A, an appeal for an administrative decision, and there is no administrative decision for the Board to look at. There are requests for variance, which is Form C. This is not an application for variance. Attorney Reddington replied that the administrative appeal form seemed the most appropriate based on the statute. The applicant cannot receive a building permit until the applicant can get the exception.

Member Connors replied that people apply for variances all the time and asked why the applicant did not ask for a variance. Attorney Reddington replied that it is an exception. Member Connors stated that this is an unusual lot because it is not part of the subdivision. It is not designated with a lot number. Setbacks will be required and there is no plot plan.

Chair Saba stated that the application says it is for an appeal from a decision of an administrative officer. Attorney Reddington stated he is correct and informed the Board that he spoke to Ms. Coppetta and the Building Inspector and was told an exception was needed before they could go forward. The applicant received a verbal denial. Chair Saba informed him that he needed something in writing before the Board could proceed.

Mr. Kinney stated he was informed on numerous occasions that he would need to go to the ZBA before he could apply for a building permit. Most recently, Ms. Coppetta explained that he should have a denial and the Building Inspector informed him that since he was new to the job, he felt uncomfortable and would talk to the Town Attorney. He would have something for the meeting, but Mr. Kinney has not received anything.

Chair Saba stated that even if Mr. Kinney had the decision by the meeting, the Board cannot act without the administrative decision. Mr. Kinney explained that fifty years ago, when the subdivision was submitted, the Planning Board allowed the lot and the easement to continue when it could have been added to the subdivision.

Chair Saba informed Mr. Kinney again that the Board cannot respond to an administrative appeal without the decision.

Member Connors stated that the deed from 1993 states that the lot is not approved for building. Mr. Kinney responded that he got the lot long before 1993.

Mr. Cleary informed the Board that this is a request for an exception under the Statute. The forms are merely the vehicle to get before the ZBA. The problem is the applicants does not have direct frontage on a classified or better road and under RSA 674:14, the applicant needs to go before the ZBA for an exception.

Chair Saba stated that based on what he stated and under the Statute, the applicant must appeal from the decision of an administrative officer. Mr. Reddington stated that the applicant was supposed to receive the decision prior to the meeting, but still has not received it. Chair Saba reiterated that the Board does not have what the applicant is appealing.

Mr. Cleary informed Mr. Saba that the applicant does not have a written denial of a building permit and asked if the hearing could be continued until a written denial was received. Member Connors stated that there are other things that the Board needs to see as well.

Brian Boyle, Building Inspector, spoke. He explained that he met with Mr. Kinney and informed him that the deadline to submit for the hearing had already passed so there was no formal or informal denial.

Chair Saba suggested that the applicant work on getting a denial based on the RSA and then come to the Board for an appeal.

Mr. Cleary requested to continue the hearing.

Chair Saba requested a motion to continue.

Member Connors made a motion to approve the request to continue the hearing for an Application for Appeal of Administrative Decision submitted by Charles Cleary, Esq and Wadleigh, Starr & Peters, P.L.L.C. for Charles Kinney & Jeanine Kinney Living Trust, Charles Kinney Trustee related to a parcel of land at Map 17 Lot 62 in the RR2 Zone. Member Leondires seconded the motion.

Discussion: Chair Saba informed the public that the public hearing is still open and the public is welcome at the continuance. The next hearing will be January 13, 2021.

The public hearing will be continued to January 13, 2021.

Roll Call Vote: Member Connors, yes; Member Leondires yes; Member Wade, yes; Member Sullivan, yes; and Chair Saba, yes. Vote: 5/0/0. The vote is unanimous.

Member Connors made a motion to close the public hearing. The motion was seconded by Member Leondires. Roll Call Vote: Member Connors, yes; Member Leondires yes; Member Wade, yes; Member Sullivan, yes; and Chair Saba, yes. Vote: 5/0/0. The vote is unanimous.

Member Sullivan made a motion to adjourn the December 9, 2020 meeting of the Atkinson Zoning Board of Adjustment. Member Leondires seconded the motion. Roll Call: Member Connors, yes; Member Leondires yes; Member Wade, yes; Member Sullivan, yes; and Chair Saba, yes. Vote: 5/0/0. The vote is unanimous.

Chair Saba adjourned the meeting at 9:16 pm.