

ATKINSON ZONING BOARD OF ADJUSTMENT
21 Academy Avenue
Atkinson, New Hampshire 03811
Public Hearing Meeting Town Hall
Wednesday, June 8, 2022

Members Present

Glenn Saba, Chair (present)

Bob Connors, Vice Chair (present)
Kevin Wade (present)

Scott Sullivan (present)

Others Present

Karen Wemmelmann, Recorder

Brian Boyle, Building Inspector
Stephen M. Okun, DubePlus Construction

Workshop 7:00 PM

Approval of Minutes:

Member Sullivan made a motion to approve the minutes of the May 5, 2022 meeting as amended. The motion was seconded by Member Wade. All members of the Atkinson Zoning Board of Adjustment present voted in favor. Vote: 4/0/0. The vote is unanimous.

Correspondence: none

Call to Order: Chair Glenn Saba called the June 8, 2022 meeting to order at 7:30 PM.

Present are Chair Saba, Vice Chair Connors, Kevin Wade and Scott Sullivan

Public Hearing – 7:30 P.M.

Chair Saba opened the public hearings at 7:30 PM, June 8, 2022.

1. **Application for Variance submitted by Colleen Sullivan and Shawn O’Connell from Article IV Section 400:4 to allow the construction of a home 11’3” from the sideline where 15’ is required (3’9” variance on property located at 26 Lakeside Dr., Map 23 Lot 52 in the RR3 zone.**

Additionally this application includes variances from Article IV Section 410:8b to allow a proposed deck 55’ feet from the Wetland instead of the required 100 feet (45’ variance) and from Article IV Section 400:4 to allow same proposed deck 7’8” from the sideline where 15’ is required (7’4” variance).

Previous variances granted on October 13, 2021 were 40’ wetland setback and 3’9” side setback for the deck. This request is for additional variances are 5’ wetlands setback and 3’7” side setback to the deck.

Abutters:

Colleen Sullivan and Shawn O’Connell (present), Town of Atkinson, John and Brittany DeVitto (present), Big Island Pond Corporation (BIPC), Town of Atkinson, DubePlus Construction (present),

Discussion:

Chair Saba explained that the application was before the Board on October 13, 2021 requesting relief which was granted. The applicants built something different than what was requested in the original application. Now, the applicants are before the Board again. Chair Saba asked if this is correct. The applicants agreed.

Mr. Okun explained that the applicants did not build anything different. What happened is the abutter had a survey done. There was no actual survey done by the applicant, it was based on a deed, the pipes and the monuments and pulling string to create where the sideline was. The applicant presented a plan based on measurements of the monuments and the pipe.

Chair Saba informed the applicant that he thought the Board was given a survey plan at the October 13, 2021 hearing.

Mr. Okun explained that the plan presented was a CAD drawing. DubePlus had a subsurface drawing and there was a packet presented to the State. His company took the pieces that they had and sideline measurements that described the lot. They did make a point to say those measurements were not to be used directly for sideline setbacks but they were able to take it and put it on AutoCAD versus where the foundation was. Everything DubePlus did was based on drawings that were done for subsurface. They represented that on an AutoCAD drawing.

Chair Saba asked Mr. Okun if a surveyed plan were presented to the State and Mr. Okun replied that his company never presented anything to the State.

Ms. Sullivan explained that there were three components to the request for variance to the State. One was impervious area calculated off the dimensions of the dwellings that were built. The square footage was taken and it was divided by the lot size. The lot size has not changed, the dimensions of the building have not changed. The house is still 32' wide by 42'. The deck size has not changed. The stair size has not changed. There is also unaltered area for the shoreline that is not impacted.

Mr. Okun explained that the sideline assumed was based on the deed and monuments stated in the deed. The applicant did the measurements off that. DubePlus also had the subsurface plan and they extrapolated from the two of those and represented what was there to the best of their ability.

Chair Saba asked if the applicant was using the existing septic and asked if it would not be updated. Mr. Okun stated Chair Saba is correct. The septic will not be upgraded. Chair Saba asked if the survey plan done was for the septic. Mr. Okun stated that is correct. They made it clear that sideline setbacks were not shown. The plot of land is being shown, its length across the water, its length along sideline and its length across the front.

Chair Saba asked if the building were located on the plan when the septic survey was done. Ms. Sullivan explained that the building is drawn on the septic plan and asked if the Board would like to see pictures.

Chair Saba stated that he does not understand how the Board entertained a variance so close to the lot line without a survey plan.

Mr. Okun explained that his company represented what they had and cross referenced it to the deed. They thought the information they gave was correct.

Chair Saba stated that the side setbacks were very detailed in what was requested and asked how they came up with the measurements. Mr. Okun explained that they used what they had which was a subsurface map. The house was plotted on it, but measurements were not plotted on the side. There was an exact length so he requested the draftsman reproduce it. Mr. Okun explained that there are bounds in the earth. Ms. Sullivan explained that there are two bounds, one at each end.

Chair Saba asked if the bounds were accurate. Mr. Okun explained that he did not go to the bounds and pull any strings. He had something done for subsurface. It shows the plot of land, length of the side and length across the side. It should have been accurate for a subsurface map. The only thing that would have been unknown is the fact that they said they put the house on the lot and measured so that outer boundaries were correct. Mr. Okun assumed since the subsurface map was presented to the State, the outer boundaries would be correct. There is a lot of data that can show you the outer boundaries.

Chair Saba stated that we all agree that an honest mistake was made. The foundation still exists. Ms. Sullivan stated yes. Chair Saba asked if the difference is a line that has been corrected. Ms. Sullivan agreed and explained that there are two issues, the house and the deck. Chair Saba stated he is discussing the house. The foundation has not moved. The applicant agreed. When Chair Saba drove by, there was an overhang that was not in their folder. Mr. Okun explained that the 34 foot width was what is in the folder. Chair Saba stated that what was discussed was that the envelope would not be increased and the structure would not be any closer to the lot line than exists. Vice Chair Connors added that what was being built is based on the original foundation. Chair Saba asked if there were is overhang now. Mr. Okun agreed that what was being built is not was approved and the structure now is indeed closer to the lot line.

Chair Saba asked Mr. Okun to explain the overhang.

Mr. Okun read his letter into the record.

My name is Stephen M. Okun and I work as the Sales and Estimating Manager for Dube-Plus Construction, Inc. Our Clients Shawn O'Connell and Coleen Sullivan approached us with a project to remove their existing dwelling and design and build a new structure using the same foundation. Using their deed to the property and a subsurface plot plan, our client determined the measurements that were necessary to request relief to the sideline setback and distance from the water to the proposed deck. Dube-Plus then had our draftsman scale then plot the measurements from the subsurface plan and home foundation, which is what we presented in the October 13'- 2021, Zoning Board meeting. The variance request was for relief of the deck to the sideline setback (we asked for 11'-3" vs 15' required); and for the distance from the deck to the water (we asked for 60' vs 100' required) . Relief was granted for both.

Mr. Okun stopped and explained to the Board that the reason he wrote the letter was to explain that a couple of mistakes were made. One is in the measurements. His company did what they have done many times before, they took information from a deed and a subsurface map. His company replotted it with AutoCAD at the angles it was. The problem is the house to the lot line, the lot line is in a different spot than everyone expected, including the abutter. As far as the overhangs, the complications with the existing foundation. Lumber was already ordered. The biggest mistake made was not verifying the measurement of the existing foundation.

Chair Saba agreed that mistakes happen, but he does not see how Mr. Okun can say it was a mistake, when there is an existing foundation, even if it isn't where they thought it was and this was discovered after the lumber was ordered. The size of the foundation is not important to the Board, it is how close the structure is to the lot line. The foundation and the lot line exist, whether it was on paper or not. The Board granted relief to expand the deck. Not to expand relief for the lot line to the overhang. Chair Saba asked if the overhang could have gone the other way. The applicant explained that the overhang is on both sides.

Chair Saba replied that if and when the error was discovered in the field, at the moment realized that the measurements were wrong, they should have stopped work and gone to the Board or the Building Inspector because it was not what they got approved for. Mr. Okun agreed and stated that the applicant came in for the deck at the October 13, 2021 meeting. The house was not discussed. Chair Saba agreed.

Chair Saba stated that an open deck is not a home. What is being discussed is the home and that is more important than the deck for life safety. In the previous application, other than an open deck, the structure was not any closer to the lot line.

Ms. Sullivan explained that she thought they were ok because they were already approved for 34 feet. So when the issue came up, they were more concerned about structural safety since the wood was already ordered.

Chair Saba requested Brian Boyle; the Building Inspector speak.

Mr. Boyle came before the Board. He stated that when the project started, he issued a permit using existing foundation and existing floor structure.

Mr. Okun agreed.

Mr. Boyle stated he issued the permit and he had no reason to think that any relief for the house would be needed because it is an existing foundation. Then he went out there because he was informed by another inspector that there were some distance issues. He spoke to a staff member from DubePlus Construction. He could see the abutters lot line. He did not want to get involved in establishing a lot line. His suggestion was because there was an issue that construction should stop. Mr. Boyle explained that when he reviews an application, if there is an existing foundation there is usually no issue. However, in this case, there is a 10 inch overhang. The original plan had 34 feet. There was never any suggestion of overhang in the plan. The overhang should have gone in the other direction. He would not have allowed anything closer to the lot line without ZBA approval.

Vice Chair Connors stated that the Board was looking at a variance from what they thought was a survey line but it was CAD driven drawn line from existing markers. The impression that the Board got is that the applicant was using the existing foundation and there was an existing garage. The building was not going to have a larger footprint for the garage and the home. The relief was about the deck. The applicant stated that the lot lines were wrong and now the relief is greater. Also the footprint of the house is encroaching more on the lot line.

The deck is 14 x 34, it goes out from the house and there are stairs on the end. Half of the deck is screened porch. The additional relief for the deck requested is because the lot line changed.

Member Sullivan stated that the plot plan identifies the existing dwelling and the Board still does not know where the foundation is. He requested a full plot plan to identify where the foundation is situated so there is no mistake that six inches was missed. Typically, the Board would get an existing foundation identifying exactly where it is and then the proposed construction would be overlaid so the Board can understand exactly what is being discussed. He has measurements going off a structure that does not exist.

Member Sullivan reiterated that he would need to know where the foundation is for the entire structure. Chair Saba agreed. The foundation should be a solid line and the overhang should be shown.

Ms. Brittany DeVitto requested to speak. She explained that the structure that was built is further from the lot line than the previous structure because the deck on the previous structure stuck out off the side of the house six plus feet. Chair Saba stated that if the Board had a plan of the previous structure and a plan of the proposed structure before the project started, it would be very helpful. Ms. DeVitto gave the Board pictures of the previous structure and explained that the deck that the applicant tore down was 10.3 feet from the lot line. When the surveyor plotted the deck, the footings are still there.

The Board discussed the previous structure. Ms. Sullivan explained that the applicant is showing the existing deck because it was actually more nonconforming before. Vice Chair Connors stated that a stair and deck is not the same as a house. Ms. Sullivan apologized for the error.

Mr. Okun stated that it was an error on the part of his company. Mr. Okun explained that construction was stopped. The abutter had a survey done on their property, which is what exposed the error.

Chair Saba asked Mr. Okun why he did not realize, with his experience, he was not conforming until the abutter did a lot line survey especially when his company framed with an overhang. Also, he is before the Board stating he is not encroaching the lot line any further than what exists.

Mr. Okun explained that the whole structure, both floors, is overhanging 10 inches on both sides with the error of the foundation being 20 inches less than what was on the original architect drawing.

Chair Saba informed him that the Board did not grant relief for the house because they were informed that it would be an existing foundation. Once Mr. Okun realized there would be an overhang beyond the foundation, he should have come back to the Board.

Chair Saba explained that he wants to work with the applicant. This area is already overdeveloped and very congested. 90% of the variance applications are for this area and there are life safety issues. In the past, the Fire Chief has stopped projects. The Town was in a lawsuit for years over a project that had granted relief, but was built differently. The Board needs to know what existed before construction began, what is there now, and how to make it right.

Mr. Okun and Ms. Sullivan informed the Board that the fire department stopped by. Member Sullivan spoke to the Fire Chief and was informed that he did not have an issue at this time.

Chair Saba requested the applicant get a letter from the fire department.

Ms. Sullivan explained that there is only one little corner that is an issue. The house is not parallel to the lot line. All the houses on the lake are stacked together. The applicant is lucky because they have a bigger lot and are surrounded by Conservation Land.

Mr. O'Connell explained that the amount of impervious area has actually been reduced.

Chair Saba stated he has the letter from the Conservation Commission stating that they do not have a problem. He reiterated that he would like to see what was there originally and what is there now on a plan. He would like to have life safety issues addressed.

Mr. Okun asked what the Board wanted, and if they wanted to see the entire foundation. The plan is only nonconforming for 2-3 feet. Mr. Sullivan would like a certified drawing showing where the foundation is. Mr. Okun explained that his surveyor has it. It was done for the overhang and that it was done for the nonconforming corner.

Chair Saba informed the applicant that word from the Fire Chief is needed stating that he has no issues. Member Sullivan stated that it is important that the plan show the proximity to the other dwelling.

Chair Saba stated that because the original request for variance did not show further encroachment, the Board did not require a letter from the Fire Chief at that time.

Member Sullivan agreed that a letter from the Fire Department is needed because of the distance from the other structure. If it does fall within a certain distance, the Fire Department may require additional fire prevention.

Mr. Okun agreed and asked if because the Fire Department has already been to the site, could the ZBA make a vote contingent upon the letter from the Fire Department and other request.

Mr. Okun knows that there is a 10 inch overhang and asked how measurements of the foundations would help.

Mr. Sullivan stated that he wants to know where the foundation is as related to the building envelope. With the soffit and fascia included, there is an overhang of one foot ten inches. That way the Board can have a clear understanding that your building includes the roof, soffit and fascia.

Mr. Okun informed the Board that he was told by the surveyor that the overhang on the roof is not a factor.

Chair Saba explained that for many setbacks it is not picked up, but in tight areas, every inch matters.

Mr. Okun stated that the Fire Chief can see the most encroachment there is now. The roof is already on the house. The lot line is there, too, so he can see that.

Chair Saba reiterated that the ZBA needs something in writing from the Fire Chief.

Member Sullivan stated he would like to know where the foundation is relative to the structure and the lot lines before the Board moves forward.

Ms. Sullivan asked if the applicant could get the information to them in the short term, could the Board give contingent approval so the applicant does not have to wait a month.

Chair Saba is undecided.

Mr. Okun stated that if the Board granted contingent approval, the applicant would not continue construction until the requested information was provided to the Board.

Member Sullivan is concerned about the lot lines. Also, a hearing for the variance would have to be conducted.

Mr. Boyle stated that if the Fire Chief has issues, some fire retardant material can be used or the house can be sprinklered.

Chair Saba stated that the applicants would like approval contingent upon a positive letter or conditions from the Fire Chief.

Chair Saba asked if the plan in front of the Board was to scale.

Vice Chair Connors explained that the Board is representing the Town and future buyers so the Board needs to ensure that everything is done legally. He is concerned that the building is already done.

The whole issue with the setbacks is the letter from the Fire Department stating either that the Fire Department does not have an issue or that fire prevention methods need to be added.

Chair Saba asked the Board for input. Vice Chair Connors suggested going through the application.

Member Wade stated that there is not much to go on. The applicant gave the Board pictures of the foundation. Chair Saba stated that the Board is requesting a plan showing the foundation and what is there to scale and a letter from the fire department stating either he is ok or what life safety measurements are needed. If the applicant would like a vote, the Board can vote.

Chair Saba asked if the Board could keep the pictures.

Mr. Okun asked if the Board is looking for the previous foundation for the home portion. Chair Saba informed him yes.

The applicant explained that the pictures show the foundation before the garage was built and the deck was built.

The deck existed until January, but the applicant cut it due to costs.

Chair Saba requested the applicant show him the deck. The applicant explained that it is something they were going to propose at a later time. Mr. Okun explained that he did not present it to the Board at the advice of the Zoning Administrator.

The applicant requested a vote for the house. Chair Saba explained that if there is a vote and if the application is not approved, then the applicant would have to stop construction.

Mr. O'Connell asked if the Board could do a vote contingent upon a letter from the fire department. He further explained that when the project was started, they used the dimensions on the tax map.

Chair Saba further explained that the Board would like all the information before a vote and is not comfortable with the application without a certified, stamped survey plan and a letter from the Fire Department.

Mr. Okun stated that it sounds like it would not be in the interests of the applicant to have a vote at the present meeting and asked if the applicant could request an emergency meeting.

Chair Saba suggested that the applicant speak to the Zoning Administrator. It would have to be advertised again. It is a possibility.

Mr. Okun stated that if there is a request for continuance would they have to go through the abutter list.

Chair Saba informed the applicant that the hearing has not been opened public.

Chair Saba opened the hearing to the public.

Ms. Brittany DeVitto stated that as she said before, the building is even further from the lot line than it was before. The applicant has taken a camp and made it into a beautiful home, which is what they did with their house. As far as neighbors and abutters, it is only helping the neighborhood. It's tougher having the project incomplete..

Mr. John DeVitto spoke, he is the owner of 5 Lakeside Drive and 24 Lakeside Drive. He has lived on Lakeside Drive his entire life. He fully supports the application. The house will be beautiful.

Ms. Brittany DeVitto also stated that she understands that the overhang is the issue. Designing a home that is 34 feet and then structurally making the house smaller would be a bigger mistake than the encroachment.

Chair Saba reiterated that the Board needs a complete folder. He just wants to make everything right.

The applicant asked if with those two items, would there be a favorable vote. Chair Saba said he could not say.

Vice Chair Connors, Member Sullivan and Member Wade stated they were willing to come in for an emergency meeting.

Chair Saba stated that the Board needs everything in the folder, including the letter from the Fire Department. Everything needs to be to scale.

Member Sullivan stated that he needs something showing the existing and proposed structures. The Board needs two plans. The setbacks need to be shown on the certified plan.

Chair Saba explained that the Board needs a foundation certification. He suggested that he speak to the Building Inspector about what is needed.

The other item needed is a letter from the fire department.

The applicant asked about the deck and if it could be discussed later. Chair Saba replied that the deck is not that big a deal, even if the Board said to cut off a foot.

Mr. Okun explained that an additional 3'9" variance for the deck is needed. The deck was 11 feet 3 inches from the lot line and now it is seven feet seven inches, an additional 3' 9" variance.

The applicant requested a continuance.

Vice Chair Connors made a motion to continue the hearing for the Application for Variance submitted by Colleen Sullivan and Shawn O'Connell from Article IV Section 400:4 to allow the construction of a home 11'3" from the sideline where 15' is required (3'9" variance on property located at 26 Lakeside Dr., Map 23 Lot 52 in the RR3 zone.. The motion was seconded by Member Wade. All members present voted in favor. Vote: 4/0/0.

Discussion: Member Sullivan suggested that the applicant show where the structure breaks the 15 foot setback.

Chair Saba stated that the next meeting is July 13, 2022. He suggested the applicant get the information before the end of the month. The Conservation Commission is having two meetings at the end of the month.

Vice Chair Connors made a motion to close the public hearing. Member Sullivan seconded the motion. All members of the Atkinson Zoning Board present voted in favor. Vote: 4/0/0.

Member Wade made a motion to adjourn. Member Sullivan seconded the motion. all in favor. All members of the Atkinson Zoning Board present voted in favor. Vote: 4/0/0.

The meeting was adjourned at 8:43 PM. The next meeting of the Atkinson Zoning Board of Adjustment will be July 13, 2022.