

ATKINSON ZONING BOARD OF ADJUSTMENT

21 Academy Avenue

Atkinson, New Hampshire 03811

Public Hearing Meeting Town Hall

Wednesday, August 9, 2023

Members Present

Glenn Saba, Chair

Arthur Leondires

Guy Wetherbee

Scott Sullivan

Others Present

Karen Wemmelmann, Recorder

David Holigan, Deputy Fire Chief

Corey Barnes, Taurus Company, LLC

Workshop 7:00 PM

Approval of Minutes:

Member Sullivan made a motion to approve the minutes of the July 12, 2023 meeting as amended. The motion was seconded by Alternate Wetherbee. 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 meeting to order at 7:30 PM. Member Leondires is keeper of the records.

Public Hearing – 7:30 P.M.

Chair Saba opened the public hearings at 7:30 PM, August 9, 2023. There are four members of the Board present. He stated that there are three applications before the Board and explained that each applicant would be given the opportunity to proceed at a later meeting since there were only four Board members present.

- 1. Application submitted by Chris Murphy for Special Exception/Home Business, specified in the Zoning Ordinance, Article IV, Section 450 to operate “Oh Deer – Atlantic Goose” at property located at 42 Westside Dr, Map 11 Lot 22-1, TR2 Zone.**

Abutters:

Shawn and Tara LaTullippe, Christopher M. and Jennifer E. Murphy (present), Walker Family Rev. Trust, Walker Jared M. and Krystle N. TTEE, Richardson Donald Donna Trust, Richardson Donald & Donna TTEEs, Danile P. and Meredith A. Bunker, Burke James & Lee Family Trust, Burke James C. and Lee M. TTEE, Brian R. George and Elizabeth Fraza George, Isabel M. Bernal, John and Patricia Mangini

Discussion:

The applicant appeared before the Board.

Chair Saba read a letter from Krystle Walker into the minutes.

"This email concerns the potential rezoning of an adjacent parcel to our home, 42 Westside Drive, Oh, Deer-Atlantic Goose. On a personal side, we feel the Murphys are a great family, are very hard working and a valuable part of the fabric of our community and we want all of their dreams to be realized, only limited to the extent that they do not impede ours. They have kindly mentioned that they are looking into eliminating loud equipment noise which is not at the current functioning level now. We recognize the value their company provides and the opportunity for expansion that exists. Therefore our only question is the degree to which their successful expansion could grow within the definition of the home business zoning code. In other words could they double, triple or quadruple the number of trucks, employees and hours that they operate. If so I would suggest that it would impede our quality of life as neighbors and reduce the value of our property. While they may indeed live there for decades, they may also sell the property at some point. The question then becomes not what they do with their home business zoning and classification but what the successor owners do with it. We want to be very reasonable and supportive but are aware we may be opening Pandoras Box. It would benefit from specific explanation as to what can and cannot be done under the home business zoning categorization and if there are limitations for how large a home business can expand. ..."

Chair Saba informed the applicant that the Board would like a quick explanation of what the applicant plans to do and what they are proposing.

Mr. Murphy explained that from a noise perspective, the biggest issue has been back up alarms installed on the trucks. When this was brought to his attention, he looked into installing kill switches for the alarms on the trucks so it would not affect the neighbors. From an expansion perspective without having to move out to a commercial property, they are about where they are right now. They have four trucks, three in use. He does not expect it to be any more than that.

Chair Saba asked what type of business it is and the applicant responded that it is a tick and mosquito control business, a residential service. Chair Saba asked if chemicals would be stored on the property and the applicant responded that chemicals would be stored on the property and they use all natural products.

Chair Saba asked about the four commercial vehicles. Mr. Murphy explained that their current employees pick them up in the morning and return them at night, which is the extent of business activity during the day. The trucks are parked in the back of the property and are not visible from the street. Mr. Murphy does not know if the Walkers can see them from their property, there is a good incline to their house. He is willing to install planting or fencing, whatever is needed to block the view of the trucks.

Chair Saba asked the Board members if they had any questions.

Member Sullivan stated he went out to the site and agreed that the trucks cannot be seen from the street, you cannot even see the house. He drove down and could see the home and a large barn. He saw two trucks parked on the side. There is a slope going up about 30 feet from the street with a residential home at the top of the hill. He believes that the trucks could not be seen from a general view. Member Sullivan asked if the trucks could be parked inside. Mr. Murphy replied that they could be.. They are winterized in the off season. All the

equipment they have can fit in the building. Member Sullivan stated that he saw two trucks on the premises. Mr. Murphy responded that the third truck was probably out. There is also an unlettered truck that is used for backup.

Member Sullivan asked about business hours. Mr. Murphy replied that they are 7:00 AM to 4:00 PM. Employees come in at seven to pick up the trucks and return between four and five to drop them off. There might be some minor noise from repair during the day but in general, the trucks back in at night so the alarms do not bother anyone in the morning. He could take the back up alarms off the trucks, but would like to leave them and install a safety switch to turn them off. Mr. Murphy believes that is what the Walkers can hear. He has spoken to the Walkers and asked them if there was still an issue but did not hear back. He knows that the Walker children do not like the back up alarms so he immediately looked into having the alarms changed.

Member Sullivan asked how many weeks out of the year the business will be operated. Mr. Murphy replied the business will operate mostly from April to October and possibly some in November or late March depending on the weather. Member Sullivan asked about the weight of the trucks. Mr. Murphy replied that he just had one weighed and it is about 9,896 pounds. They are all the same.

Member Sullivan stated that home businesses are not allowed trucks with a weight greater than 20,000 pounds.

Chair Saba stated that would all be reviewed.

Member Leondires asked if the employees left in the morning and returned in the afternoon and the applicant replied that they did. They come in and the morning, pick up the trucks and go out. The trucks are turned around and ready to go out.

Chair Saba asked how many employees the applicant has and Mr. Murphy replied that currently he has four full time employees. Chair Saba stated that four vehicles would be coming in, the employees would open the doors, get out and get into the company trucks.

Chair Saba asked if there is an Alternative Dwelling Unit ("ADU") on the property. Mr. Murphy responded that currently there is an unapproved in-law on the property, It is on the further side of the house and their vehicles are in their garage which is underneath the unit. The residents are elderly and there is not much traffic.

Chair Saba opened the hearing to the public and asked if anyone in the audience would like to speak for or against the project.

David Holigan, Deputy Fire Chief, stated that the Walkers are concerned about the line between a home business and a commercial business. The code and ordinances for a commercial business are must stricter than for a home business. He remarked that it seems that the applicant is pushing the limits of a home business in this application. Deputy Chief Holigan stated that the fact that the chemical are natural does not mean much to him and asked what the hazards of the chemicals that will be stored are. The applicant explained that from a pesticide standpoint, they are FIFRA exempt, all natural pesticides in Massachusetts, are exempt from the pesticide control act and are labeled as caution chemicals. The applicant will

send an SDS regarding flammability to the Fire Department. The chemicals are not exempt in New Hampshire. The applicant received his New Hampshire license within the last month and is required to send copies of the SDS sheets to the Fire Department.

Chair Saba asked if anyone else would like to speak.

Ms. Katherine Goodwin requested to speak and asked about a resale, and if it would allow for a similar business to go in if this application is approved.

Chair Saba responded that a home business if approved goes to the applicant so if there is a new owner they would have to come before the Board. If they are operating in kind, it is most likely they would get approval and any stipulations or conditions to approval would have to be maintained.

Chair Saba asked that the Board turn to page Z36 of the Atkinson Land Use Ordinances and read from the regulation regarding special exceptions. If the applicant complies all the conditions, then the Board would have to grant the exception by right. If he does not, then the Board cannot approve it. At present it appears that the applicant's business has outgrown his home but the Board will discuss it.

450:2 A permit for a home occupation shall be allowed in residential zones by special exception from the Board of Adjustment if the occupation complies with the following:

- a. A proposed occupation shall be incidental and secondary to the use of the property as a dwelling and shall not consume more than 20% of the gross residential building space, and not change the residential character of the premises thereof. (1992)

Discussion:

There were no questions from the Board. Mr. Murphy asked if it were 20% of his home or if the workshop/storage area in the barn should be included. Chair Saba informed him that the regulation states 20% of the gross residential building space and stated that would be his home. Mr. Murphy agrees that he complies with 450:2(a).

Vote: 4/0/0. Unanimous. All members of the Atkinson Zoning Board of Adjustment present agree.

- b. Unless exempted by Section 450:4-a, no home occupation shall take place in a multi-family dwelling.

Chair Saba stated that the applicant informed the Board that there is an ADU in the dwelling. Mr. Murphy stated that as he recalls from moving in, the ADU is connected to the primary residence by an interior door and asked if that means it is not a multifamily.

Chair Saba asked that the Board look at the definitions. The ADU has a separate bathroom and kitchen. Member Sullivan stated that an ADU is secondary to the primary residence. Chair Saba stated that a multifamily dwelling is one that contains three or more living units. The applicant complies with Section 450:4-b.

Vote: 4/0/0. Unanimous. All members of the Atkinson Zoning Board of Adjustment present agree.

- c. The occupation may be carried on by the occupant's immediate family residing at that location and by one or more additional employees whose aggregate hours of work at that location do not exceed eighty hours per week (80 hours/week). The foregoing limitations on the aggregate hours of work per week by additional employees shall not apply in the case of medical, dental or veterinary home occupations. (2007).

Mr. Murphy responded that the employees are at the property for a total of an hour or less a day to pick up and drop off the trucks.

Member Leondires pointed out that the regulation states “no more than eighty hours per week at that location”. Alternate Wetherbee stated that that is the literal definition. Member Leondires stated that if the employees are coming in, picking up trucks, going out for the day, he would say that the employees are not there. He feels that the regulation is talking about production. If the employees are coming in, picking up trucks and leaving, they would not be there.

Vote: 4/0/0. Unanimous. All members of the Atkinson Zoning Board of Adjustment present agree.

- d. There shall be no physical evidence of equipment or materials outside the dwelling.

Mr. Murphy stated that he could put up a fence and will store equipment and materials inside the building.

Member Leondires asked if the applicant sees growth for his business. Mr. Murphy stated he sees growth for his business but currently they do not want it to be any bigger. They built the business for a maximum of four trucks. There is also an RV stored inside the workshop. If it does grow, he would have to get something commercial.

Member Sullivan asked if there is a mechanism for screening in perpetuity and Chair Saba responded that there is and it will be addressed further into the criteria.

Vote: 4/0/0. Unanimous. All members of the Atkinson Zoning Board of Adjustment present agree.

- e. Adequate off-street parking areas must be provided. Parking areas in excess of those necessary for normal residential purposes may be allowed in side and rear yards only provided the residential character of the environment is preserved. (1992)

Member Sullivan asked where the employees park. Mr. Murphy replied that there is a long driveway, the employees park to the right of the house. They could park in the rear if necessary. Where they park is not visible, even from the Walker property. There are trees in between.

Chair Saba stated that when he drove by he saw the cars parked, and when you look to the right the Walker home can be seen. So he is assuming they can see the employee cars in the

front . He stated that the regulation states that “parking areas in excess of those necessary for normal residential purposes may be allowed in side and rear yards only”. He agrees, the parking cannot be seen from the street, and the Board will address the issues addressed in the letter from the Walkers further.

Mr. Murphy stated that he would be happy to continue the fence so the vehicles would not be seen or they could be moved further to the rear of the property.

Vote: 4/0/0. Unanimous. All members of the Atkinson Zoning Board of Adjustment present agree.

- f. When necessary, further restrictions shall be placed on the occupation in order to comply fully with Article IV, Section 400:2 of this ordinance.

Chair Saba read Article IV, Section 400:2. Loud and Obnoxious Noise.

Any uses that may be obnoxious or injurious by reason of the production or emission of odor, dust, smoke, refuse matter, fumes, noise vibrations, or similar conditions, or that are dangerous to the comfort, peace, enjoyment, health, safety of the community or lending to its disturbance or annoyance are prohibited in any district. No privately-owned land in any district shall be used for the dumping of or storage of hazardous wastes or junk. (1982, 1984)

Chair Saba informed the applicant that he would have to comply. The Code Enforcement Officer would inspect and if there is a violation, the property owner will get an order and if it is not complied with, the permit can be rescinded.

Member Leondires asked if the board needed to consider a contingency for chemicals. Mr. Murphy explained that New Hampshire requires a license to store the chemicals. They are exempt federally and Massachusetts does not require approval. Chair Saba stated it still has to go through Code Enforcement and the Fire Department.

Vote: 4/0/0. Unanimous. All members of the Atkinson Zoning Board of Adjustment present agree.

- g. A permit to operate a home occupation shall be issued to the owner/occupant only and is not transferable to a subsequent owner. A permit to operate a home occupation shall be issued to the owner/occupant only, and is transferable to a subsequent owner who will certify to the Zoning Board of Adjustment in writing that he or she will continue the home occupation on the same terms and conditions as the previous owner/occupant. (2007)

Chair Saba informed the Board that there is control as to what happens to the property if it is sold.

Mr. Murphy stated he did not believe anyone who bought the property would be operating the same type of business. The barn itself is a four stall animal barn plus the workshop. Unless someone bought the business and the house, he does not see it happening.

Vote: 4/0/0. Unanimous. All members of the Atkinson Zoning Board of Adjustment present agree.

- h. The applicant shall complete and sign a form that sets forth the nature of the home occupation and provides details of the business and its scope of operation.

Chair Saba stated that the form would go to Building & Code Enforcement. The applicant agrees.

Vote: 4/0/0. Unanimous. All members of the Atkinson Zoning Board of Adjustment present agree.

- i. No home occupation that will result in heavy truck use in excess of 20,000 lbs. gross vehicle weight shall be allowed. (1992)

Mr. Murphy stated that all vehicles are under 10,000 pounds.

Vote: 4/0/0. Unanimous. All members of the Atkinson Zoning Board of Adjustment present agree.

- j. Vehicles registered to a home business or occupation must comply with the provisions of Section 480:1. (1992)

Chair Saba read Section 480:1 into the minutes.

SECTION 480 STORAGE OF VEHICLES

480:1 In residential areas, with the exception of farm vehicles, commercial vehicles parked on the premises must be wholly screened from the view of abutting property either by natural screening or by fencing at least equal in height to that of the vehicle itself. Commercial vehicles in excess of 20,000 pounds gross vehicle weight are not permitted to be routinely parked in Residential Districts. (1999)

Chair Saba informed the applicant that screening has to be as high as the vehicles.

Mr. Murphy stated that there is 10 or 15 foot elevation at the property line, if a six foot fence were built, then nothing could be seen.

Chair Saba agrees that based on his explanation, it would comply.

Member Sullivan stated that any screening especially for the residential house at the top of the hill is needed but a six or seven foot fence would almost be a spite fence, and asked if other screening could be provided. Hopefully, any screening would be natural; a fence would not absorb noise.

Mr. Murphy stated that he could plant natural, evergreen screening such as arborvitae. Chair Saba stated that they would have to be maintained.

Member Sullivan agrees that a fence would work but it would not be as aesthetically pleasing to the neighbor.

The applicant agreed to a natural, evergreen screening.

Vote: 4/0/0. Unanimous. All members of the Atkinson Zoning Board of Adjustment present agree.

Chair Saba reviewed Section 450:3 and addressed Section 450:3d - No more than one business permit can be in effect for any one location. He asked if the applicant has multiple permits and Mr. Murphy replied that he does not.

Next, Chair Saba addressed Section 450:3 - A permit is valid only for two (2) years and only for the owner/occupant and location for which it is issued. A renewal permit shall be required after two (2) years. He explained that this would be a two year permit.

Alternate Wetherbee asked the applicant if Oh, Deer and Atlantic Goose were one and the same. Mr. Murphy explained that they are essentially the same, same equipment, same employees, different spray, they are the same.

Chair Saba asked if it were one company. Mr. Murphy replied that officially they are two corporations for separation and tax purposes but they use the same equipment, same trucks. There are no employees to Atlantic Goose except himself.

Chair Saba reread Section 450:3d and asked how many business permits the applicant has and if both permits were registered with the State.

Mr. Murphy informed the Board that Atlantic Goose Management is a corporation in Massachusetts registered in New Hampshire as a foreign corporation. Oh, Deer is a franchise but it is also a Massachusetts corporation. Atlantic Goose is essentially Mr. Murphy, two dogs and the equipment shared with Oh, Deer.

Member Sullivan asked if there are two tax id's. The applicant stated that there are. Alternate Wetherbee stated that technically, there are two businesses.

Member Sullivan also stated that Oh, Deer is a franchise, the product and logo are proprietary.

Mr. Murphy informed the Board that Atlantic Goose is essentially him and one pickup truck, it would comparable to an electrician that goes out in a truck and comes back at the end of the day. There is no additional equipment other than his truck and a ride on sprayer that goes in the garage. Oh, Deer would be more impactful because there are employees that show up every day.

Chair Saba stated that the Board cannot deviate from the code. Mr. Murphy is wondering if it would have to be registered because it is just himself working in Massachusetts and returning home.

Chair Saba stated that Mr. Murphy is describing a home occupation. The Board does not have a lot of control for growing businesses. The Board has gone through everything, only one business permit can be in effect for any one location and it sounds like there are two businesses, even though one is just the applicant and his truck, it doesn't mean it doesn't exist. They both should be registered with the Town.

Alternate Wetherbee stated that the Board has to interpret the code. It says that only one business permit can be in effect. It doesn't say whether the business permit is for a corporation, if it is in Massachusetts or New Hampshire, it just says no more than one business permit.

Chair Saba stated that as a special exception, if you meet all the criteria, then it will be granted, if not the special exception cannot be granted.

The applicant asked if anyone who is self employed and takes their vehicle home would need a business permit.

Chair Saba read from Section 450:5 – Exemptions

450:5 Exemptions from permit application requirements

- a. Home occupations in which neither customers nor vehicles come to the location where the business activity takes place and at which no sign is displayed ...
- b. Agricultural activity, including farming and forestry, ...
- c. Home occupations for which permits were officially issued by the Planning Board and in effect on or before March 8, 1984...

Member Sullivan asked if the ordinance was meant for a husband and wife who each had a business with customers and cars. If Mr. Murphy were an LLC that owned both franchises, would the Board have a different opinion. Chair Saba said he did not think so.

Chair Saba asked Deputy Chief Holigan to speak regarding the ordinances reference because this is borderline on and asked if they were covered. Deputy Chief Holigan explained that any driveway over 150 feet needs special fire protection. Any commercial business needs to have sprinkled buildings and monitored alarms. Chair Saba stated that those issues go to Code Enforcement and Chair Saba wants to address the ordinance on home occupations.

Deputy Chief Holigan that those regulations apply to commercial properties. Chair Saba stated that this is not a commercial property.

Deputy Chief Holigan stated that this is approaching the scale of a commercial property. Chair Saba agreed. Mr. Murphy explained that he picks up the chemicals. There is approximately one barrel a month. One is granular product and the other is a blend of essential oils. Deputy Chief Holigan again stated that the residential code is being applied, but this is rapidly approaching a commercial business.

Chair Saba agrees but the Board has to go by the book. Deputy Chief Holigan can review everything with the applicant when the applicant goes to code enforcement. Deputy Chief Holigan stated he does not believe that the applicant is in violation of anything.

Chair Saba stated that the Board is still reviewing Section 450:3-d.

Member Leondires stated that the applicant has two Massachusetts LLCs registered as foreign entities in New Hampshire. Mr. Murphy replied that they are S Corporations registered in New

Hampshire and incorporated in Massachusetts. One is the active business, Oh, Deer that is utilizing the space and has comings and goings. The other is the applicant, his wife, his truck and her Chevy Traverse. There are no employees, only one subcontractor who has nothing to do with the property. It is not impactful in any way to his property.

Alternate Wetherbee reviewed Section 450:5a and stated that Atlantic Goose is close to being exempt.

Chair Saba stated that it is close but there is a vehicle. Mr. Murphy stated that Oh, Deer is the business with activity. Atlantic Goose has no comings and goings to the property except himself. Chair Saba asked if it was a lettered truck. Mr. Murphy stated that it is unlettered, and it is his personal vehicle. There is a small yard sign put up by an employee and the applicant can remove it.

Chair Saba reiterated that there is no commercial vehicle and there is no lettering on the vehicle, and asked the Board if they thought Atlantic Goose would be exempt under Section 450:5a.

Alternate Wetherbee agreed that it could be and asked the applicant if he is planning to expand it. The applicant replied no, it's been himself and his wife for 20 years and it has been successful. They have been operating Oh, Deer for seven years.

Member Leondires asked if there are two, and one is exempt, then it is off the table. He believes so. Chair Saba agrees.

Member Sullivan stated that the intent for more than one business license is the example he gave. In this case, it is the same truck, the same people. There is no manufacturing. He agrees. It looks like it is an owner-operated business, there is no signage to and from the property and there are no employees. He agrees with Alternate Wetherbee.

Chair Saba requested a vote on whether Atlantic Goose is exempt from having to be permitted under Section 450:5a, home occupations in which neither customers nor vehicles come to the location where the business activity takes place and at which no sign is displayed.

All members of the Atkinson Zoning Board of Adjustment present agree. Vote: 4/0/0. Unanimous.

Chair Saba requested a vote on whether Atlantic Goose would be exempt from the requirements of Section 450:3d - No more than one business permit can be in effect for any one location.

All members of the Atkinson Zoning Board of Adjustment present agree. Vote: 4/0/0. Unanimous.

Next, Chair Saba reviewed Section 450:3f Annual inspections of the home occupation/home business premises may be required subsequent to the issuance of a permit in order to confirm compliance with the conditions of the original special exception granted. If, in the opinion of the Board of Selectmen, the business practices originally set forth and defined in the initial approval have changed, it shall revoke the permit that was issued. Permit holders whose permits are revoked may

make application to the Board of Adjustment for a new permit based on the changed circumstances of the business

Chair Saba requested a vote on whether Atlantic Goose would be exempt from the requirements of Section 450:3f - No more than one business permit can be in effect for any one location.

All members of the Atkinson Zoning Board of Adjustment present agree. Vote: 4/0/0. Unanimous.

Chair Saba informed the applicant that the Board has reviewed the criteria and will review the conditions the Board added.

Reviewing the letter, the issues are controlling growth, screening and noise.

The applicant has informed the Board that he will install switches for the back alarms.

Chair Saba asked the applicant about natural screening. The applicant replied that he could provide screening from 60-100 feet with 4- 5 foot tall evergreens that need to be maintained in perpetuity.

There are chemicals on site, they are FIFRA exempt in Massachusetts, but not in New Hampshire. The applicant has a license and will send all information to the Fire Department for them to sign off.

The applicant agreed to cap his business at 3 operating trucks and one for backup. There are four trucks total. The trucks cannot easily be seen from the street, but natural screening 60-100 feet along the property line with 40 Westside Dr (Map 11 Lot 23).

Findings of Fact

- There is a letter questioning the Company growth.
- The biggest noise problem is the backup alarms.
- The applicant will put a kill switch on the backup alarms when the vehicles are on the property.
- The applicant has stated that it cannot grow any more at this location. The Board is capping growth at three trucks operating and the fourth as back up.
- The trucks cannot be seen from the street easily but natural screening of 60 to 100 feet, with four to five foot evergreens that need to be maintained , along the north east property line can be used.
- There are four full time employees, they pick up the vehicles, leave for the day and return them in the evening.
- Chemicals are stored on site. They are FIFRA exempt. New Hampshire restricts them but the company has the licenses. The applicant will inform the Fire Department.
- Regarding the ADU, although not approved, the regulation states that a multi family has three or more living units.
- 450:2f refers to contingencies on noise, chemicals and sight lines.
- The applicant must comply with Section 480:1 with regard to number or vehicles.

- 450:5a as stated above exempts Atlantic-Goose, this licensed corporation, from the permit process. This allows the Board to give a yay vote to 450:3d as stated above.
- No more than one business permit can be in effect.

Member Sullivan made a motion to approve the Application submitted by Chris Murphy for Special Exception/Home Business, specified in the Zoning Ordinance, Article IV, Section 450 to operate “Oh Deer ” at property located at 42 Westside Dr, Map 11 Lot 22-1, TR2 Zone. with the following conditions:

The applicant must comply with Sections 450:2 and 450:3 in their entirety. In addition, natural screening will be planted to achieve screening from vehicle storage and business operations on the north east line running approximately 60 to 100 feet, consisting of four to five foot evergreens at the time of planting, that need to be maintained. The business is limited to four vehicles, three operating with a fourth as a back up. Back up alarms on vehicles must be disabled while the vehicles are on the property. The Fire Department must be notified with MSDS sheets according to their application process for a home business permit. Member Leondires seconded the motion. Vote: 4/0/0. All members present voted in favor.

- 2. Application for Variance submitted by Joseph Casey from Article VI Section 600:11 to allow the installation of an inground pool 55’ within the 100’ perimeter buffer (a 55’ variance) on property at 3 Windmill Lane, Map 6 Lot 39 in the RR2 zone.**

Abutters:

Jeremy D. Mercier and Ashley N. D’Innocenzo, Sarah M. Flores, Derek J. and Brenda D. Sterner, Fields, Micheal J. 2013 Trust, Micheal J. Fields TTEE, Robert A. and Karen S. Prince, Butler Estates Homeowners Association, Joseph D. (present) and Karin L. Casey, John and Joan Lopizzo, George Tomberelo

Discussion:

Mr. Joseph Casey, the applicant, appeared before the Board. He explained that he is requesting a 55 foot variance to install a pool that will encroach on the landscape buffer.

Chair Saba read from a letter from Sue Killam, Chair Planning Board addressed to the Board of Selectmen dated December 4, 2002. Chair Saba explained that this issue has come up before. There are restrictions because it is a cluster subdivision and there is a buffer around the entire site. The buffer is in place for a reason.

Chair Saba requested the Board to turn to page Z59 in the zoning book regarding permitted buffer requirements. There has been an effort to keep them intact. He explained that the buffers were required for a reason and it has been a problem keeping them in place. Chair Saba explained that the applicant is requesting to encroach on the buffer. The Zoning Board needs to look at the ordinance, look at the property and decide if there is an option that will work out for the applicant, the buffer and the Town.

Chair Saba requested the applicant review his arguments.

The applicant states that in 600:11 it also states that the 100 foot landscape buffers are now

put outside of the dwelling perimeter. In his opinion, there was a correction in 2020 regarding the buffers as to what was in place in 1992 and 1994 when the subdivision was built. 600:11-e states that "No portion of the perimeter buffer shall be included as part of any lot defined for construction of a dwelling." His argument is that he is encroaching on the landscape buffer, but the entire landscape buffer encroaches on his yard about 16 feet from his back yard. The septic is in front of the home. The left side of the house has a 200 foot buffer from Providence Hill so the logical place for this recreation area is behind the house. From the street, from his neighbor on the right, Site 40 and on the left Site 13 with the tree line being maintained, besides the 55 feet, the pool will not be visible.

The applicant has a site plan of the property. The applicant showed him a plan of the property. Chair Saba is requesting an engineered stamped plan that shows the house in relation to the buffer. All the Board has is the subdivision plan.

Chair Saba asked if there was a wetlands setback. The applicant replied that there is a wetlands setback that is further into the property and that clips the garage, there was a variance for the garage added to the home before the applicant purchased the property. He was told that a setback for the wetlands is not necessary for the pool.

There are other examples in the subdivision that have pools that encroach on the buffer in about the same amount as the applicant is requesting. Chair Saba stated that the ordinance has changed and it applies to all buffers now. He does not know if those pools were put in legally. The Board must go by the ordinance today. Chair Saba stated that without the site plan, the Board cannot say the applicant has a hardship so that they could grant a variance. He informed the applicant that he would have to hire a surveyor and do an existing conditions plan showing the house, the tree line and the grass line.

Chair Saba opened the hearing to discussion.

Alternate Wetherbee asked if the applicant has made any changes or additions and if the building envelope has changed since they purchased it. He recommended the applicant go to the Town to see if there is a survey plan on file. A plan from the previous owner could be helpful.

Member Sullivan informed the applicant that it would be helpful if there were something such as a foundation drawing so the Board can see what the offset is.

The applicant informed the Board that he has a picture of the house. Chair Saba stated that it is not a plan. The applicant went to the Zoning Administrators office, there is a folder and a subdivision plan and information on the variance for the garage. Chair Saba stated that there was something submitted. The subdivision is old. The Board needs to know what is there before they can make a judgment.

Chair Saba explained that the Town wants to protect the buffers, but the Board cannot make a decision as to what is there. There was no more discussion.

Chair Saba informed the applicant that he can ask for a continuance and it will be for 30 days. If a survey is needed, it could take longer than 30 days. He can ask for another continuance. The other option would be to withdraw without prejudice and refile when he feels he has what is needed. The applicant requested to withdraw without prejudice.

Member Sullivan made a motion to allow the applicant to withdraw without prejudice. Alternate Wetherbee seconded the motion. Vote: 4/0/0. All members present voted in favor.

Chair Saba recommended the applicant speak to the Zoning Administrator to see what information she has about the site.

Mr. Tomberelo requested to speak for the Walkers regarding the first hearing. Chair Saba informed him that the Board is proceeding to the next hearing and informed Mr. Tomberelo that there is a 30 day appeal and the Walkers can appeal.

3. Application for Variance submitted by Corey Barnes for Charles & Jeanine Kinney Trust from Article VII Section 700:1 c to allow an additional non-conforming use on the same premises of another non-conforming use on the property located at 170 Main St, Map 17 Lot 55, in the RR2 Zone

Abutters:

David R. and Cynthia A. Caron (present), Sawmill Ridge Association c/o Neals, Sandy, Katherine and Lonnie Goodwin, Town of Atkinson (Deputy Chief Holigan), Kinney, Charles & Jeannine Liv Trust, Charles and Jeannine Kinney TTEEs, Saco Realty Trust, Anderson, Arthur TTEE, Diane Kinney

Discussion:

Mr. Corey Barnes appeared before the Board to represent the Kinneys. Chair Saba requested a summary of the lot and what Mr. Barnes is proposing.

Mr. Barnes explained that he is the owner of Taurus Company, LLC, a small landscape excavation business and is requesting permission to run Taurus Company at 170 Main Street. It was previously operated by D&H and D&H Garage and is owned by the Kinney family. It has been a repair shop for vehicles and larger equipment. Taurus Company is a hardscape and excavation company only. They do not do lawn maintenance so this limits the number of trucks and vehicles that they own and operate. His company consists of three pickup trucks, one is his personal vehicle. He has a six wheeler and a triaxle dump truck. None of the vehicles are lettered except the triaxle dump truck. There will be a skidder, a backhoe, a mini-excavator, a dozer and a large excavator at the property. The dozer and large excavator stay on job sites and rarely go back. He has one full time employee. Business hours are 7:00 am to 4:00 PM. He has been renting for 25 years and would like a place where he can store equipment and work on it as needed. The Kinneys have owned the property for a long time, possibly since the '20s. There has been a gas station there as well as a garage run by the Kinneys. D&H has just retired. D&H had the business for several years and maintained large dump trucks, fire trucks, ambulances, big trailers and equipment. Equipment and trucks have been on the property for many years. The applicant would like to keep his equipment there and work on it as needed. There is a garage going in that will be doing the same work as D&H has been doing for many years. He would like to keep the back of the property for himself and fence off an area to keep his equipment there as well as some inside.

Mr. Barnes is working with Mr. Charles Kinney, the owner, regarding lot size. There is another

piece between the property. Mr. Kinney is working with SEC to decide what to do with it. There is an easement through that property that goes to Diane Kinney's house. The lot is 1.2 acres. It is just a garage, no house.

Chair Saba stated that there is an owner authorization form allowing Mr. Barnes to speak on behalf of Mr. Kinney.

Alternate Sullivan stated that there is one parcel and the house on the rear left is not on the parcel, it is a separate parcel but there is a drive access that runs through the property to the house. The Board was not provided a site plan that shows where the right of way is.

Mr. Barnes explained that Mr. Kinney is working with SEC for a site plan. Mr. Barnes is before the Board to ensure that he can operate a business there before he possibly purchases it.

Member Sullivan clarified that at present this self standing parcel does not have a house on it. The only structure on the parcel is the garage. Mr. Barnes explained that at one time the Kinneys owned all the property there but it has been subdivided many times through the years.

Chair Saba opened the hearing to the public.

Katherine Goodwin requested to speak. She asked if the applicant is planning to run a garage. The garage previously operated there has been closed for two months. Chair Saba stated that an applicant would have a year to reopen a garage and run it before they lose their jurisdiction.

Ms. Goodwin clarified that the applicant will be running a landscaping business and possibly use part of the garage, but someone else will run the garage. There will be cars coming in and out, and the applicant will be storing landscaping equipment somewhere on the property.

Chair Saba asked if it were running, what would be on site. Mr. Barnes stated that there would be a pickup truck or two and possibly a six wheeler.

Chair Saba stated the garage is operating and they would have vehicles behind it.

Mr. Barnes explained that he is looking to take the back part of the property where there is a shed, fence it off and store his equipment there. He is looking for a place to store and work on equipment. There will not be employees going in and out all day. He is on site all day.

Ms. Goodwin asked the applicant if he wants to purchase the property, run his business out of it and rent the rest of the space. Mr. Barnes explained that there has to be a garage there. It has been grandfathered as a garage. He replied that a garage will be going in. There is someone who will be renting and operating the garage doing car and equipment repairs and inspection stickers.

Ms. Goodwin asked if he would access the property through Teddy Bear Lane or through Main Street. Mr. Barnes stated that he would access the property through Main Street. Ms. Goodwin explained that Mr. Barnes has purchased the land behind the house.

Ms. Roberta Calbert is a little confused because she drives by once or twice a day and has seen cars and the ambulance but has never seen fire trucks or big trucks repaired there. She has lived in Atkinson for 42 years. Mr. Barnes replied that D&H has been taking care of fire department vehicles for the Town of Atkinson for years.

Chair Saba informed Mr. Barnes that if the service business reopens, and it would have to reopen within a year in order for it to maintain its nonconforming status, they would have to come forward and it can be discussed.

Ms. Cynthia Caron explained that she has lived directly across the street for 8 years. D&H does maintain large vehicles including fire engines or trucks, but it is once a year. There is a hill, she is concerned about traffic. She understands that there will be two businesses. She looked up Taurus LLC and there is a lot of large equipment and how will she know that it will not be coming and going. She stated that his sites have a lot of large equipment on them. Mr. Barnes replied that he cannot move his larger equipment and Busby Construction moves all his large equipment. That is why he does not move the equipment back and forth to the shop and leaves it on site.

Chair Saba stated that there is a difference between running a landscaping company, an excavating company and a trucking company. Right now it is a nonconforming garage and it sounds that the concern is the heavy equipment.

Ms. Caron stated that there will be two businesses on a small lot with a house in back which means that there will be a lot of traffic. She asked if the garage is business zoned.

Chair Saba explained that the garage is nonconforming. It is an existing business which was there before many of the homes on Main Street. There are several of those businesses in Town. Ms. Caron is in the RR2 Zone which is residential but the business is nonconforming and has been there since before zoning. If the business stays closed longer than a year, it loses its nonconforming status.

Ms. Goodwin asked what will happen if it does not open up for a year. Chair Saba explained that they will have to come before the Board for a variance which is harder to obtain than a special exception. Ms. Goodwin asked what happens if Mr. Barnes is allowed to operate his business on the site and the garage does not get rented. Chair Saba explained that it would be based on what was approved. If the garage did not open within a year and did not register with the Town, it would lose its exception and it would be a lot harder to get a variance as opposed to a continuation of a nonconforming use.

Ms. Goodwin explained that Mr. Barnes is renting the space from the Kinneys with the intention of purchasing it. It is his hope that a garage will rent from the Kinneys and stay with him so that it will stay a nonconforming, exempt property. Mr. Barnes agreed.

Deputy Chief Holigan explained that this building has been a concern for the Fire Department because it was built in the 1920's and they did not have to bring it up to code because of the type of business. He believes that if it goes from one business to two businesses, it would change the current use, and once the current use is changed, it would need to be brought up to code. It has to be exactly the same use and same business. If a second business office were put in, it would trigger a change of use and it would have to be brought up to current code. This applies to any commercial property. As major issues, a sprinkler system and central alarm would have to be installed. It already has annual inspection.

Mr. Barnes stated that he is not planning to put an office in and employees there, he is just wants a place to store his equipment. He is building a house behind the building and the office will be in the house.

Ms. Caron asked if the change of use would be because another office would be put in or if it were because two businesses would be utilizing the property. Deputy Chief Holigan stated that he cannot give her an answer today.

Member Sullivan stated that the property is a nonconforming use, it came into existence many years ago. It can only continue to exist as an auto repair shop and if it does not continue as an auto repair shop, then it will revert back to a residential property. Mr. Barnes is proposing to operate a business that is secondary to an auto repair shop. There is no auto repair shop permitted and operational for the site. If that does not happen, the business Mr. Barnes is proposing cannot exist. Mr. Barnes agreed. Member Sullivan stated that the first step is to have an auto repair shop permitted and in place for this to exist as commercial property. It used to be a family business with a house. Now, it is an independent structure on a lot without a dwelling unit. It can continue to exist within the nonconforming use that has been in existence for the last twenty years only if there is an auto repair shop. If there is no auto repair shop, then Mr. Barnes will not be able to use it. At present, the Board does not have an auto repair shop to allow the right to continue.

Member Leondires asked what would happen if the Board granted a variance and the auto repair shop never went in and the conditional use expired.

Chair Saba explained that the Board granted a variance he would be the sole business. Member Sullivan stated that it would be non conforming to a nonconforming use in a residential neighborhood. Chair Saba stated that the Board has the power to grant the conditional use.

Alternate Wetherbee stated that Section 700(c) states that a nonconforming use cannot be changed subsequently to another nonconforming use on the same premises. The Board cannot change it to a landscaping company if an auto repair shop were not in there. Without the garage Mr. Barnes could not use the site for his business.

Chair Saba stated that if the garage does not reopen, the applicant has the option to come in and request a variance to operate a business in a residential zone. After a year, the nonconforming use would no longer exist.

Alternate Wetherbee stated that the applicant could come back and ask for a variance.

Chair Saba stated right now it would be an additional nonconforming use on the same premises as a nonconforming use, but the point is that the business is not operating.

Chair Saba asked if there was more discussion.

Mr. Barnes requested to withdraw the application without prejudice and talk to Mr. Kinney.

Member Sullivan made a motion to allow the Application for Variance submitted by Corey Barnes for Charles & Jeanine Kinney Trust from Article VII Section 700:1 c to allow an additional non-conforming use on the same premises of another non-conforming use on the property located at 170 Main St, Map 17 Lot 55, in the RR2 Zone to be withdrawn without prejudice. Alternate Wetherbee seconded the motion. Vote: 4/0/0. All members present in favor.

Member Leondires made a motion to close the public hearing. Member Sullivan seconded the motion. Vote: 4/0/0. All members present in favor.

Member Leondires motion to adjourn. Member Sullivan seconded the motion. Vote: 4/0/0. All members present in favor.

The meeting was adjourned at 9:13 PM. The next regular meeting of the Atkinson Zoning Board of Adjustment will be September 13, 2023.