

ATKINSON ZONING BOARD OF ADJUSTMENT

21 Academy Avenue

Atkinson, New Hampshire 03811

Public Hearing Meeting Town Hall

Wednesday, October 11, 2023

Members Present

Glenn Saba, Chair

Bob Connors, Vice Chair

Arthur Leondires

Guy Wetherbee

Scott Sullivan

Others Present

Vernon Dingman, IV, Vernon Dingman
Consulting

Ryan Lavelle, James Lavelle, Assoc.

Workshop 7:00 PM

Approval of Minutes:

Member Leondires made a motion to approve the minutes of the August 9, 2023 meeting as amended. The motion was seconded by Member Sullivan. All members of the Atkinson Zoning Board of Adjustment voted in favor. Vote: 4/0/1. Member Connors abstained.

Correspondence: none

Call to Order: Chair Glenn Saba called the meeting to order at 7:30 PM and introduced the members of the Board. He informed the audience that three hearings were scheduled but there was one withdrawal so there would be two hearings at this meeting.

Public Hearing – 7:30 P.M.

Chair Saba opened the public hearings at 7:30 PM, October 11, 2023.

- 1. Application by Vernon Dingman for Jaguar Realty Trust, Teresa Kalil & George Kalil Trustees for a Special Exception under Article VII Section 700:1a to allow the extension, expansion, enlargement or alteration of a nonconforming use on property located at 18 Chase Island Rd, Map 22 Lot 33, in the RR3 Zone. Alteration will be to tear down existing house and rebuild a new larger house with an attached garage and also a detached garage.**

Abutters:

Brownfield Gary Don Rev Trust, Gary Brownfield, TTE (present); Paradise Rev Trust, Kalil, Robert A. TTE; Chase Island Assoc. ; Karen and Guy LaPlante, Bilodeau Scott and Gretchen Liv, Bilodeau Scott and Gretchen TT (present), Jaguar Realty Trust, Kalili, Teresa, TTE (present), Big Island Pond Corporation, Mildred Reynolds, John T. Mason, Jr., Baker Living Trust, Baker Blake and Donna TTEE (present), Vernon Dingman, Consulting (present)

Chair Saba requested the applicant to come forward and read the abutters list. Mr. Vernon Dingman came before the Board to represent the applicant.

Discussion:

Mr. Dingman explained that his clients currently own a home on Map 22, Lot 33 that they would like to remove and build a better home. The current structure is older and no longer fits their needs. The proposed new dwelling will comply with current codes, be more modern and have a garage. All septic and State permits have been obtained and copies of the septic plan and the shoreline permit are included in the application.

The applicant is removing the existing home, building a slightly larger one and adding a garage in the back to store the boat. The proposed, freestanding garage is 30 x 34 feet. It is a story and a half. The upper level of the garage will be storage only. There is a bathroom on the first floor of the garage and it has its own septic. It does not need setback relief, but it is part of the shoreline permit. The only issue is that it is tied to the septic system. There is approval for the septic. It is a pump up system. There are two tanks.

Chair Saba stated that the garage meets current setbacks and is not nonconforming so it does not need to be on the application. Mr. Dingman informed him that the Zoning Administrator requested the freestanding garage be put on the map.

The Board discussed the distance from the freestanding garage to the seasonal high water and decided that the garage did not require relief. It is a legal lot, the proposed, detached garage meets the setbacks. The issue is that the existing dwelling is being replaced by a newer, larger one. The Board does not have a plan for the proposed detached garage. There are a couple of tie points to the lot line and frontage. There are no tie points from the water. They are not seeking relief from the lake. There was no request or determination of relief from the lake. Mr. Dingman stated that the detached garage is 100 feet from the seasonal water.

Vice Chair Connors stated that if the proposed detached garage is 100 feet from the lake and meets required setbacks, then it does not need to be before the Board. If there are issues, they can be resolved by the Building Department. The Board decided not to address the garage. There was no vote.

The Board turned to discussing the proposed dwelling unit. The proposed dwelling will be 36.5 feet long. The additional dwelling is 10 feet smaller. The existing deck corner and the proposed deck corner are equal. The current dwelling is 1.5 stories and the applicant is proposing a 3 story home if the basement is counted as a full story.

Chair Saba asked for questions from the Board. There were none. Chair Saba opened the hearing to the public.

Mr. Blake Baker, 16 Chase Island, has no issues with the proposed plan, but was not aware of the proposed garage. Chair Saba informed him that the garage would not be addressed at the meeting.

Chair Saba requested further discussion from the Board.

Member Sullivan stated that looking at the plan, there are two well recorded setbacks on the water side. The other two sides have setbacks typical for zoning, but he does not see that although the structure is modern and taller, there will be a harmful impact to abutters.

Chair Saba stated that in the RR3 zone the setback to the line is 30 feet, so the applicant is not seeking relief for setbacks.

Vice Chair Connors asked about silt and erosion control. The applicant affirmed that silt and erosion control would be installed prior to start of construction and the silt and erosion control plan has been approved by NHDES. The approval is included in the application.

Member Sullivan stated that the building envelope is carefully outlined. The applicant agreed.

Member Sullivan asked about stamps. The applicant replied that a scanned plan is submitted to the State and is referenced by the number on the approved plan. The dwelling plan submitted to the State does not need to be stamped, just the septic plan. The designers stamp is on the septic plan. The plans that are required to be stamped are stamped.

There was no more discussion. Chair Saba reviewed the criteria.

Findings of Fact:

This hearing was for a special exception under Article VIII Section 700:1a, to tear down an existing dwelling at 18 Chase Island Rd and build a new larger dwelling with attached garage, presented by Vernan Dingman for George and Teresa Kalil of Jaguar Realty Trust.

All state required permits have been received.

The new deck would occupy the same northwest setbacks as the existing deck.

NONCONFORMING USES: 700:1 - ANY NONCONFORMING USE, AS THAT TERM IS DEFINED IN ARTICLE III, MAY BE CONTINUED IN ITS PRESENT FORM EXCEPT AS PROVIDED HEREIN:

- a. No extension, expansion, enlargement, or alteration of a nonconforming use will be allowed without the granting of a Special Exception by the Board of Adjustment. This Special Exception shall be issued in the form of a special permit which shall expire within one (1) year unless acted upon by the permittee.

Discussion: This application is being made as the owner wishes to replace the existing home with a new home that is a larger foot print and detached garage. The proposal has NHDES approval for Shoreland and septic. See attached approval permits.

- b. A nonconforming use of a building or premises which has been abandoned shall not thereafter be returned to such nonconforming use. When any nonconforming use of a structure is abandoned for a period in excess of one year, the structure shall not thereafter be used except in conformance with the regulations of the district in which it is located.

Discussion: The existing dwelling has not been abandoned. It has been used and will continue to be used for personal, residential use.

- c. A nonconforming use may not be changed subsequently to another non-conforming use of the same premises.

Discussion: The proposed home will be the owners own home.

- d. Nothing in this ordinance shall prevent the reconstruction, repairing, rebuilding, and continued use of any nonconforming building or structure damaged by fire, collapse, explosion, or Acts of God, subsequent to the date of the ordinance, provided that the restoration activity commences within two (2) years of the damaged incident. Such restoration will not require a variance. (3/10/2009)

Discussion: Replacement is for older home built in 1945, not for any fire or natural act of God.

- e. A Special Exception shall be granted by the Board of Adjustment provided the following conditions are met for the non-conforming use:
 - 1) There is no diminution of the value of surrounding properties.

Discussion: There is an existing, year round home. There will no diminution to abutting properties as the structure will be an upgrade to the lot and the neighborhood. The Board agreed.

Vote: 5/0/0. All agree.

- 2) It would be of benefit to the public interest.

Discussion: It will be a benefit to the public interest as the health of the lot and area will be upgraded by the installation of a new NHDES approved septic system. Chair Saba pointed out that the new structure will be built to today's standards and codes. Member Leondires pointed out that there is new septic, new water treatment and better erosion control. The applicant had proposed a new well but decided to use the existing well for the new home.

Vote: 5/0/0. All agree.

- 3) It would result in substantial justice being done.

Discussion: It is the largest lot in the area and will allow the owner to use the property to its potential. Chair Saba stated that it is a residential lot being improved and there is no further encroachment.

Vote: 5/0/0. All agree.

- 4) It would comply with Sections WS300 of the Atkinson Water Supply and Sewage

Discussion: The septic system has been approved by the Town and NHDES.

Vote: 5/0/0. All agree.

The four criteria are met.

Chair Saba requested a motion.

Vice Chair Connors made a motion to approve the Application by Vernon Dingman for Jaguar Realty Trust, Teresa Kalil & George Kalil Trustees for a Special Exception under Article VII Section 700:1a to allow the extension, expansion, enlargement or alteration of a nonconforming use on property located at 18 Chase Island Rd, Map 22 Lot 33, in the RR3 Zone. Alteration will be to tear down existing house and rebuild a new larger house with an attached garage. Member Leondires seconded the motion. All members of the Atkinson Zoning Board of Adjustment voted in favor. Vote: 5/0/0. The motion passes.

Chair Saba reminded the applicant there is a 30 day appeal period and any work done prior is at the applicant's own risk. Once again, the house is approved but not the detached garage. The detached garage meets zoning so it does not need approval. If there is an issue, it can come back to the Board. Statements of Fact were not read.

- 2. Application by James Lavelle Associates for Kathleen McMahon for a Special Exception under Article VII Section 700:1a to allow the extension, expansion, enlargement or alteration of a nonconforming use on property located at 6 Stickney Rd, Map 23 Lot 50, in the RR3 Zone. Alteration will be to convert an existing deck to a 3 season room and also to add a new deck.**

Abutters:

Fajvan, Carrie E. Rev Trust, Fajvan, Carrie E. TTE, Sadie Pappas Horaj and Stephen F. Horaj, Roy J. Charland, Bushek Rev Trust, Bushek, David TTEE, Atkinson, Town of (Conservation), Kathleen C. McMahon (present), James Lavelle, Assoc. (present)

Mr. Ryan Lavelle came forward to represent the applicant. Chair Saba read the abutters list.

Discussion:

The applicant is proposing a 2 foot extension of the existing deck in the rear. It is a conversion of a section of the existing deck to 3 season and adding stairs. The big reason for this is to extend the access ramp around to the deck and creating better space with the property. The deck was falling apart. Sideline setbacks are needed. It is a small property and the house itself is not within the required 50 foot setback so adding 2 feet to the deck will not be an issue.

The property is not on the water and is far away from the neighbors. Mr. Lavelle informed the Board that the proposed 2 foot extension is to allow the access ramp to extend around the dwelling for handicap access. The applicant proposes to make the deck two feet wider. There are existing stairs on the other side of the deck. There is no need for a wetland setback.

Chair Saba stated for the record that there is an authorization for Mr. Lavelle to speak on

behalf of the applicant.

Chair Saba stated that the plan shows a 26.2 foot setback to the side lot line. Mr. Lavelle stated that the required rear setback is 50 feet. The house already extends into the 50 foot required setback and it is a nonconforming lot. The required side setback is 15 feet, and the proposed extension of the deck will meet that. Because of the size of the lot, the house and the proposed extension to the deck will not meet the required rear 50 foot setback.

Mr. Lavelle informed the Board that the setback for both sets of steps are similar.

Chair Saba opened the hearing to the public. There was no comment. Chair Saba asked the Board for more discussion.

Member Sullivan asked about the deck and stated no relief is needed on the right side, just the rear. Mr. Lavelle explained that one portion of the existing deck would be enlarged by two feet because of the access ramp. Member Sullivan stated it would still be a deck and would be open air and permeable. Mr. Lavelle explained that it would just be the boxed area shown on the plan that would be enclosed. The existing deck and the new habitable space are not getting any larger or encroaching any further.

Mr. Bill Willis requested to speak and explained that the proposed addition of the deck would be part of the ramp. It would be open and permeable and would just be for travel. The Board agreed that the steps going to the ground would also be just for travel. There are steps on both sides of the deck. Mr. Lavelle explained that one is the new proposed set of steps and the other would be removed. Member Leondires remarked that the setback of the proposed steps and the one to be removed is very similar.

There was no more discussion.

Finding of Fact:

The applicant James Lavelle Associates for Kathy McMahon appeared before the Board for special exception under Article 7 Section 700:1a to convert an existing deck to a three season room with a new deck and stairs. Mr. Ryan Lavelle presented the plan. Chair Saba opened the discussion to the public and there were no comments. Discussion among the Board continued on the layout of the deck with no objections.

Chair Saba asked the Board for further discussion comment.

Member Sullivan pointed out that there is an illustration of a slider on the new, three season deck. Looking at it from the street, if there is a slider on the left hand side, a slider on the right hand side and a passage door on the four foot extended deck and asked about the slider. Mr. Ryan explained that there will be only one room with two access points, one is the slider and one is the man door. The Board concluded the man door would allow easier access.

NONCONFORMING USES: 700:1 - ANY NONCONFORMING USE, AS THAT TERM IS DEFINED IN ARTICLE III, MAY BE CONTINUED IN ITS PRESENT FORM EXCEPT AS PROVIDED HEREIN:

- a. No extension, expansion, enlargement, or alteration of a nonconforming use will be allowed without the granting of a Special Exception by the Board of Adjustment. This

Special Exception shall be issued in the form of a special permit which shall expire within one (1) year unless acted upon by the permittee.

- b. A nonconforming use of a building or premises which has been abandoned shall not thereafter be returned to such nonconforming use. When any nonconforming use of a structure is abandoned for a period in excess of one year, the structure shall not thereafter be used except in conformance with the regulations of the district in which it is located.

Discussion: This has not been abandoned.

- c. A nonconforming use may not be changed subsequently to another non-conforming use of the same premises.

Discussion: It is a single family home and will continue to maintained as such and be owner occupied.

- d. Nothing in this ordinance shall prevent the reconstruction, repairing, rebuilding, and continued use of any nonconforming building or structure damaged by fire, collapse, explosion, or Acts of God, subsequent to the date of the ordinance, provided that the restoration activity commences within two (2) years of the damaged incident. Such restoration will not require a variance. (3/10/2009)

Discussion: This is not the case.

- e. A Special Exception shall be granted by the Board of Adjustment provided the following conditions are met for the non-conforming use:

- 1) There is no diminution of the value of surrounding properties.

Discussion: The property is being improved and there has been no objection from the abutters. Member Sullivan asked if there would be further encroaching of the setback on the rear and if a variance would be required. Chair Saba replied that the Board agreed it is an open air step and is insignificant. If it does require a variance, granting of a special exception by the Board does not relieve them of requiring a variance if there is ever a legal issue. The applicant is not requesting a variance at this time and a variance is not before the Board. The proposed steps are like an open air stoop and should not be counted.

Vote: 5/0/0. All agree.

- 2) It would be of benefit to the public interest.

Discussion: Member Leondires stated that the applicant is taking down a dilapidated deck and rebuilding it. It is a safety issue and would grant better access. Mr. Lavelle stated it would be a better purpose for the occupant of the dwelling unit. The other Board members agreed.

Vote: 5/0/0. All agree.

- 3) It would result in substantial justice being done.

Discussion: Member Leondires stated it is justice because the applicant can enjoy her property and get in and out safely.

Vote: 5/0/0. All agree.

- 4) It would comply with Sections WS300 of the Atkinson Water Supply and Sewage

Discussion: Chair Saba stated that a bathroom is not being added. The current septic and well are adequate.

Vote: 5/0/0. All agree.

The four criteria are met.

Member Leondires made a motion to allow Application by James Lavelle Associates for Kathleen McMahon for a Special Exception under Article VII Section 700:1a to allow the extension, expansion, enlargement or alteration of a nonconforming use on property located at 6 Stickney Rd, Map 23 Lot 50, in the RR3 Zone. Alteration will be to convert an existing deck to a 3 season room and also to add a new deck. Vice Chair Connors seconded the motion. All members of the Atkinson Zoning Board of Adjustment voted in favor. Vote: 5/0/0. The motion passes.

Chair Saba informed the applicant that there is a 30 day period to appeal. Any work done during that period is at the applicants' own risk.

- 3. Application for Variance submitted by James Lavelle Associates for David & Daphne Lovely from Article IV Section 410:8b to allow the construction of a detached garage 50.4' from the Wetland instead of the required 100 feet (49.6' variance) on property at 14 Kings Grant Dr, Map 12 Lot 41 in the RR2 zone.**

Abutters

The abutters list was not read.

Chair Saba informed the Board that the applicant requested the application be withdrawn without prejudice.

Member Sullivan made a motion to allow the request for withdrawal made by James Lavelle Associates for David & Daphne Lovely of the Application for Variance submitted by James Lavelle Associates for David & Daphne Lovely from Article IV Section 410:8b to allow the construction of a detached garage 50.4' from the Wetland instead of the required 100 feet (49.6' variance) on property at 14 Kings Grant Dr, Map 12 Lot 41 in the RR2 zone. Vice Chair Connors seconded the motion. All members of the Atkinson Zoning Board of Adjustment voted in favor. Vote: 5/0/0. The motion passes.

Member Leondires made a motion to close the public hearing. Vice Chair Connors seconded the motion. All members of the Atkinson Zoning Board of Adjustment voted in favor. Vote: 5/0/0. The motion passes.

Adjournment:

Member Sullivan made a motion to adjourn. Member Leondires seconded the motion. All members of the Atkinson Zoning Board of Adjustment voted in favor. Vote: 5/0/0. The motion passes.

The meeting was adjourned at 8:14 PM.