

ATKINSON ZONING BOARD OF ADJUSTMENT

21 Academy Avenue

Atkinson, New Hampshire 03811

Public Hearing Meeting Town Hall

Wednesday, July 13, 2022

Members Present

Glenn Saba, Chair
Bob Connors, Vice Chair
Kevin Wade

Scott Sullivan

Others Present

Karen Wemmelmann, Recorder
Sue Coppeta, Planning Administrator
Theodore Mouzakis

Stephen M. Okun, Dube ConstructionPlus
Jonathan Keevers
Attorney Kleinman, Bouchard, Kleinman, and
Wright, PA

Workshop 7:00 PM

Call to Order: Chair Glenn Saba called the meeting to order at 7:00 PM.

Approval of Minutes:

Member Wade made a motion to approve the minutes of the June 8, 2022 meeting as amended. The motion was seconded by Vice Chair Connors. All members of the Atkinson Zoning Board of Adjustment present voted in favor. Vote: 4/0/0. The vote is unanimous.

Member Sullivan made a motion to approve the workshop minutes of the July 7, 2022 meeting as written. 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

Public Hearing – 7:30 P.M.

Chair Saba opened the public hearings at 7:30 PM, July 13, 2022. There are four members of the Zoning Board of Adjustment ("Board") present, Bob Connors, Kevin Wade Scot Sullivan and Chair Saba. There are four applications for public hearing.

- 1. Application for Variance from Article IV Section 400:4 submitted by Theodore Mouzakis to allow construction of a 16' x 20' garage 2' from the lot line (13' variance) where 15' is required and 17.5' from the front setback (12.5' variance) where 30' is required - on property located at 36 Hemlock Shore Dr. Map 22 Lot 60 in the RR3 Zone. (continued from 05/11/22)**

Abutters:

ABH Realty Trust, Arlene Hawkins, Adam Sugar, Theodore Mouzakis (present), John J. and Margaret M. Robillard, Big Island Pond Corporation

Chair Saba requested the applicant come forward.

Discussion:

Chair Saba stated that at the last hearing, the applicant was going to get some information. The Board was mainly concerned about distance to the lot line as well as issues with a structure being built over the septic tank and maybe a septic system as well. Mr. Mouzakis informed Chair Saba that he got a reply by email from DES stating, that the applicant can build, if it ever fails, he would have to remove it.

Chair Saba read the letter from Travis Guest, DES dated June 6, 2022, into the record.

“...Although I would not recommend building over the tank, there is not much prohibiting what you have proposed provided that the tank can still be accessed for maintenance and pumping. But, if and when the septic fails, and is in need of replacement, the tank will have to be relocated to meet the requirements set by the State.”

Ms. Coppeta informed the Board that she emailed Mr. Guest and asked if he had looked at the parcel and the septic design and he replied that he had not. Ms. Coppeta sent him the plan number. Mr. Guest informed her that a tank can go under a porch or deck as long as there is access, but cannot go under a concrete foundation. It would have to be five feet from the concrete slab foundation.

Based on Ms. Coppeta's correspondence with Mr. Guest, it appears he did not understand exactly what the applicant is proposing. Chair Saba informed the applicant that an H2O tank can go under the driveway because a load can go over it, but it cannot go in an enclosed building as the applicant is proposing. Chair Saba does not believe the Board has the authority to grant approval without even addressing the issues with the lot line and street frontage.

The Board has a stamped septic plan in front of them and they can see where the applicant wants to put the garage, over the tank.

Mr. Mouzakis stated the tank would not be completely over the tank, maybe only 5 feet. Chair Saba replied that the structure would be over the access cover. Mr. Mouzakis agreed and replied that the company has extensions up to 3 feet so it would be accessible. Chair Saba explained that a septic tank cannot be in an enclosed building, inside the foundation under State regulations because of gases and access. The garage is part of the foundation. If there were an open air tent it would be permissible. Mr. Guest only stated that the applicant could drive over the tank. Chair Saba informed the applicant that in Mr. Guest's email to Ms. Coppeta, he stated that he did not realize that the tank would be inside the proposed garage.

Chair Saba asked for comments from the Board members.

Member Sullivan asked if it would be in the jurisdiction of the Board.

Chair Saba agreed with Member Sullivan. Even if the request for variance were granted by the Zoning Board, the Building Inspector would not be able to issue a building permit for the same reasons. Mr. Mouzakis is only showing that he can drive over it.

Mr. Mouzakis explained that he could not get any more information and no one wants to sign. The applicant went to Mr. Maznek, who designed the system, and he would not sign. Chair Saba stated that the Board needs someone with authority to give something in writing that it is allowed.

Vice Chair Connors stated that Mr. Mouzakis could not get an answer because it's never been done before. Chair Saba again stated that it is not allowed.

Mr. Mouzakis also went to Mr. Lavelle but due to time constraints, Mr. Lavelle was unable to review the plans and inspect the system.

Chair Saba informed the applicant that he needs a stamped letter from an engineer or a licensed septic designer. If he can get that, then he will need a survey plan.

Mr. Mouzakis requested to withdraw without prejudice.

Vice Chair Connors made a motion to accept the withdrawal without prejudice of the Application for Variance from Article IV Section 400:4 submitted by Theodore Mouzakis to allow construction of a 16' x 20' garage 2' from the lot line (13' variance) where 15' is required and 17.5' from the front setback (12.5' variance) where 30' is required - on property located at 36 Hemlock Shore Dr. Map 22 Lot 60 in the RR3 Zone. (*continued from 05/11/22*). Member Sullivan seconded the motion.

Discussion: None

All members present voted in favor. Vote: 4/0/0.

Chair Saba informed the applicant that he has withdrawn without prejudice and if has more information he can come back. If he does return to the Board he would need to file a new application. The applicant agreed.

2. Application by Leonard & Catherine Traub for Special Exception under Article VII Section 700:2 to allow conversion of a seasonal home to year-round status on property located at 12 Hemlock Heights Rd. Map 22 Lot 95, in the RR3 Zone. (*continued from 5/11/22*)

Abutters:

John Pomer, Marjorie Venditti, Carol Palmegiano Irrev. Trust, Carol Palmegiano TTE, Susan C. Collette, Catherine L. and Leonard A. Traub (present), Davies Family Rev. Trust, Adam W. and Robin A. TT, Budzyna 2016 Trust, Gail S. Budzyna and Nicole M. DiFramco TTEs, Lorraine D. Gorrow Rev. Trust, Diane M. Gorrow (present), Samantha Stenbeck and Kevin Choinski, Hemlock Heights c/o Diane Gorr

Chair Saba stated that the applicant has requested a continuance to August 10, 2022 and requested a motion.

Vice Chair Connors made a motion to continue until August 10, 2022, the Application by Leonard & Catherine Traub for Special Exception under Article VII Section 700:2 to allow conversion of a seasonal home to year-round status on property located at 12 Hemlock Heights Rd. Map 22 Lot 95, in the RR3 Zone (*continued from 5/11/22*). Member Wade seconded the motion.

Discussion: None

All members of the Atkinson Zoning Board of Adjustment present voted in favor. Vote: 4/0/0.

3. 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 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, this request is for additional variances of 5' wetlands setback and 3'7" side setback. (*Continued from 6/8/22*)

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)

The applicants came before the Board.

Discussion:

Chair Saba informed the Board that he had two sets of plans. Ms. Sullivan informed him that one is showing the abutters and the other is showing the foundation and the setbacks.

Attorney Kleinman, Bouchard, Kleinman and Wright, PA, also came before the Board to provide assistance. He is on the Planning Board in Brentwood, New Hampshire.

Chair Saba explained that at the last hearing, the Board requested more information. Ms. Sullivan explained that they were working with the Fire Department.

Mr. Dube informed the Board that they were provided with a foundation certification as requested. The Board also requested distances between the building. Also, the applicant has spoken with the Fire Chief on multiple occasions and has met with him as well.

Chair Saba informed the applicant that he would have the Fire Chief speak regarding life safety issues.

Chair Saba asked Mr. Dube if he has looked at the overhang. Mr. Dube explained that he had an engineer look at it and is working on the foundation certification determining if he feels comfortable. They have a letter regarding the framework. It is not complete because the engineer went on vacation. The applicant was issued a building permit.

Chair Saba asked if there was an overhang on the request for a building permit. Mr. Dube informed him there was no overhang on the building permit because they were going to use the existing foundation. Chair Saba stated that when the building permit was submitted it was for a load directly over the foundation. Now the applicant has canter load. Mr. Dube stated that the applicant has an engineering report stating that the foundation can handle the load with a 10 inch overhang on both sides, but it is not in the folder.

Chair Saba read the letter into the record addressed to the Building Inspector from Associated Design Partners, Inc.

“...with regard to the framed overhang at the existing foundation located at 26 Lakeside Drive, in Atkinson, we have reviewed the plans and performed the site visit to look at actual conditions. We have analyzed the floor joist framing components and performed calculations to determine if they are acceptable for this application to support the structure and conform to today’s building code requirements....

Signed James Thibideau, PE, SE, DFE, President Associated Design Partners. “. The letter was placed in the file.

Ms. Sullivan explained that they will get the foundation certification. The occupancy permit will be an issue; however the applicant is before the Board for a zoning issue. Member Sullivan explained that the foundation certification will need a wet stamp.

Member Sullivan explained that the Board is looking at the existing footprint and a plan that shows an overhang of 10 or 12 inches from the existing structure. Then, the Board will review it. Whether or not the structure exists will not impact the decision.

Chair Saba is concerned that the foundation can support the overhang. If it cannot, the setbacks will be a moot point.

Chair Saba requested Chief Murray come before the Board for his input and comments.

Chief Murray informed the Board that he has reviewed the plan. Looking at it from the standpoint of lot lines, this particular building is over the 30 feet. Therefore, there are no proximity issues. For anything less than 30 feet, he would be required to comply with NFP 80. In order for him to sign off on occupancy, a sprinkler system would be required.

Ms. Coppeta stated that the application, the permit and the plan set submitted with it is not what was built because of the overhang. The description on the application also differs from what has been built. She recommended that the permit be voided and reissued with the plans

that match what has been built and the description on the application. The applicant would not have to pay for another permit unless there were additional inspections. Ms. Sullivan stated that the applicant would comply after the Zoning Board issue. Chair Saba informed her that plan review from various departments would also require it.

Mr. Dube commented that the changes have been made, and inspections have all been done up to the roughing.

Chair Saba stated that based on what was built, a proper plan review was not done. There have been inspections and no one caught that something was wrong.

Mr. Dube stated that the 10 inch overhang was pointed out at the inspections and that he has no problem with submitting a new application and going through the process again. He is willing to put in a sprinkler system.

Chair Saba informed him that it has not been decided if the structure can stay. He is concerned that the foundation can support the structure as it has been built.

Mr. Dube stated that the application can be filled out again and the process can be gone through again.

Attorney Kleinman stated that it is an important point that the applicants are willing to spend \$20,000 on a sprinkler system.

Chair Saba informed the attorney that a variance was granted, a permit given and something different was built. No plan review was done.

Attorney Kleinman stated that a plan review will be done on the new plans that will be submitted. The applicant is here for setback review.

Chair Saba informed him that in October the Board had an open air deck in front of them, now they have a totally new structure.

Ms. Sullivan informed him that the Fire Chief is satisfied with the life safety issues and the distance between the proposed dwelling and the neighbors.

Chair Saba opened the hearing to the public.

Ms. Brittany DeVitto, 24 Lakeside Drive and 5 Lakeside Drive came forward and stated that she does not have a problem with the plan. Chair Saba informed her that the location of the proposed dwelling could prevent her from expanding her residence. Ms. DeVitto replied that it would not be possible anyway. The dwelling being built is actually further from her house. Chair Saba stated the landing doesn't count, there is a totally new structure. Ms. DeVitto stated that it is a wonderful project and she would like to see it built.

Attorney Kleinman stated he started out talking about the Fire Chief's findings and the applicants willingness and this is an important consideration for substantive justice in terms of granting the exception for variance.

Chair Saba asked if there were questions from the Board. Member Sullivan stated he would like to hear some of the presentation from the Fire Chief.

Vice Chair Connors stated that the issues are life safety and congestion. He is concerned about the distance wall to wall. If the Fire Chief is not concerned, then the appropriate measures are there to prevent fire spread. The other issue is whether the abutter would be able to expand.

Attorney Kleinman remarked that it is not only the 30 feet plus, but the \$20,000 sprinkler system.

Chief Murphy is concerned about the street width, requirements for a fire lane and the water supply. He has done his homework and the sprinkler system is to meet the intent and spirit of the ordinance.

Ms. Sullivan stated that after she spoke to the Fire Chief, everything made sense.

Chair Saba agreed to go through the criteria. Chair Saba explained that the criteria must be reviewed for each variance request.

The Board went through the conditions for the request for variance from Article VI Section 400:4 to allow the construction of a home 11'3" from the sideline where 15' is required (3'9" variance on property at 26 Lakeside Dr, Map 23 Lot 52 in the RR3 zone.

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

It does not obstruct the line of sight to the lake for any abutters. It will enhance the value of the home, the look of the home and the neighborhood. The remodeled / new home is in a secluded and not highly traveled part of the lake.

Discussion:

Chair Saba stated that the public interest based on setbacks is what the applicant has stated and what is in the handbook. Chair Saba read from the handbook: does the variance alter the essential character of the neighborhood or threaten the health general welfare and safety of the public. The applicant addressed two of the issues in the handbook and as far as safety, the Fire Chief spoke. It will be picked up in plan review. Attorney Kleinman stated that the Fire Chief's testimony was important and because it is in a secluded area it would not be a detriment to the public.

Member Sullivan stated that the structure only overhangs 10 inches from the foundation. He is concerned about how much of the structure goes within the 15 foot setback. 18 feet 8 inches of the structure is in the setback. This is less than half. The purpose of the setback is for

density and safety. The structure is 2 stories which is more exposure to the abutter. There is only a small portion of the structure in the setback.

Vice Chair Connors drove by and he feels there is sufficient distance between the applicant's dwelling and the dwelling of the abutter. He does not believe that there will be any visibility problems or any safety issues. The applicant stated that the road cannot be changed.

All members of the Zoning Board of Adjustment present agreed that Criteria 1 has been met. It is unanimous.

Vote: 4/0/0. Criteria 1 is approved.

2. The spirit of the ordinance is observed because:

The home side overhang allows for balance to the foundation, 12 inches per side to make the house 34 feet in width; it meets the shoreline approval and fire safety permits from the fire chief.

Discussion:

Member Sullivan asked if the overhang were merely for aesthetic reasons and Ms. Sullivan stated yes.

Chair Saba stated that the Board is discussing a setback, the life safety issues and density issues have been resolved. It is a section that is encroaching, not the entire structure. Based on these reasons, he would agree with the applicant.

All members of the Zoning Board of Adjustment present agreed that Criteria 2 has been met.. It is unanimous.

Vote: 4/0/0. Criteria 2 is approved.

3. Granting the variance would do substantial justice because:

None of the abutters are negatively affected. The direct abutter, Brittany DeVitto, has no issues with the proposed overhang. It will allow the applicant space to enjoy the lake. The home width is recorded and taxed at 35 feet wide. 35 feet was approved in the building permit. The request for variances proposed are the result of a new survey. The applicant has already put substantial investment into the property.

Discussion:

Chair Saba stated that any loss to an individual not outweighed by a gain to the general public is an injustice and asked what the gain to the public would be by denying the variance. The life safety issues are resolved. The structures are already there. Congestion and density are only increased by 10 inches.

Member Sullivan is concerned about shadow casting. The applicant replied that regarding shadow casting, there is only one neighbor, the proposed dwelling will be at a dead end and the trees are much taller than the house. There is no one to the front, behind or to the other side. Ms. DeVitto stated that shadow casting is not a problem.

Member Sullivan stated that other than shadow casting he has no issues.

In the presentation and discussion about the building permit and the 34 feet and what is existing, has nothing to do with this discussion. It's a big mistake and it is on the applicant. Other than that, he has nothing else that would affect the public interest.

There was no other discussion.

All members of the Zoning Board of Adjustment present agreed that Criteria 3 has been met. It is unanimous.

Vote: 4/0/0. Criteria 3 is approved.

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

This will greatly improve the quality and look of the existing property from the lake; it will increase the value of the home and the surrounding property values and the neighbor's property values. She showed a picture of the camp that was there before. The Board agreed that it was a big improvement.

Discussion:

The Board all agreed that a new home is a big improvement over an old camp.

All members of the Zoning Board of Adjustment present agreed that Criteria 4 has been met. It is unanimous.

Vote: 4/0/0. Criteria 4 is approved.

5. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

5a. No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of the provision to the property because:

The only affected abutters are the DeVittos, they own the property beside them and across the street. They have stated that it does not create a hardship on their part, they are in favor of the project and have provided a letter in support of the project which is enclosed with the application.

Attorney Kleinman stated that this is somewhat addressed by the prior criteria. It has already been determined that this will have very minimal, if any affect on the public and in terms of this application, the only affect would be on the abutter, Ms. DeVitto, who has already indicated that she is in favor for the reasons that have already been discussed, that the project will improve the value of the community and the surrounding area. It will be a project that is done in a tasteful manner. Looking at the substantial relationship or lack of substantial relationship to the public and applying this application, this is one box that can be checked off.

Vice Chair Connors stated that the hardship comments in the book state that the restrictions on one parcel are balanced by similar restrictions on other parcels in the same zone. When a

hardship is imposed, it is shared equally by property owners. It is only when some characteristic of a particular land in question makes it different from others can an unnecessary hardship be claimed. What the abutter says is not part of the conversation.

Chair Saba stated that the need for a variance is self-inflicted. Looking at the uniqueness of the lot and how it is situated and, compared to the other lots in the neighborhood it is good sized. The setback between the abutting structure and your structure is over 30 feet. The abutter understands that her rights have been diminished and she is fine with that. Based on these reasons he would say that he is ok.

Member Sullivan states that for planning purposes, he does not understand why it has to overhang 10 inches. If this were in the initial planning steps, the Board would be pushing back. It cantilevers under a foot, he does not see any space needs or code requirements that your bedroom cannot be less than 70 square feet. Sometimes these choices are really not hardships. The 10 inches is not substantial, it does not create more nonpermeable surface. Hopefully, the applicant will be infiltrating so that runoff will be recharged into the ground. It is 10 inches out of 34 feet.

All members of the Atkinson Zoning Board of Adjustment present voted to approve Criteria 5a. It is unanimous.

Vote: 4/0/0. Criteria 5a is approved.

5b. The proposed use is a reasonable one because:

It does not impact the public or abutters in a negative way. It adds value to the applicant's home and properties both abutting and along the lake.

Discussion:

Chair Saba stated that it is a reasonable use, it is in the permitted uses, it is a residence, the applicant is improving it. Times have changed, homes are bigger. Member Wade stated that new construction always improves the area. Vice Chair Connors stated that one of the key points is if it will alter the essential character of the neighborhood and it will not.

All members of the Atkinson Zoning Board of Adjustment present voted to approve Criteria 5b. It is unanimous.

Vote: 4/0/0. Criteria 5b is approved.

Chair Saba reminded the applicant that there is a 30 day period and any development during that period will be done at the applicant's risk.

Next, the Board went through the request for variance for Article IV Section 410:8b to allow a proposed deck 55' feet from the Wetland instead of the required 100 feet (45' variance).

It is an open air deck. Ms. Coppeta reminded the Board that previous variances granted on October 13, 2021 were for a 40' wetland setback, but an additional five feet is needed. The applicant explained that the additional five foot variance is required because a survey was

done and the lot lines were miscalculated. The applicants had originally used a CAD drawing to calculate the setbacks to the lot lines.

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

For the deck, it does not obstruct the line of sight to the lake for any of the abutters. The proposed deck would be farther from the Wetlands than many other structures around the lake. It will enhance the value of the home and the look of the home in the neighborhood. The proposed deck is in a very secluded area, it is not highly traveled and the applicant is in the dead end portion, marsh part of the lake.

Discussion:

Member Sullivan asked if the deck is 14' x 34', and the setback from high water is because of the landing and stair. The landing and stair request is for four feet. The applicant agreed and explained that it is really the only place to put it. Ms. Sullivan answered that looking around the lake, there are many other decks that are closer. State requirements are for a 50 foot setback from the wetlands. Chair Saba believes the setback for an open deck is 25 feet.

All members of the Atkinson Zoning Board of Adjustment present voted to approve Criteria 1. It is unanimous.

Vote: 4/0/0. Criteria 1 approved.

2. The spirit of the ordinance is observed because:

The shoreline approval from the State has already been granted. The State requires a setback of 50 feet from the water. The ordinance is intended so that structures would not be too close to the Wetlands but the majority of decks in the surrounding area are much closer than the required setbacks.

Discussion:

Chair Saba stated that relief has already been granted, this is for an additional 5 feet. The State has a 50 foot requirement while the Town of Atkinson has a 100 foot requirement. The Conservation Commission is in agreement.

All members of the Atkinson Zoning Board of Adjustment present voted in favor. It is unanimous.

Vote: 4/0/0. Criteria 2 is approved.

3. Granting the variance would do substantial justice because:

None of the abutters are negatively affected, including Brittany DeVitto. It will allow the applicant space to enjoy sitting outside by the lake.

Discussion:

Chair Saba stated as far as setbacks for the lake are concerned, he does not think that there would be an injustice to the general public. The Board has already granted 45 feet, this is an

additional 5, and there are many structures closer. For the above reasons, he does not see an issue.

All members of the Atkinson Zoning Board of Adjustment present voted to approve Criteria 3. It is unanimous.

Vote: 4/0/0. Criteria 3 is approved.

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

This will greatly improve the quality and look of the existing property from the lake.

Discussion:

Chair Saba stated that the Board has already approved the 40 feet. Now, the applicant is requesting an additional 5 feet. He believes that the State requires a 25 foot setback for an open deck from wetlands.

All members of the Atkinson Zoning Board of Adjustment present voted to approve Criteria 4. It is unanimous.

Vote: 4/0/0. Criteria 4 is approved.

5. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

5a. No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of the provision to the property because:

The wetland setback relief to the rear deck appears to be a reasonable request compared to many that are significantly closer to the water around the same lake and on the same street.

Discussion:

Conservation does not have an issue. This is open water as compared to a resource protected wetland area. There are boats and swimming and other uses.

All members of the Atkinson Zoning Board of Adjustment present voted to approve Criteria 5a. It is unanimous.

Vote: 4/0/0. Criteria 5a is approved.

5b. The proposed use is a reasonable one because:

It does not affect the public or abutters in a negative way.

Discussion:

Chair Saba stated that it is a reasonable use. The applicant needs stairs to get off the deck. There was no more discussion.

All members of the Atkinson Zoning Board of Adjustment present voted to approve Criteria 5b. It is unanimous.

Vote: 4/0/0. Criteria 5b is approved.

Chair Saba reminded the applicant that there is a 30 day appeal and that anything done in that period is at their own risk.

The final request is for a variance from Article IV Section 400:4 to allow the same proposed deck 7'8" from the sideline where 15' is required (7'4" variance).

Chair Saba asked the representative from the Fire Department regarding setback for the deck if the Fire Department is concerned about setback for the open deck. The Fire Department representative replied that it is primarily concerned about a structure that has significant width and height. Code #A uses width and height to calculate radiant heat. He thinks that the deck has a very thin profile and would not be a significant hazard.

Chair Saba asked about the screened porch, it is on the other side so the roof is on the other side and would not be an issue.

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

For the deck, it does not obstruct the line of sight to the lake of any of any of the abutters, it will enhance the value of the home, the look of the home and the neighborhood, it is in a secluded area, it is not highly traveled and there is no public safety issue because it is greater than 30 feet from the next lot.

Discussion:

Chair Saba agreed that it does not alter the essential character of the neighborhood in any way. There was no further discussion.

All members of the Atkinson Zoning Board of Adjustment present voted to Approve Criteria 1. It is unanimous.

Vote: 4/0/0. Criteria 1 is approved.

2. The spirit of the ordinance is observed because:

The shoreline approval from the State for the deck has already been granted.

Discussion:

Chair Saba stated that the use is allowed. Because of the uniqueness of this lot and its size as discussed, the cumulative effect looking across the entire shoreland may be a problem, but because it is unique in how it stands and how far away it is from the abutter compared to other properties he believes that the spirit is being met.

Discussion:

The Board has already granted relief for the side set back. There is only 3 feet 8 inches difference from prior approval. It is so far from the other building that fire safety is not an issue.

All members of the Atkinson Zoning Board of Adjustment present voted to approve Criteria 2. It is unanimous.

Vote: 4/0/0. Criteria 2 is approved.

3. Granting the variance would do substantial justice because:

None of the abutters are negatively affected. The DeVittos have no issues with this proposed setback. It will allow the applicant space to enjoy sitting out by the lake.

Discussion:

Chair Saba stated that the Board has already granted relief and he does not believe the general public will gain if this relief for the open deck is denied.

All members of the Atkinson Zoning Board of Adjustment present voted to Approve Criteria 3. It is unanimous.

Vote: 4/0/0. Criteria 3 is approved.

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

This will greatly improve the quality and look of the property from the lake. It will also increase the property values of the neighbors.

Discussion: none

All members of the Atkinson Zoning Board of Adjustment present voted to approve Criteria 4. It is unanimous.

Vote: 4/0/0. Criteria 4 is approved.

5. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

5a. No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of the provision to the property because:

Compared to other properties on the lake, the deck is actually farther away from other structures.

Discussion:

Chair Saba stated that looking at the property as it sits and its uniqueness, its size and its distance to the abutter and also there is no abutter on the opposite side. It is the uniqueness of the lot that allows the granting of this variance. A variance has already been granted, the Board is just adding to it.

All members of the Atkinson Zoning Board of Adjustment present voted to approve Criteria 5a. It is unanimous.

Vote: 4/0/0. Criteria 5a is approved.

5b. The proposed use is a reasonable one because:

It does not impact the public or abutters in a negative way. It adds value to their home.

Discussion:

Chair Saba stated that an open deck with stairs to the deck is reasonable. It is close to the lot line, but relief has already been granted.

All members of the Atkinson Zoning Board of Adjustment present voted to approve Criteria 5b. It is unanimous.

Vote: 4/0/0. Criteria 5b is approved.

Chair Saba congratulated the applicant, all variances have been granted. He reminded the applicant that there is a 30 day period and any development during that period will be done at the applicant's risk.

Vice Chair Connors made a motion to conditionally approve:

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 at 26 Lakeside Dr, Map 23 Lot 52 in the RR3 zone;

A variance 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);

With the understanding that the applicant will submit a new application for a building permit and comply with all safety requirements and building codes.

Member Wade seconded the motion. All members of the Atkinson Zoning Board of Adjustment voted in favor. Vote: 4/0/0.

- 4. Application for Variance from Article V Section 530b submitted by Alfred J Hardy, Jr to allow a proposed subdivision of a 6.87 acre lot to create 2 lots, one with less than 200' of frontage. One proposed lot of 2.0 acres will have 74' of frontage requiring a variance of 126'. The property is located at 36 Meditation Lane, Map 8 Lot 103 in the TR2 zone.**

Abutters: Edwin and Erica Araujo, Patrick and Jeannette Hurley Trust, Patrick Hurley TTE, Elizabeth Conha Schoonman, Lawrence and Tammy LeBlanc, Judy and John

Driver, Eileen Calandriello, Alfred and Shelley Hardy, Jr. (present), Mary W. Roy, Burns Family Rev. Trust, Nicole Burns TTE, Andrew J. Dicologero, Roy, Thomas Rev Trust, Thomas Roy TTE (present)

Discussion:

Chair Saba informed the Board that this is an application for a subdivision where there is not enough frontage. There is a conceptual plan in the folder. The applicant came before the Board. He explained that he is asking relief because he is getting older, he has neuropathy and is a Viet Nam veteran. He would like to have his daughter closer to him so he will not have to call the fire department. He fell in his back yard and got a big sliver. He loses his balance at times. He was told that he could put a house in the back when he bought the property but he was not aware of the frontage issues.

Chair Saba opened the hearing to the public. If a lot is being created, the hearing is opened to the public.

Chair Saba explained that the fire department has a 911 system and that it appears that there is no house number. Ms. Coppeta informed him that those issues would be reviewed by the Planning Board.

Jonathan Keevers, 18 Academy Ave requested to speak. He is the applicant's son-in-law.

Chair Saba stated there are provisions in the zoning regulations that allow for reduced frontage by special exception, but the applicant does not meet those requirements. The applicant is asking for a variance. According to the plan the applicant has upland for both lots, 2 acres or more apiece.

Chair Saba requested members of the Board to speak.

Vice Chair Connors stated that none of the buildings are shown so we do not know if other setbacks are required. Chair Saba pointed out the building envelope and informed him that there is ample setback.

The applicant has already done a wetland impact.

Chair Saba stated that if there were a question about the soils, they would be addressed at the time the engineer did the site walk. The soil types in this area are generally not an issue.

Mr. Roy stated he looked at the plan and he has no issues.

There was a question about line of sight. Chair Saba remarked that it is pretty straight. Mr. Keever showed pictures of the present dwelling. There is no issue with the line of sight. The home would be at the back. There are not enough setbacks closer to the road for the proposed dwelling to be closer to the front. The lot total is 931, so the driveway would be around 400 feet.

Chair Saba stated he would like to see a conceptual plan showing that a 400 foot road with a circle could be put in to give the applicant frontage and there was enough upland and area to put a house. The Board needs to go through the criteria and decide whether it is reasonable or not and it meets the criteria in order to grant a variance according to rules and regulations. All this shows is the setback where a building could be put and meet the setback requirements to the lot line. It is all upland, there is no wetland on the 2.00 acres and there is no wetland on the 4.85 acres. The entire lot is 6.85 acres.

Member Sullivan stated that it looked ok to him.

Chair Saba stated that the existing lot after cut off would be 4.85 acres with 2.5 acres of contiguous upland. The new proposed lot would be 2 acres with 2 acres of contiguous upland. It would be nice to show if the applicant could meet 200 feet.

Mr. Keever stated that this map is not to scale. Mr. Zilch has a full plan to scale.

The Fire Department representative stated that the Fire Department looks at three things; fire department access, water supply and exposure to nearby buildings. Meditation Lane is a hydrant district so water supply is not a problem. There are no nearby buildings so exposure is not a problem. However, access will require a 20 foot road and/or sprinkling. This would be addressed in the code review. Mr. Keever spoke to the Chief and was informed that the Chief does not have a problem but the applicant would need to have a sprinkler system or access.

Chair Saba informed the applicant that because it is a subdivision a variance from the Zoning Board is required first, then the application needs to go to the Planning Board if they are successful. The Planning Board will do a plan review. Then the applicant will have to go to the Building Inspector for a building permit and there would be a plan review for the structure.

Chair Saba stated that there is enough land for both lots and in excess. The slopes are not bad. All criteria are met except for the frontage. The lot widens out in the back. Congestion is not an issue. The only issue is the road frontage.

If the Board has no more questions, at the pleasure of the applicant, the Board can go through the criteria.

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

The property contains approximately 6.8 acres. The proposal is to subdivide the lot into 2 lots. The lot supporting the existing dwelling shall be a minimum of 4.85 acres and will be supported with 200 feet of frontage on Meditation Lane. The property of the second lot will be 2 acres with 74 feet of frontage on Meditation Lane. As noted, the proposed subdivision meets and exceeds all other lot sizing and siting requirements and is only lacking in the frontage to support the second lot. Once built, the slight lack of frontage would not be discernable from many other parcels with similar frontage whether abutting or removed from the site. Nor would the lot subdivision appear to be overcrowded.

Discussion:

Member Wade asked if there were any other lots on Meditation Lane with frontage that narrow. The applicant explained that he believes there is one lot on the west side. Member Sullivan believes that it would be one of the narrower lots if it is created, and stated that the line of sight is good. The vegetation on the roadway is minimal as far as safety is concerned.

Vice Chair Connors explained that the purpose of the ordinance as far as frontage is to prevent pork chop lots and the cumulative effect. However, each case must be looked at individually. Where the applicant does have the appropriate setbacks and acreage, the only issue is the frontage. Without seeing the driveway, it is difficult to figure out what it will look like.

Chair Saba stated the Board must decide if granting the variance would not be contrary to the public interest, does the variance alter the essential character of the neighborhood or threaten the health safety and general welfare of the public. Chair Saba stated that the life safety issues have been addressed. As far as the character of the neighborhood, as the applicant stated, the dwelling would be set back far enough so it would not be noticed. The plan is not to scale but looking at the 200 feet of frontage and compare it with the back side, it is pretty close. The building area is adequate.

Vice Chair Connors asked if the circle driveway would continue on the property. Chair Saba asked if that were the entrance the applicant will use. Mr. Hardy stated the proposed new driveway would be to the left. Ms. Coppeta stated that the location of the driveway would be a subject of the Planning Board and Fire Safety. It does not have to match the frontage. If he is the owner of both lots he could grant an easement.

All members of the Atkinson Zoning Board of Adjustment present voted to approve Criteria 1. It is unanimous.

Vote: 4/0/0. Criteria 1 is approved.

2. The spirit of the ordinance is observed because:

The intent of the ordinance is to provide adequate separation of dwellings and the driveways that serve the dwellings and to maintain a reasonable density and prevent overcrowding. The lots would/will contain the proper area and will have generous building envelopes ensuring proper separation. When considering there are other lots with less than 200 feet of frontage, this request is reasonable. The dwelling on the newly separated lot would be located well back from the road and would not be intrusive.

Discussion:

Chair Saba informed the Board that the Courts have emphasized in numerous decisions that the characteristics of a particular parcel of land determine whether a hardship exists. There are six acres, more than 5 acres of the property are upland. More than 2 acres per lot is required. Congestion is not an issue. Life safety has been addressed. He believes the spirit of the ordinance has been addressed.

Chair Saba requested input from the Board.

Member Sullivan agrees and stated that the buildable part of the lot is well spaced out.

Chair Saba stated that the new dwelling would not be behind the existing one. It's further back.

Member Sullivan stated that the house to the left is a little forward and there is a couple hundred feet of spacing.

Chair Saba requested a vote.

All members of the Atkinson Zoning Board of Adjustment present voted to approve Criteria 2. It is unanimous.

Vote: 4/0/0. Criteria 2 is approved.

3. Granting the variance would do substantial justice because:

It will allow for the creation of a lot although lacking in frontage, meets and exceeds all other lot sizing and siting requirements. This is a high quality lot with excellent soils, moderate slope and a generous buildable area. The elderly disabled combat veteran property owner and his wife would also benefit from their family being close to them and lend support. Granting of the variance would allow for the construction of one additional home on a tract of land that in all due respects supports the use and as such substantial justice is done.

Discussion:

Chair Saba stated that the guiding rule is that any loss to the individual that is not outweighed by a gain to the general public would be an injustice. By denying this what would be the gain to the general public. Chair Saba stated that it is a nice site, the slopes are not bad and the site is big enough to support what the applicant is requesting.

There was no more discussion.

All members of the Atkinson Zoning Board of Adjustment present voted to approve Criteria 3. It is unanimous.

Vote: 4/0/0. Criteria 3 is approved.

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

The use for which the variance is sought is for the residential use as enjoyed by the surrounding property owners. Granting the variance will not create any unsafe or intrusive conditions. There is no wetlands impact associated with this proposal and the lots are large enough to provide individual septic systems and individual wells with excellent receiving and recharge area left available. The lots will be generously sized and the potential dwelling to be constructed will be of the same or greater value of the surrounding neighborhood.

Discussion:

Chair Saba that the Board has no reason to believe otherwise and has no arguments against diminution.

All members of the Atkinson Zoning Board of Adjustment present voted to approve Criteria 4. It is unanimous.

Vote: 4/0/0. Criteria 4 is approved.

5. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

5a. No fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of the provision to the property because:

The ordinance does not consider every application and that is evident in a case such as this. Granting the variance allows the property owners the full productive use of the property for their immediate and long term needs. As demonstrated this lot will meet all other lot sizing and siting requirements as required without creating unsafe or unsightly conditions. There is no wetland impact.

Discussion:

Chair Saba asked for discussion. He stated that regarding the frontage purpose of an ordinance, if the lot meets all criteria and it can be shown that life safety criteria and congestion issues have been met, then frontage requirements should be the least important.

The applicant is requesting to create a two acre, rolling lot with decent soils, a huge buildable envelope and it is all upland. Chair Saba does not have an issue with 5a.

There was no more discussion.

All members of the Atkinson Zoning Board of Adjustment present voted to Approve Criteria 5a. It is unanimous.

Vote: 4/0/0. Criteria 5a is approved.

5b. The proposed use is a reasonable one because:

The proposed use is reasonable, allowing for one additional dwelling fully supported by all other requirements and considerations as outlined above.

Discussion:

Chair Saba stated that to build a house on a 2 acre lot, although it does not meet 200 feet of frontage, it widens out considerably. It does not affect the existing lot and home. It meets life safety requirements and does not impact or require any other relief. He believes that the criteria for 5b have been met.

He asked the Board members to speak. There was no more discussion.

All members of the Atkinson Zoning Board of Adjustment present voted to approve Criteria 5b. It is unanimous.

Vote: 4/0/0. Criteria 5b is approved.

Vice Chair Connors made a motion to approve the Application for Variance from Article V Section 530b submitted by Alfred J Hardy, Jr to allow a proposed subdivision of a 6.87 acre lot to create 2 lots, one with less than 200' of frontage. One proposed lot of 2.0 acres will have 74' of frontage requiring a variance of 126'. The property is located at 36 Meditation Lane, Map 8 Lot 103 in the TR2 zone. Member Wade seconded the motion. All members of the Atkinson Zoning Board of Adjustment voted in favor.

Vote: 4/0/0. Unanimous.

Chair Saba reminded the applicant that the variance has been approved. There is a 30 day appeal period and any development during that period will be done at the applicant's risk.

Vice Chair Connors made a motion to close the public hearing. Member Sullivan seconded the motion. The public hearing was closed at 9:19 PM. All members of the Atkinson Zoning Board of Appeals voted in favor. Vote: 4/0/0.

Member Sullivan made a motion to adjourn the July 13, 2022 meeting of the Atkinson Zoning Board of Adjustment. Member Wade seconded the motion. All members of the Atkinson Zoning Board of Appeals voted in favor. Vote: 4/0/0.

The meeting was adjourned at 9:25 PM.