

## **ATKINSON ZONING BOARD OF ADJUSTMENT**

**21 Academy Avenue**

**Atkinson, New Hampshire 03811**

**Public Hearing Meeting Town Hall**

**Wednesday, September 14, 2022**

### **Members Present**

Glenn Saba, Chair

Bob Connors, Vice Chair

Kevin Wade

Scott Sullivan

### **Others Present**

Karen Wemmelmann, Recorder

Brian Murray, Fire Chief

James Cowdery

### **Workshop 7:00 PM**

#### **Approval of Minutes:**

**Member Wade made a motion to approve the minutes of the August 10, 2022 meeting as amended. The motion was seconded by Member Sullivan. The members of the Atkinson Zoning Board of Adjustment present at the August 10, 2022 meeting and the September 14, 2022 voted in favor. Member Connors abstaining. Vote: 3/1/0.**

#### **Correspondence:** none

**Call to Order:** Chair Glenn Saba called the meeting to order at 7:30 PM. Vice Chair Bob Connors, Member Wade and Member Sullivan present.

### **Public Hearing – 7:30 P.M.**

Chair Saba opened the public hearings at 7:30 PM, August 14, 2022.

- 1. Application by James C Cowdery for Paul Masone 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 28 Stickney Rd Map 23 Lot 37, in the RR3 Zone.**

#### **Abutters:**

**Paul Masone, Joe and Beverly Poulin, Louie Nicolakakis, Frank Loverde and Lily Bao, Paul Masone, James Cowdery**

Chair Saba invited the applicant to appear before the Board and then read the abutters list. There were no abutters present.

#### **Discussion:**

Mr. Cowdery came before the Board to represent the applicant. He explained that the house appears okay but there is a lot of rot in the foundation. They are currently using the basement

space as some of the living space. The current structure is a three bedroom house. The applicant is proposing a new septic and a three bedroom house.

The second floor of the new house will be the full size of the house. The first floor will be slightly smaller than the present foundation. The present foundation is 34' x 28'. The new foundation will be 26' x 32'. Currently the house is about 1400 square feet. The applicant would like to make the upstairs a couple of hundred square feet bigger so they will not have to use any of the basement as living space. It is buried in the ground and there is really no egress except for the door facing the lake.

Chair Saba remarked that the applicant applied for a permit which was denied because it is a non-conforming dwelling structure.

Mr. Cowdery agreed and stated that the applicant would also like to make the second floor slightly bigger.

Vice Chair Connors stated that the front, right and left setbacks are under the required distance.

Mr. Cowdery informed the Board that the proposed structure will be 2 feet farther from the road and a foot each side farther from abutting properties than the present structure.

Chair Saba agreed that the proposed structure will be less non-conforming in terms of setbacks.

Mr. Cowdery informed the Board that the septic has been approved by the State and the shoreline impact has also been approved.

Chair Saba asked if the applicant had talked to the Fire Chief.

Chair Saba invited Fire Chief Murray to speak. Chief Murray stated that he is waiting for full plans to review before giving a definitive answer as to what he will require.

Vice Chair Connors remarked that the proposed structure would be 9 feet from abutting structure(s).

Chair Saba informed the applicant that the special exception will be granted if all specifications are met according to Article VII Section 700:1e.

Chair Saba asked if the Board had any questions.

Member Sullivan asked if the footprint of the building would be getting larger.

Mr. Cowdery explained that the footprint will be smaller. The height of the proposed structure is about the same but the second floor will be slightly bigger. The present second floor is chopped up and there is a small front porch which makes the second floor smaller.

Member Sullivan asked if an as-built drawing was included in the package.

Mr. Cowdery explained that the footprint is hard to see on the small drawing but the drawing shows the footprint of the current structure a little bigger in the back and a little closer to the

road. The applicant would like to come back 2 feet from the road and 2 feet from the sides on the proposed structure.

The Board continued to review the plan. Member Sullivan asked if the shaded lines were the current foundation and the bolded lines are the proposed foundation and Mr. Cowdery replied yes.

Chair Saba asked if there were more questions from the Board.

Vice Chair Connors asked if a variance was needed for the setbacks. Chair Saba explained that the setbacks are existing and are grandfathered. The applicant is making them less non-conforming.

Chair Saba explained that a special exception is needed because the size of the proposed structure is increasing by expanding the second floor. Chair Saba read from the Section 700:1a. It is a conforming use but it is a nonconforming lot. Chair Saba read from Article III, Section 300, Definitions, Page Z16 of the zoning regulations:

**“N2 NONCONFORMING USE** means a building, structure, or use of land lawfully existing at the time of enactment of this ordinance and which does not conform to the regulations of the district in which it is situated. (1982)”

Vice Chair Connors stated that the proposed plan will be a complete tear down and rebuild.

Mr. Cowdery agreed and stated that the only expansion would be that the applicant will be moving from the basement into the second floor.

Vice Chair Connors stated that the regulations talk about expansion for nonconforming use and stated that this is a complete teardown and rebuild.

Chair Saba again read from the regulation. Because he is proposing a structure, a special exception is needed and explained that the lot is grandfathered.

Mr. Cowdery explained that Article VII, Section 700:1d explains instances where a new structure could be built. He informed the Board that a complete teardown is needed because the present foundation is crumbling.

Chair Saba stated that there were applications with additions that did not go beyond the current setback. They were nonconforming, but not more nonconforming than what was previously allowed. He explained that a special exception was needed under Article VII, Section 700:1a as follows:

**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.

Chair Saba then explained that a special exception under Article VII, Section 700:1(a) would be granted by law if the applicant met all the criteria of Article VII, Section 700:1(e) as follows:

- 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:

Member Sullivan asked if the vertical wall would be continued at the building envelope line. Member Sullivan did a drive by. The second story walls will be closer to the abutter than the original structure.

Vice Chair Connors remarked that the applicant is replacing a dilapidated structure with a new one.

Chair Saba remarked that the applicant is taking a camp, tearing it down and replacing it with a new home. This should not be a diminution to surrounding properties.

Member Sullivan agreed.

Chair Saba stated that the Board cannot consider hypotheticals and there are no abutters present to object. Mr. Cowdery informed the Board that the proposed structure meets current height requirements.

Chair Saba asked if all members agreed that the conditions of Article VII, Section 700:1e(1) have been met.

**All members present agreed. Vote: 4/0/0. Unanimous.**

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

Discussion:

Vice Chair Connors stated it would be a safer house. Chair Saba stated it will meet today's codes.

Mr. Cowdery stated that it would be nearly impossible to remodel the present structure to meet current code.

Chair Saba stated that the Fire Chief has some recommendations and Mr. Cowdery explained that there will be fire resistant siding and roofing as well as a sprinkler system.

Vice Chair Connors asked about windows on the side within 9 feet of the abutting structure. Mr. Cowdery explained that there will be very small windows on the side of the abutting structure.

Chair Saba explained that there are thermal issues with windows on structures with tight lot lines. Vice Chair Connors stated that radiant heat can go through the windows and light the inside of the abutting house on fire.

Chair Saba asked if there were more comments.

Chief Murray informed the Board that all these issues would be addressed when the full plan is reviewed.

There were no more comments.

Chair Saba asked if all members agreed that the conditions of Article VII, Section 700:1e(2) have been met.

**All members present agreed. Vote: 4/0/0. Unanimous.**

3) It would result in substantial justice being done.

Discussion:

Mr. Cowdery stated that the property could be used. Mr. Cowdery had a tenant until a few months ago.

Chair Saba informed the applicant and the Board that:

“it is not at all possible to set up rules that can measure or determine justice. Board members must determine each case individually. Perhaps the only guiding rule is that any loss to the individual that is not outweighed by a gain to the general public is an injustice. Injustice must be capable of relief by granting a variance that meets the other four qualifications. Board members cannot alleviate an injustice by granting an illegal variance.”

Chair Saba asked if there were a gain to the general public by not allowing the variance. The Board agreed that there would be none.

Chair Saba asked if all members of the Atkinson Zoning Board of Adjustment agreed that the conditions of Article VII, Section 700:1e(3) have been met.

**All members present agreed that the conditions of Article VII, Section 700:1e(3) have been met. Vote: 4/0/0. Unanimous.**

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

Discussion:

Mr. Cowdery explained that there is a well on site and a plan for a septic system approved by the State, which will be installed.

There were no more questions from the Zoning Board of Adjustment members.

Chair Saba asked if all members agreed that the conditions of Article VII, Section 700:1e(4) have been met.

**All members present agreed. Vote: 4/0/0. Unanimous.**

Based on rules of special exception, all conditions are going to be met, if not already met, therefore the Board will grant the special exception.

**Vice Chair Connors made a motion to accept the Application by James C Cowdrey for Paul Masone 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 28 Stickney Rd Map 23 Lot 37, in the RR3 Zone. Member Wade seconded the motion.**

Discussion: none

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

Chair Saba informed the applicant that there is a 30 day period for appeal. The applicant may proceed, but at their own risk.

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

**Member Wade made a motion to adjourn. Vice Chair Connors seconded the motion. All in favor. All members of the Atkinson Zoning Board of Adjustment present voted in favor. Vote: 4/0/0.**

**The meeting was adjourned at 7:49 PM.**