

ATKINSON ZONING BOARD OF ADJUSTMENT

21 Academy Avenue

Atkinson, New Hampshire 03811

Public Hearing Meeting Town Hall

Wednesday, October 12, 2022

Members Present

Glenn Saba, Chair

Bob Connors, Vice Chair

Kevin Wade

Arthur Leondires

Others Present

Karen Wemmelmann, Recorder

Jonathan Keevers

Workshop 7:00 PM

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

Approval of Minutes:

Vice Chair Connors made a motion to approve the minutes of the September 14, 2022 meeting as amended. The motion was seconded by Member Wade. All members of the Atkinson Zoning Board of Adjustment present voted in favor. Vote: 4/0/0. The vote is unanimous.

Correspondence: none

Public Hearing – 7:30 P.M.

Chair Saba opened the public hearings at 7:30 PM, October 12, 2022. Four members of the Atkinson Zoning Board of Adjustment are present, Chair Saba, Member Kevin Wade, Vice Chair Robert Connors and Member Art Leondires.

- 1. Application for revised 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 71' of frontage requiring a variance of 129'. The property is located at 36 Meditation Lane, Map 8 Lot 103 in the RR2 zone.**

A variance of 126' frontage reduction was approved on July 14, 2022. This hearing is for an additional 3' of frontage reduction. Chair Saba added that the reason for difference is there was an error in picking up the bounds.

Abutters: Edwin and Erica Araujo, Scott and Amanda Monagle, Sarah Differ, Patrick and Jeannette Hurley Trust, Patrick Hurley TTE, Elizabeth Conha Schoonman, Lawrence and Tammy LeBlanc, Judy and John Driver, Eileen Calandriello (present), Alfred and Shelley Hardy, Jr. (present), Mary W. Roy, Burns Family Rev. Trust, Nicole Burns TTE, Andrew J. Dicologero, Thomas Roy Rev Trust, Thomas Roy TTE (present)

Discussion:

Mr. Johnathan Keevers came before the Board to represent the applicant. Mr. Keevers explained that there was a discrepancy between a land survey done for the neighbor and a land survey done for the applicant. The neighbor brought the discrepancy to the attention of the Zoning Board Administrator, Sue Coppeta. The applicant had another land survey done and the survey found another drill hole and a monument. As a result, the applicant is requesting another 3 feet of variance. The applicant informed the Board that the original request was for a 126 foot variance and they are now requesting 129 feet.

Chair Saba remarked that based on his research, the discrepancy was from one pin to another.

Mr. Keevers explained that the layout shown to the Board at the July 13, 2022 hearing has changed and shows the extra three feet going to the neighbor. The new plan now shows the correct frontage for each lot, the change is not on the subdivision lot, it is on the parent lot.

Chair Saba remarked that the line pivoted, but it did not change the square footage of the lot.

Chair Saba requested questions from the Board.

Vice Chair Connors stated that the setbacks have not changed. The applicant will not be closer to the abutters.

Mr. Keevers stated that the change is on the side abutting the neighbor, not on the side of the proposed subdivision. The only change is the applicant will have 3 less feet of frontage. The neighbor had 200 feet of frontage and now has 203 feet.

Chair Saba explained that there was an iron pin that was discovered in the land survey that was in a different location than shown on the first application.

Vice Chair Connors clarified that the change occurred on the parent lot, the abutter now has 3 more feet of frontage. The main lot now has 200 feet of frontage, 3 less feet of frontage, than on the original plan.

Chair Saba opened the hearing to the public.

Eileen Callendiero stated that they wanted to stay informed and was concerned about the wetlands. Chair Saba showed the location of the proposed dwelling and pointed out that the wetlands will not be affected by the proposed subdivision.

There were no more questions from the public or the Board, so at the pleasure of the applicant, the Board went through the criteria.

Chair Saba read a letter to the Zoning Board of Adjustment dated September 26, 2022 from Charles Zilch, Project Manager, SEC & Associates Inc. regarding the request in the change to

the variance into the record. The letter is regarding an Application for Rehearing for Frontage Variance by Alfred John Hardy, Jr. and Shelley Hardy on property at 36 Meditation Lane, Tax Map 8, Lot 103, Atkinson New Hampshire. The letter is attached to the application and can be viewed in the Code Enforcement Office, Atkinson Town Hall, 19 Academy Avenue, Atkinson, NH. It explains that the reason for the request for rehearing.

"Please find attached the application, plans and all supporting data for the above referenced variance application. The intent of this application is to rehear a previously granted variance to allow for a reduction in frontage for proposed lot 8-103-1. The plan presented to the Zoning Board of Adjustment for which the variance was granted was based upon the recorded subdivision plan D-4568. This plan showed that the parent lot contained a total of 274.56 feet of frontage. The proposed subdivision plan presented to this Board provided 200' of frontage for lot 8-103, the existing house lot and lesser frontage for the proposed additional lot, lot 8-103-1, with 74.56 feet.

Upon granting the variance, a field survey was performed in anticipation of preparing final plans for submittal to the Planning Board. This field survey along with an unrecorded plan provided by abutting property owner of lot 8-104 as well as recovery of additional property monuments revealed that the record plan and abutting plan were in conflict. The final result is that our subject lot does not contain 274.56' of frontage, but slightly less, 271.48'. This change in frontage requires that the variance granted be reheard in order to address the change. As requested, this is a variance request to allow proposed lot 8-103-1 to be supported by 71.48 feet of frontage. The responses to the 5 criteria submitted at the initial hearing remain as previously considered whereas the slight change would not affect the statements accepted..."

Chair Saba stated that the Board has the application. A proposed 4.8 acre lot supporting the existing dwelling and a proposed 2 acre lot with approximately 71 and a half feet of frontage on Meditation Lane.

Mr. Keevers requested the Board see previously submitted and granted responses.

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 4.8 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 now 71 feet 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:

Vice Chair Connors stated that there is a three foot difference, there is no change in setbacks, there is no change in any of the other plans.

Chair Saba remarked that the change from 74.8 to 71.48 feet is minimal. Nothing really changes regarding public interest.

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 and 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 remarked that the three foot change in frontage is not affecting the setbacks, where the house sits or the building area. It is affecting the frontage at the street and that is all. Density and crowding is not being changed. Vice Chair Connors remarked that public safety is not an issue as others can get to the dwelling.

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 property is a high quality lot with excellent soils, moderate slope and a generous buildable area. The property owner and his wife would also benefit from their family being able to live 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 he did not see any gain to the general public by denying the extra three feet. All other discussions regarding this criteria are still in force.

Vice Chair Connors stated that the Board personally thinks it's a great thing to help a disabled combat veteran. The Board needs to look at each case in totality and treat them individually. The lot meets and exceeds other site requirements and the only issue is frontage. Looking at the entire package, it is a unique circumstance that the Board takes into consideration. This is why the Board is willing to move forward with it.

There was no more discussion. Chair Saba requested a vote.

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 are no wetlands impacted 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 remarked that the Board has always said that new construction increases value. As to this particular unique situation, the proposed subdivision which the Board has just reviewed, the abutters are in the back behind the wetland, there is a huge building area, and it is a beautiful lot.

There was no more discussion. Chair Saba requested a vote.

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 stated again all properties are unique and the Board needs to look at each application individually. In this case, the buildable area of the proposed lot is well within Atkinson requirements. Regarding frontage relief, as Vice Chair Connors stated, the applicant does have frontage, although less than required, and it is not creating a density issue or life safety problems. Therefore he agrees that no substantial relationship exists.

There was no more discussion. Chair Saba requested a vote.

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 the proposed use is a single family dwelling on a two plus acre upland lot. The lot meets all other setback requirements and area requirements although it does not have enough frontage.

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.

Chair Saba requested a vote.

Vice Chair Connors made a motion to approve the application for revised 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 71' of frontage requiring a variance of 129'. The property is located at 36 Meditation Lane, Map 8 Lot 103 in the RR2 zone. Member Leondires seconded the motion. All members of the Atkinson Zoning Board of Adjustment present 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. The applicant will be subject to building codes and safety issues. Any development during that period will be done at the applicant's risk.

Member Leondires made a motion to close the public hearing. Member Wade seconded the motion. The public hearing was closed at 7:55 PM. All members of the Atkinson Zoning Board of Appeals voted in favor. Vote: 4/0/0.

Vice Chair Connors made a motion to adjourn the October 12, 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 7:56 PM.