

ATKINSON ZONING BOARD OF ADJUSTMENT
21 Academy Avenue
Atkinson, New Hampshire 03811
Public Hearing Meeting Town Hall
Wednesday, December 14, 2022

Members Present

Glenn Saba, Chair
Bob Connors, Vice Chair
Arthur Leondires
Scott Sullivan

Others Present

Karen Wemmelmann, Recorder

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

Workshop 7:00 PM

Approval of Minutes:

Member Leondires made a motion to approve the minutes of the October 12, 2022 meeting as amended. The motion was seconded by Vice Chair Connors. The members of the Atkinson Zoning Board of Adjustment present at the October 12, 2022 and the December 14, 2022 meetings voted in favor. Vote: 3/0/0. The vote is unanimous.

Review of ZBA Procedures: The Board agreed to wait until the Planning and Zoning Administrator could be present to discuss.

Correspondence: none

Public Hearing – 7:30 P.M.

Chair Saba opened the public hearings at 7:32 PM December 14, 2022. He informed the audience that Vice Chair Robert Connors, Member Scott Sullivan and Member Arthur Leondires and himself were present.

Chair Saba read the application and abutters list.

- 1. Application for Variance from Article IV Section 410:8 submitted by Kevin Hatch of Cornerstone Survey for Dawn Amiss to allow construction of a new single family house 73' from the wetland (27' variance) where 100' is required on property located at 53 East Rd, Map 14 Lot 76 in the TR2 Zone. This new house replaces a prior house which was destroyed by fire. The prior house was 87' from the wetland.**

Abutters:

Dawn Amiss, Andrew and Christine Mason, Norma L. Smith, Trustee, Norma Smith Trust, Timothy and Patricia King, Christopher and Bonnie Sullivan, Albert and Pamela Kozlovski, Martha P. Meade, J.E.P Realty Trust, David and Karen Bishop, Shane G. and Michele Childs, Patricia I. and Timothy M. King, Martin and Pauline Short, Trustees, The Pauline Short Rev Trust, Kevin Hatch, LLS, Cornerstone Survey, Inc.

Discussion:

Chair Saba requested Kevin Hatch to come before the Board to represent the applicants.

Chair Saba read a letter from the Conservation Commission to the Zoning Board of Adjustment dated December 8, 2022 and signed by Paul Wainwright, Conservation Commission Chair into the record. The letter recommends approval of the variance application considering the improvement to public safety as described in the plan and conditioned upon not disturbing the existing natural vegetation that currently buffers the lawn area from the wetlands.

"At the regular meeting of the Atkinson Conservation Commission on November 30, 2022, Kevin Hatch from Cornerstone Survey, Inc. presented a plan for the construction of a home at the above-referenced address. This home would be a replacement for a home that was destroyed by fire. The new home would be 73 feet from an isolated wetland toward the rear of the property, whereas the previous home was 87 feet from that wetland. Therefore, the property owner will be appearing before your board on December 14, 2022 to request a 27-foot variance from the 100-foot wetland setback ordinance, Article IV, Section 410:8. After careful consideration of the plan as presented, and considering the improvement to public safety that would result as described in that application, the Conservation Commission voted unanimously to recommend approval of this variance application, conditioned upon not disturbing the existing natural vegetation that currently buffers the lawn area from the wetlands shown on the plan."

A letter from the applicants allowing Kevin Hatch to represent them is in the folder.

Chair Saba read Article VII Section 700:1d, nonconforming uses, into the record:

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)

Chair Saba asked Mr. Hatch when the fire occurred. Mr. Hatch informed the ZBA that he believed the fire occurred within the last two years.

Chair Saba informed Mr. Hatch and the Board members that if the applicant were building within the footprint, then this application would not need to be before the ZBA. However, the applicant is requesting a small addition that is extending further into the setback. Just that addition is the reason the applicant needs relief.

Mr. Kevin Hatch introduced himself to the Board. He explained that the house belonged to Fred Childs and it burned down a little over a year ago, he does not have the date. He also stated that he is aware that three votes are needed for approval.

He explained that the house belonged to Fred and Dale Childs, since deceased. The applicant is their daughter. The house which burned down, is outlined on the plan in yellow. Prior to the fire, there were garage doors in the face of the house. Then, if there were another car in the driveway, it would be necessary to back out onto East Road. This could be a challenge especially when school lets out and because of cars going at high speed. The applicant is proposing to put the garage doors on the side of the house so cars can pull in, turn around and drive out onto East Road which will make more sense.

Mr. Hatch informed the Board that the applicant moved the leach bed. The old leach bed was very close to the wetland and was probably installed before permitting. According to present

State law, if a house is destroyed by fire, a new septic system is not needed as long as it is less than twenty years old. However, the present septic system is much older than twenty years, so the applicant submitted a design for a new septic and leach field to the State and the State approved it. It meets all State rules. Mr. Hatch also discussed the application with Brian Boyle, Atkinson Building Inspector. Mr. Boyle informed the applicant that according to Atkinson regulations, the leach bed would be exempt from moving closer to the wetlands, but the house would not be. This is the reason for the request for variance. They are going from the existing 87 feet from the wetlands to the foundation to 73 feet. The balancing act is life safety versus a somewhat greater encroachment on the wetlands.

Member Sullivan asked about the leach fields.

Mr. Hatch stated that both of the wetlands are 50 feet from the leach field, which is the State requirement. However, Atkinson requires a 100 foot setback. The proposed leach field is closer than 100 feet, but it is still further away than it was previously. It is close to 50 feet from the wetlands.

Chair Saba asked Mr. Hatch if they agreed to any conditions with the Conservation Commission.

Mr. Hatch explained that they would not cut down any trees, especially the silver birch on the corner. The lawn extends back to the wetlands. The distance between the house and the barn on the proposed plan has increased. The prior house was approximately 10-12 feet from the barn.

Member Sullivan asked if the request for variance were just for building setback. Mr. Hatch replied in the affirmative.

Member Sullivan asked if there were any other structures that would be added to the back of the house such as a deck or a bulkhead. Mr. Hatch explained that the house would be at grade, so anything added on the back would most likely be a patio, not a deck. There is nothing on the present house plan proposed by the applicants.

Member Sullivan asked if the house were slab on grade. Mr. Hatch replied that there will be a foundation but because of the layout and because it will be tight, a patio would be more likely than a deck. There is nothing on the present plan.

Member Sullivan stated that a bulkhead would be a structure and Mr. Hatch again informed the Board that there were currently no bulkheads on the plan.

Chair Saba opened the discussion to the public. There was no comment from the public.

Chair Saba stated that since there were no further questions, the Board would go through the criteria. He explained that the Board would go through the criteria one by one and vote on them.

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

It will allow the landowner to rebuild the home and provide safer access to East Road by reconfiguring the style of the house and garage.

Discussion:

Chair Saba stated the Board must determine if the variance alters the essential character of the neighborhood or threatens the health, safety or general welfare of the public. He stated it likes that the buffer will remain and not encroach any further.

Vice Chair Connors stated that the proposed leach field is an improvement because it is relocated further from the wetlands.

Vote: Vice Chair Connors, yes; Member Leondires, yes; Member Sullivan, yes; and Chair Saba, yes 4/0/0. Unanimous. Criteria 1 is approved.

2. The spirit of the ordinance is observed because:

This new house style will not affect the existing lawn, wooded buffer or the wetland and will have no direct impact on the wetland.

Discussion:

Chair Saba stated the spirit of the ordinance to protect Atkinson resources, wildlife and fresh water. The Conservation has looked at the proposed variance with their expertise and believes this project can be approved. No one is better to determine that than the Conservation Commission.

Vote: Vice Chair Connors, yes; Member Leondires, yes; Member Sullivan, yes; and Chair Saba, yes 4/0/0. Unanimous. Criteria 2 is approved.

3. Granting the variance would do substantial justice because:

It will allow the landowner to provide a safe turnaround for cars in the driveway while protecting the wetland.

Discussion:

Chair Saba stated that the Board must review any loss to the applicant not outweighed by gain to the general public which would be an injustice. By looking at that, he does not see a gain to the general public if the variance were denied.

Vice Chair Connors stated that he does not agree that he would approve the variance because it provides a safe turnaround in the driveway. He does not want that to be something that would be used for approval of a variance.

Chair Saba agreed that the ZBA is looking at a relief to a wetland. The spirit of the ordinance would be protecting the wetland.

Mr. Hatch stated that he addressed that issue because the general welfare of the traveling public, users of East Road, are at greater risk of having cars back out into traffic with the present configuration. It is certainly not wetland related, but a safe turnaround will improve life safety issues without touching the buffer.

Chair Saba thanked him for the clarification.

Vote: Vice Chair Connors, yes; Member Leondires, yes; Member Sullivan, yes; and Chair Saba, yes. Vote: 4/0/0. Unanimous. Criteria 3 is approved.

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

Replacing the existing home with a new one will increase surrounding property values and adjusting the rear portion of the house 14 feet will have no noticeable impact on the abutters.

Discussion:

Chair Saba stated that there is no one present or anything in the folder to dispute whether there will be diminution of value and added that new construction and improvements generally adds value.

Vice Chair Connors agreed and stated new construction on the proposed foundation will add value. Chair Saba agreed and stated, especially with conditions that exist today.

Vote: Vice Chair Connors, yes; Member Leondires, yes; Member Sullivan, yes; and Chair Saba, yes; 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:

This ordinance was intended to protect the wetland and buffer surrounding it. This property was developed prior to the regulation and is being rebuilt due to fire. A literal enforcement would require the landowner to rebuild in the same footprint which would still not meet the 100-foot setback.

Discussion:

Chair Saba stated that it is a 4 acre site. It is unique in the way it sits. It has a beautiful existing barn that is being protected. The applicant has stated that the new design as far as safety is concerned, is definitely better. An existing leach field that was very close to a wetland has been removed and the new one will be farther away.

Vice Chair Connors added that the existing septic tank will also be removed. The new one will be farther from the wetland.

Member Leondires agreed that it is an all-around better situation than what was there.

Vice Chair Connors stated that also the Conservation Commission has stated that the proposed house being closer is not an issue.

Chair Saba stated the difference is 15 feet.

Vote: Vice Chair Connors, yes; Member Leondires, yes; Member Wade, yes; and Chair Saba, yes. Vote: 4/0/0. . Criteria 5a is approved. Unanimous

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

This proposal maintains the greatest wetlands setback possible while still protecting the residents safety by improving access to East Road. The existing wooded buffer around the wetland is also being maintained.

Discussion:

Chair Saba stated because of that and all the other reasons discussed by the Board, the proposed use would be reasonable. The applicant is proposing to reconstruct a home, situated a little better on the lot than what previously existed with its leach field further away from the wetland and no encroachment and clearing of wooded buffer extending to the wetland.

There was no more discussion.

Vote: Vice Chair Connors, yes; Member Leondires, yes; Member Wade, yes; and Chair Saba, yes. Vote: 4/0/0. Criteria 5b is approved. Unanimous.

Vice Chair Connors made a motion to approve the Application for Variance from Article IV Section 410:8 submitted by Kevin Hatch of Cornerstone Survey for Dawn Amiss to allow construction a new single family house 73' from the wetland (27' variance) where 100' is required on property located at 53 East Rd, Map 14 Lot 76 in the TR2 Zone. This new house replaces a prior house which was destroyed by fire. The prior house was 87' from the wetland. The approval is conditioned upon the requirements from the Conservation Commission in their letter of December 8, 2022 stating that the wooded buffer be maintained. Member Leondires seconded the motion. All members of the Atkinson Zoning Board of Adjustment present voted in favor. Vote: 4/0/0.

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.

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

Vice Chair Connors made a motion to adjourn the December 14, 2022 meeting of the Atkinson Zoning Board of Adjustment. Member Sullivan seconded the motion. All members of the Atkinson Zoning Board of Adjustment voted in favor. Vote: 4/0/0.

The meeting was adjourned at 7:54 PM.