

**ATKINSON ZONING BOARD OF ADJUSTMENT**  
**21 Academy Avenue**  
**Atkinson, New Hampshire 03811**  
**Public Hearing Meeting Town Hall**  
**Wednesday, January 11, 2023**

**Members Present**

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

**Others Present**

Karen Wemmelmann, Recorder  
Sue Coppeta, Zoning Administrator  
Tim Lavelle, Lavelle Associates  
  
Kevin and Betty Ann Finnegan  
Edward and Susan Bureau

**Workshop 7:00 PM**

**Approval of Minutes:**

**Vice Chair Connors** made a motion to approve the minutes of the December 14, 2022 meeting as corrected. The motion was seconded by Member Leondires. The members of the Atkinson Zoning Board of Adjustment present at the December 14, 2022 meeting and the January 11, 2022 meeting voted in favor. Vote: 4/0/0. Member Wade not voting. The vote is unanimous.

**Review of ZBA Rules of Procedure:**

Ms. Coppeta stated that the Board has not adopted the Rules of Procedures. She put together something and requested the Board to review it and adopt it. Importantly, on the very last page, findings of fact need to be included according to the laws passed last summer.

The last sentence of Section 784 state why findings of fact are important. Ms. Coppeta has made a worksheet for deciding findings of fact. There are specific items in the criteria that can be included. The findings of fact should be summarized at the end of the hearing.

**Correspondence:** none

**Call to Order:** Chair Glenn Saba called the meeting to order at 7:30 PM. Chair Saba introduced the members of the Board present, Vice Chair Robert Connors, Members Kevin Wade, Scott Sullivan and Art Leondires and himself.

**Public Hearing – 7:30 P.M.**

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

- 1. Application for Variance from Article IV Section 410:8 b submitted by Kevin and Betty Ann Finnegan to allow construction of a detached garage (50'x30')**

**55.8' from the wetland (44.2' variance) where 100' is required on property located at 7 Noyes Lane, Map 5 Lot 61 in the TR2 Zone.**

**Abutters:**

Felix and Toni L. Blouin (present), Justin C. and Rosaly V. Ulrich, Mikel and Helena Papoutsy, Robert and Stacy Preston, James N. and Sandra J. Mittica, Michael N. and Beth M. Perras, Kevin L. and Betty Ann Finnegan

**Discussion:**

Tim Lavelle from James Lavelle, Associates, came before the Board to represent the applicants. The applicants are proposing to construct a 50 x 30 foot detached garage on the right hand side of their driveway. It will be 55.8 feet from the wetlands at the closest point. The other point is 68.1 feet. The wetlands are on the right hand side of the garage. The applicant has met with the Conservation Commission.

Chair Saba read a letter dated January 2, 2023, from the Conservation Commission to the Atkinson Zoning Board of Adjustment regarding the applicant into the record.

...“At a special meeting of the Atkinson Conservation Commission on December 30, 2022, we did a site visit to the above-referenced property, and had a conversation with the property owner Kevin Finnegan and surveyor Tim Lavelle concerning the owner’s application for a wetland setback variance to construct a 50-foot by 30-foot detached garage on the property. The Finnegan’s are proposing to place the garage 55 feet from a stream and associated wetland that flows along the northwestern boundary of their land. This stream flows into the Bryant Brook Prime Wetland that is approximately 188 yards downstream from the Finnegan’s property, so any potential disturbance of this wetland deserves special attention.

Members of the commission were concerned about the removal of natural vegetation that currently acts as a protective buffer to the wetland, and about the size of the building and stormwater management issues introduced by the amount of impervious surface that will be created by the building’s roof. Alternative locations for the garage were discussed and eliminated as impractical. The proposed location was deemed to be the “least worst” location for the garage.

Chair Wainwright asked surveyor Tim Lavelle if the plan could show the “before” and “after” border of natural vegetation, and whether Mr. Lavelle could include some sort of stormwater management to minimize the amount of runoff that would be directly introduced into the stream from the roof, and Mr. Lavelle said these would be easy to include.

Members of the commission noted that even with the removal of trees for the construction of the garage, there would remain a 50+- foot buffer of natural vegetation that would help filter out contaminants before they enter the wetland. Members of the commission considered maintaining this vegetation to be an important condition of their recommendation.

Since Mr. Lavelle said he had flagged the wetland himself, Chair Wainwright asked that Mr. Lavelle include his wetland or soils scientist license stamp on the plan showing that he is licensed by the State of New Hampshire to flag a wetland.

Since our recommendation concerning this application has a number of conditions, I reproduce on the following page the exact wording of our motion recommending approval: Wetland Setback Variance Application, 7 Noyes Lane

Vice Chair Steele made a motion to recommend that the ZBA grant the wetland setback variance for the construction of the detached garage at 7 Noyes Lane, with the following conditions:

1. That both the “before” and “after” edge of natural vegetation be shown on the plan, with a note that no additional removal of natural vegetation will be permitted in the future,

2. That the plan include a stormwater management feature that would minimize runoff from the roof from reaching the wetland, and
3. The plan show a stamp indicating that the person who located the wetland was licensed to do so in the State of New Hampshire. Member Newman seconded the motion. The vote was 5/1/0, the motion carried...

Mr. Lavelle passed out a copy of the plan with a note that no further removal of natural vegetation shall be allowed beyond this buffer, thus establishing a permanent, vegetative buffer. He placed the note on the plan twice in order to reenforce the vegetative buffer. Mr. Lavelle remarked that there are a couple of pine trees that need to go that are within that limit, other than that no excavation or filling will be needed. One pine tree is on the corner of the driveway and the other is where the buffer meets the existing driveway. This has been discussed with the Conservation Commission.

Mr. Lavelle has also shown the drip line trenches to be installed on the plan. There is a note to that effect. There is a roof dripline trench detail. There is a wetlands certification statement signed by Mr. Lavelle in the upper righthand corner of the plan.

Chair Saba stated that there is an NHDS designer stamp, and Mr. Lavelle stated that that stamp allows him to map wetlands. He informed the Chair that if necessary, he could get a wetlands scientists to stamp the plan with him.

Mr. Lavelle informed the Board that drip line trenches will be installed for stormwater management. They are shown on either side of the building. They will be 2 feet deep by 4 feet. They are proposed go where the eaves drop the water. They will not be where the gable is. The gable will face the driveway.

The applicant informed the Board that the building will be single story.

The Board remarked that based on the plan as submitted, the gable will be very high. The plan shows the ridge running the short length. The applicant stated it will not exceed Atkinson Zoning regulations and the proposed building will be below it. It is 30 feet wide and 50 feet long. The Board discussed where the proposed drip edge will be located.

Mr. Lavelle stated that the plans are drawn wrong. The applicant stated that there will be four doors facing the driveway. There will be pavement on the front side so there cannot be drip line trench. Chair Saba stated that there is an issue with stormwater management on the plan. Member Sullivan pointed out that the conditions in the Conservation Commission letter require the applicant to infiltrate.

Mr. Lavelle stated that a gutter and other changes will need to be made. He thinks there will be a drip line trench in the back with a leaching trench.

Chair Saba stated he has a recommendation from Conservation with conditions. Even with a drip line, it is a huge roof and he is concerned about what will happen when the trench fills. Mr. Lavelle stated that there will be some runoff. Mr. Lavelle responded that he specifically asked the Conservation Commission if stormwater management and drainage calculations were needed and they said no.

Member Leondires reiterated that the Conservation Commission letter requires stormwater management.

Chair Saba read again from the letter.

“...2. That the plan include a stormwater management feature that would minimize runoff from the roof from reaching the wetland, and...”

Mr. Lavelle stated that he thought he had it covered because he thought the roof was going the other way. A gutter would be needed unless a drain were installed in the driveway.

Member Sullivan suggested a permeable system. Mr. Lavelle stated that he would have to look at it. The back trench is adequate, but the front will have to have a gutter to stop the water from going on the pavement. There is only 3 feet to water table, so anything will have to be shallow.

Member Sullivan remarked that the language in the letter says “ a system, minimize, reduce”. It doesn’t say contain 100%, it says, minimize, reduce.

The applicant suggested that the downspout come down and lead into a drip trench on the side. There is already a drip edge on the side. There would be a four-foot wide 30 foot deep drip trench. Mr. Lavelle agreed. The Board discussed what type of stormwater management to use. Mr. Lavelle stated a gutter would be needed on the plan.

Mr. Lavelle stated he needs to make some changes to the plan. He thinks a chamber would be the best solution, but it’s not on the plan. He can add it and have it by tomorrow.

Chair Saba informed Mr. Lavelle that the ZBA must go by the recommendations of the Conservation Commission. The Board cannot make a recommendation based on an incomplete plan and asked if a one month delay would adversely affect the applicant.

The applicants informed the Chair that a one month delay would be acceptable. Chair Saba stated he would like to see the revised plan so the Board can say the conditions have been met. He did a drive by and it’s a beautiful site.

Mr. Lavelle requested a continuance to the next available hearing so he can make adjustments.

Chair Saba asked if there were any comments from the audience. There were none. Chair Saba requested a motion.

**Vice Chair Connors made a motion to continue the hearing for an Application for Variance from Article IV Section 410:8 b submitted by Kevin and Betty Ann Finnegan to allow construction of a detached garage (50’x30’) 55.8’ from the wetland (44.2’ variance) where 100’ is required on property located at 7 Noyes Lane, Map 5 Lot 61 in the TR2 Zone to February 8, 2023. Member Wade seconded**

**the motion. All members of the Atkinson Zoning Board of Adjustment voted in favor. Vote: 5/0/0.**

The application is continued to February 8, 2023.

- 2. Application for Variance from Article IV Section 400:4 submitted by James Lavelle Associates for Bureau Family Revocable Trust, Edward & Susan Bureau Trustees, to allow construction of a replacement dwelling 8.7' right side setback (6.3' variance) and 9' left side setback (6' variance) where 15' is required on each side on property located at 9 Lippold Rd, Map 23 Lot 16 in the RR3 Zone.**

**Additionally, this application includes a Variance from Article IV Section 410:8a submitted by James Lavelle Associates for Bureau Family Revocable Trust, Edward & Susan Bureau Trustees to allow construction of a replacement dwelling 63.8' from the Wetland (36.2' variance) where 100' is required on property located at 9 Lippold Rd, Map 23 Lot 16 in the RR3 Zone.**

**Abutters:**

Brown, David Rev. Trust, Brown David Rev. Trustee, Corbett, Grace Rev. Trust, Corbett, Grace Trustee, Big Island Pond Corporation, Bureau, Edward and Susan, Tim Lavelle, James Lavelle Associates

**Discussion:**

Chair Saba read a letter from the Conservation Commission dated January 2, 2023 into the record.

..."At a special meeting of the Atkinson Conservation Commission on December 30, 2022, we did a site visit to the above-referenced property, where owners Ed and Susan Bureau are proposing to raze and reconstruct a home in essentially the same location as the present structure. Mr. Lavelle presented the plan for the new home, and noted the differences in side and wetland setbacks, which were relatively small changes from the current non-conforming measurements. Our discussions were limited to the wetland setback portion of the variance application. It was noted that, while the house would be slightly closer to the lake, the deck would be smaller, resulting in a slight increase in the distance between structural improvements and the lake, which is a good thing.

It was also noted that there would be a slight decrease in impervious surface because some of the paved sidewalk would be eliminated, which would also be good. However, these "improvements" would be relatively small.

Of bigger interest to the Commission was the replacement of the septic system with one that would be much better for the water quality of the lake.

After additional discussion, the Commission voted to not object to the approval of the wetland setback variance application at 9 Lippold Road. We chose to "not object" rather than "recommend approval" because of the very large nonconformity of many aspects of Town zoning for not only this property, but most properties on the lake.

Chair Saba stated he did a drive by and things are tight there.

Mr. Tim Lavelle came before the Board to represent the applicants. He informed the

Board that the applicant is proposing to remove the existing structure, deck and patio and replace them with new ones. The applicant is proposing to square off the dwelling. The existing one juts out towards the road.

This is proposed in order to make room for a new septic system. It will be a clean solution system. The current septic system is in the same area. It is a tank and drywell.

The applicant is in the process of obtaining shoreline approvals. Sheets 3 and 4 show different impervious areas. Sheet 4 shows what vegetation will be removed and what vegetation will be put back.

As Mr. Wainwright's letter states, not much will be changed, the structure is proposed to be moved away from the road to fit the proposed clean solution septic system. However, the proposed deck and patio will be smaller.

This house is well above the lake. The intent is a one story home with a walk out basement, similar to the house to the right. A second story deck with a patio below it is also proposed. The applicant has received the natural heritage inventory and sent it to the State with the shoreline application.

Vice Chair Connors asked if Mr. Lavelle had spoken to the Fire Chief and if a sprinkler system is proposed due to the proximity to the neighbor property. Mr. Lavelle stated that he has not spoken to the Chief, but realizes a sprinkler system will probably be required. The applicant informed the Board that his neighbors were required to install a sprinkler system and agreed that it would be necessary. Vice Chair Connors also pointed out that windows and siding might also be an issue due to radiant heat.

Chair Saba thanked Mr. Lavelle for a complete set of plans. He asked Mr. Lavelle what is creating the increase in encroachment. The increase is very small. Mr. Lavelle replied that the increase is due to squaring off the proposed new structure.

Chair Saba asked about the dimensions of the existing structure and of the proposed structure. He also pointed out that the difference is 2/10 of a foot.

Mr. Lavelle explained that the proposed building will be set back further from the road to make room for the proposed new septic system.

The proposed structure is 23 square feet larger than the existing structure but the proposed deck and patio are smaller.

Mr. Lavelle stated that the existing dwelling is 8.8 feet from the wetland to the foundation. The applicant is proposing a dwelling 8.7 feet from the wetland. Vice Chair Connors stated it should be grandfathered because it is a rip and replace. Chair Saba stated there is a 1.5 inch further encroachment.

Member Sullivan asked if there would be any structures on the right or left such as stairs from the deck to the patio. Mr. Lavelle replied there is no plan for stairs. The patio could be accessed along the side of the house.

Member Sullivan asked if the entrance to the dwelling will be in the front and asked about elevation. Mr. Lavelle replied that the elevation would be lower.

Chair Saba opened the hearing to the public. No one spoke.

Chair Saba asked the Board if there were more questions. There were none. Chair Saba requested to go to the request for the setback variance. Chair Saba stated for the record that the applicants have given Mr. Lavelle permission to speak on their behalf.

Member Sullivan reviewed the findings of fact.

- The applicant met with the Conservation Commission and they noted that there were betterments for nonpermeable surfaces;
- No public comment from audience for or against;
- Further encroachment is lessened from the front lot line; and is a minimal 1.75 inches on the right lot line; and
- The Conservation Commission voted to not object.

Member Leondires, stated that the proposed structure was moved back, and the footprint is smaller. The building envelope is essentially the same.

Vice Chair Connors stated that the actual variance is very small. Chair Saba stated that the request for variance was needed due to improvement to the property and existing circumstances.

Chair Saba requested to go through the criteria.

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

The structure would not interfere with public travel and would not create any hazards.

Discussion:

Mr. Lavelle stated that by losing the jut out in front of the building, there is more room for cars, it would not be contrary to the public interest because they are not blocking the road and not much is changed.

Chair Saba stated that the essential character of the neighborhood is not changed. It is tight in there. The difference from the existing structure to the proposed change is miniscule.

The Board members agreed.

**Vote: Vice Chair Connors, yes; Member Leondires, yes; Member Wade, yes; Member Sullivan, yes; and Chair Saba, yes; Vote: 5/0/0. Criteria 1 is approved.**

**2. The spirit of the ordinance is observed because:**

It would allow for the replacement of an existing, nonconforming structure in an area where the lots were created well prior to the ordinances of which we speak.

Discussion:

Chair Saba stated that the characteristics of this particular lot definitely warrant relief. The lot narrows. By granting this variance it allows for the improvement of the property. Vice Chair Connors stated that the ordinance is to prevent density and people being too close to each other. But there was an existing structure so there are liberties they can take because there is an existing structure.

**Vote: Vice Chair Connors, yes; Member Leondires, yes; Member Wade, yes; Member Sullivan, yes; and Chair Saba, yes; Vote: 5/0/0. Criteria 2 is approved.**

**3. Granting the variance would do substantial justice because:**

It would allow for an upgrade to the property in a similar manner as surrounding properties and it will help with runoff due to the reduction of impervious areas such as walk ways, and other things the State and Shoreline require. The septic will be in a better place and of a variety that will reduce nitrates.

Discussion:

Chair Saba stated any loss to the individual that is not outweighed by a gain to the general public is an injustice. The injustice must be capable of relief by granting a variance that meets the other four qualifications. Denying this would not give the public any benefit.

Chair Saba requested a vote.

**Vote: Vice Chair Connors, yes; Member Leondires, yes; Member Wade, yes; Member Sullivan, yes; and Chair Saba, yes; Vote: 5/0/0. Criteria 3 is approved.**

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

The property will increase in value therefore it will increase the value of the surrounding properties.

Discussion:

It makes sense.

Chair Saba requested a vote.

**Vote: Vice Chair Connors, yes; Member Leondires, yes; Member Wade, yes; Member Sullivan, yes; and Chair Saba, yes; Vote: 5/0/0. 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 property is in an area of existing small lots with similar setbacks. The proposed structure will have a larger setback than those around it.

Discussion:

Vice Chair Connors pointed out that there is a 1.5 inch difference. Mr. Lavelle stated that the proposed plan will put the proposed dwelling in one spot.

Chair Saba requested a vote.

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

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

The use is a reasonable one because it is an existing use that is being changed and upgraded.

Discussion:

Member Leondires stated that the proposed dwelling and proposed septic are being upgraded Chair Saba stated it will still be used as a single family residence.

Member Sullivan stated that this is not a proposal for a three story, two bedroom structure. They are getting back down to grade line, it is a very small lot, it is a very reasonable, single story, two bedroom dwelling.

Chair Saba agreed that it fits the character of the neighborhood.

Chair Saba requested a vote.

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

**Vice Chair Connors made a motion to approve the Application for Variance from Article IV Section 400:4 submitted by James Lavelle Associates for Bureau Family Revocable Trust, Edward & Susan Bureau Trustees, to allow construction of a replacement dwelling 8.7' right side setback (6.3' variance) and 9' left side setback (6' variance) where 15' is required on each side on property located at 9 Lippold Rd, Map 23 Lot 16 in the RR3 Zone. Member Leondires seconded the motion. All members of the Atkinson Board of Adjustment voted in favor. Vote: 5/0/0.**

Chair Saba informed the applicant that there is a 30 day appeal. Any construction prior to that is at the owners' own risk.

**2b. A Variance from Article IV Section 410:8a submitted by James Lavelle Associates for Bureau Family Revocable Trust, Edward & Susan Bureau Trustees to allow construction of a replacement dwelling 63.8' from the Wetland (36.2' variance) where 100' is required on property located at 9 Lippold Rd, Map 23 Lot 16 in the RR3 Zone.**

Discussion:

Chair Saba stated that there has been discussion on the request for variance of the wetlands setback in the application and asked if there were anything else to add.

Chair Saba stated that it is a reconstruction of an existing dwelling and deck 63.8 feet from Island Pond, a 36.2 foot variance.

Findings of Fact:

- Decrease of nonpermeable surface
- The disposal system is further away from water
- Building proposed maintains similar placement of other homes surrounding structure proposed
- Conservation Commission did not deny
- Improvement makes neighborhood values increase.

Chair Saba requested to go through the criteria.

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

It would not adversely affect the water of Island Pond.

Discussion:

Impermeable surface is decreasing, the septic system will be smaller, upgraded and on the side of the lot away from Island Pond. There will be less paved walkway. The lot will be a little flatter, so the runoff will not be as quick with the proposed new structure. The Conservation Commission has addressed the issues and a request for Shoreline approval has been submitted.

Chair Saba requested a vote.

**Vote: Vice Chair Connors, yes; Member Leondires, yes; Member Wade, yes; Member Sullivan, yes; and Chair Saba, yes; Vote: 5/0/0. Criteria 1 is approved.**

**2. The spirit of the ordinance is observed because:**

The proposed new dwelling would be setback from the pond in a similar manner to the surrounding properties.

Discussion:

Chair Saba stated that the actual structure is closer but because the deck was so big, the actual setback is not changing much.

Chair Saba requested a vote.

**Vote: Vice Chair Connors, yes; Member Leondires, yes; Member Wade, yes; Member Sullivan, yes; and Chair Saba, yes; Vote: 5/0/0. Criteria 2 is approved.**

**3. Granting the variance would do substantial justice because:**

Allowing for an upgraded to the property in a similar manner as surrounding properties, it will allow for improving the quality of Island Pond water.

Discussion:

Chair Saba is assuming that the applicant will want to access the lake.

Vice Chair Connors stated that the applicant is proposing a nicer house with an upgraded septic system, so that is substantial justice.

Chair Saba requested a vote.

**Vote: Vice Chair Connors, yes; Member Leondires, yes; Member Wade, yes; Member Sullivan, yes; and Chair Saba, yes; Vote: 5/0/0. Criteria 3 is approved.**

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

Increasing the value of this property, therefore, not adversely affecting the value of surrounding properties

Discussion:

Chair Saba stated that the property is being improved.

**Vote: Vice Chair Connors, yes; Member Leondires, yes; Member Wade, yes; Member Sullivan, yes; and Chair Saba, yes; Vote: 5/0/0. 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 property is in an area of small lots created prior to this ordinance, and the proposed structure will have a larger setback than many of those around it.

Discussion:

There is a structure already there. It is similar to the house next to it.

Chair Saba requested a vote.

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

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

The use is a reasonable one because it is an existing use and it would allow for the upgrade of that use.

Discussion:

Chair Saba stated that the applicant is improving what is there already.

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

**Member Leondires made a motion to approve a Variance from Article IV Section 410:8a submitted by James Lavelle Associates for Bureau Family Revocable Trust, Edward & Susan Bureau Trustees to allow construction of a replacement dwelling 63.8' from the Wetland (36.2' variance) where 100' is required on property located at 9 Lippold Rd, Map 23 Lot 16 in the RR3 Zone. Member Sullivan seconded the motion. All members of the Atkinson Zoning Board of Adjustment voted in favor. Vote: 5/0/0.**

Chair Saba informed the applicant that there is a 30 day appeal period so any work done prior to that is at the applicant's own risk.

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

**Member Wade made a motion to adjourn. Vice Chair Connors seconded the motion. All members of the Atkinson Zoning Board of Adjustment voted in favor. Vote: 5/0/0.**

The meeting was adjourned at 8:30 PM. The next regular meeting of the Atkinson Zoning Board of Adjustment will be February 8, 2023.