

## **ATKINSON ZONING BOARD OF ADJUSTMENT**

**21 Academy Avenue**

**Atkinson, New Hampshire 03811**

**Public Hearing Meeting Town Hall**

**Wednesday, March 8, 2023**

### **Members Present**

Glenn Saba, Chair (present)  
Robert Connors, Vice Chair (present)  
Arthur Leondires (present)  
Kevin Wade (present)  
Scott Sullivan (not present)

### **Others Present**

Karen Wemmelmann, Recorder  
Tim Lavelle, James Lavelle Assoc.

### **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 February 8, 2023 meeting as amended. The motion was seconded by Member Leondires. 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 hearing at 7:30 PM, March 8, 2023. Four members are present, Vice Chair Robert Connors, Kevin Wade, Art Leondires and Chair Glenn Saba.

- 1. Application for Variance submitted by James Lavelle Associates for Michael Saviano from Article IV Section 410:8b to allow the construction of a detached garage 70.5' from the Wetland instead of the required 100 feet (29.5' variance) on property at 33 Boulder Cove Rd, Map 20 Lot 12 in the RR3 zone.**

### **Abutters:**

Michael F. Saviano, Sandra L. Fuhs, SL Fuhs Revocable Trust, Town of Atkinson (Conservation), Big Island Pond Corporation, Atkinson Woods Condo Assoc., James Lavelle Assoc.

### **Discussion:**

Member Leondires will record and read the findings of fact. Chair Saba read the authorization from the applicant authorizing Tim Lavelle, James Lavelle Associates to represent him.

Chair Saba read a letter from the Conservation Commission dated February 28, 2023. The Conservation Commission voted to not object to the variance.

“....Tim Lavelle appeared before the Conservation Commission at our regular meeting on February 22, 2023, and presented an application for a wetland setback variance for Map 20 Lot 12 to demolish an existing structure and allow the construction of a detached garage 70.5' from the wetland instead of the required 100'. This structure will be on the shoreland side of the existing house on the property, and was not deemed to increase any adverse impact on the wetland. Therefore, we voted to not object to this variance. In the course of the discussion but unrelated to the variance application, I pointed out to Mr. Lavelle that there is some debris just over the lot line of Map 20 Lot 12 on property that the Commission recently acquired as a gift from Susan Beckhorn. While not a condition of granting this variance, I asked Mr. Lavelle whether the property owner, as a favor, could ask the demolition crew to also place this debris in their dumpster. I have attached an Existing Conditions report showing a number of camera positions, and call your attention to the photos at positions 03 and 04. The owner's voluntary cooperation would be appreciated. Please let me know if you have any questions.”

The existing conditions report is attached to the original letter. There are camera positions showing the boundary lines and the existing debris that the Conservation Commission has requested be removed.

Chair Saba invited Mr. Tim Lavelle to come before the ZBA to represent the applicant.

Mr. Lavelle stated he spoke to the owner regarding cleaning up the debris and the applicant agreed to clean it up.

Mr. Lavelle explained that there is an existing structure that is over the lot line of Sandra Fuhs' property. It is over the lot line of the Fuhs property by about 3 feet. He passed out photos of the structure to the Board members. The applicant is proposing to remove the structure entirely and replace it with the proposed garage/solar shed that would be 17.62 feet from the lot line. The applicant is proposing to remove something that is not only nonconforming, it is encroaching on the abutting property and make it conforming to the sideline setback. The applicant has kept the proposed garage/solar shed as far back from the shoreline as possible. However, there is an overhead power line going through the property that feeds the rest of Boulder Cove. By regulations, the applicant cannot build closer than 10 feet from that existing power line. The applicant is proposing a drywell system designed by Lavelle and Associates to catch the roof drainage. To get to the nearest point on Island Pond, it is necessary to measure through the house. The house is a little under 12 feet from the water. The proposed garage/solar shed is behind the house. The applicant is planning to use the proposed garage/solar shed to store his boats, a speed boat and a pontoon boat. He is also proposing solar panels on the solar shed/garage.

Vice Chair Connors asked if the proposed structure is a shed or garage and asked to confirm that it would be behind the house. Mr. Lavelle responded that the applicant calls it a solar shed but it is a garage and it is behind the house.

Vice Chair Saba informed Mr. Lavelle that he drove by. There was too much snow so he could not get in. His concern is the debris he saw, not just the debris mentioned by the Conservation Commission. He saw one existing structure and debris. Mr. Lavelle responded that the debris around that existing structure would be cleaned up as part of the applicant's proposal. Chair Saba asked if the lot would be cleaned of all debris. Mr. Lavelle responded that it would mostly be cleaned up and asked if debris were allowed. Chair Saba proposed to wait until the snow has melted and take a site walk. Chair Saba responded that the property is on the

water, it is a beautiful property, and the applicant is asking for relief. He stated that relief has been granted in the past.

Vice Chair Connors is concerned that if the Board gives the relief and the applicant builds the proposed structure, that he will put more junk on the lot and it would be closer to the water.

Mr. Lavelle stated that the house is clean, there is no debris around it and there is very little debris around the newer garage. The structure encroaching on the lot line is falling down and full of electrical parts. The applicant is planning to demolish that building and clean up that area.

Chair Saba asked if the applicant is already planning on cleaning up the debris.

Mr. Lavelle stated that the applicant is planning on cleaning up the debris and will agree to doing so.

Vice Chair Connors stated that one of the questions is diminution of value and that adding more debris or not cleaning up what is there is offsetting the benefit of building a new structure.

Mr. Lavelle stated that the Conservation Commission objected to the debris behind the other garage because it is on their property and that the applicant agreed to clean up that debris as well.

Chair Saba continued that the applicant should not object to the Board making approval of the variance contingent upon the lot being reasonably cleaned and Mr. Lavelle stated again that he believes the applicant would not object and that is his intent.

Chair Saba opened the hearing to the public. No members of the public were present and there were no comments.

Chair Saba asked the Board members if they had more questions.

Member Leondires asked about the existing garage.

Mr. Lavelle showed where the structure to be removed goes over the lot line. The abutter had her property surveyed and is aware that the structure is over the lot line. The new structure is 17.62 feet from the lot line. Since this is a pre-existing lot of record, 15 feet are required and side line setbacks are met.

Chair Saba stated that the variance is for wetlands setback from Big Island Pond and asked if the applicant has gone to the State for shoreland approval. Mr. Lavelle stated that he has submitted an application for shoreland approval but has not received it.

Chair Saba requested Member Leondires read the findings of fact.

**Findings of Fact:**

- Agent authorization letter for Tim Lavelle
- The Conservation Commission letter states that it does not object
- The letter requests debris removal as a favor, not contingent upon approval

- Applicant agrees to debris removal
- The Chair asked that approval be granted contingent upon debris removal and the applicant agreed
- Nonconforming structure is being replaced with a conforming structure with a 17.62 side setback which conforms to the side setback regulations
- The house is between the garage and the pond and is closer to Big Island Pond than the garage. The variance is for the garage which is still nonconforming to the wetlands setback
- There is a lot of debris on the lot and Mr. Lavelle stated that the applicant should not be opposed to cleaning up most of the lot
- The application is going to the State for shoreline approval.

Chair Saba requested to go through the conditions.

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

This proposal would not adversely affect the water quality of Island Pond, the reason for the ordinance.

Discussion:

Vice Chair Connor stated that the house is already closer than the shed and will block anything from the shed. The Conservation Commission does not object. Mr. Lavelle stated that the applicant meets all State regulations.

Member Leondires asked if the shed were the same distance from the shoreline as the house. Mr. Lavelle responded that it is about the same but conforms to State requirements of 50 feet.

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

2. The spirit of the ordinance is observed because:

The proposed new structure will meet the setback from the sideline. It is set back from the pond in a similar manner or further than the surrounding properties. Other structures are 17 feet and 19 feet from the shoreline while this structure is 70 feet from the shoreline.

Discussion:

Chair Saba stated that there is a structure there which is being replaced. It is not encroaching more than that structure which is dilapidated. Conservation has no objection to this proposed structure and its proximity to the pond.

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

3. Granting the variance would do substantial justice because:

It will allow for the upgrade of the property the same as others in the surrounding area.

Discussion:

Chair Saba stated that substantial justice is done because the applicant is cleaning up the lot which is a beautiful lot but it is a mess, there is a lot of debris. The applicant will take a structure that is over the side lot line and replace it with a structure that will meet the side setback, thereby eliminating a nonconforming use.

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

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

The property will increase in value itself by removing a dilapidated structure thus not adversely affecting surrounding property values and as Vice Chair Connors stated, cleaning up the debris will also help with property values.

Discussion:

Chair Saba stated that it would definitely help and it will protect the lake from any potential runoff from that debris. The current condition of the lot is an eyesore for everyone.

Vice Chair Connors stated it will not diminish the value of the surrounding properties but he is not sure if it will increase the value of the applicant's property. He does not think a shed will increase the property value. Chair Saba stated that the shed will not diminish the value of the property.

**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 property is in an area of small lots and would be used in a similar manner to those around it. The proposed structure will have a larger setback than those around it.

Discussion:

Chair Saba pointed out that the property is 3 acres. Mr. Lavelle agreed and pointed out that the applicant combined a lot of lots.

Chair Saba stated he believes that the no fair and substantial issue is that there was a structure there and the new structure will be less nonconforming and the proposed use of the structure is more than reasonable.

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

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

It is a garage and solar shed and would allow for boats, etc. to be stored inside especially in the winter.

Discussion:

Vice Chair Connors stated that Mr. Lavelle mentioned solar shed a number of times and asked if there would be solar panels. Mr. Lavelle stated that solar panels would be placed on the shed and be used to power the house. It is a garage that the pontoon boats will fit in.

Chair Saba believes a garage is a reasonable use.

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

**Vice Chair Connors made a motion to approve the Application for Variance submitted by James Lavelle Associates for Michael Saviano from Article IV Section 410:8b to allow the construction of a detached garage 70.5' from the Wetland instead of the required 100 feet (29.5' variance) on property at 33 Boulder Cove Rd, Map 20 Lot 12 in the RR3 zone contingent upon reasonable cleanup of the debris on the lot, inspected and signed off by the Code Enforcement Officer. Member Wade 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 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 close the public hearing. Member Leondires seconded the motion. All members of the Atkinson Zoning Board of Adjustment present voted in favor. Vote: 4/0/0. Unanimous.**

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

The meeting was adjourned at 7:53 PM. The next regular meeting of the Atkinson Board of Zoning Adjustment is April 12, 2023.