

ATKINSON ZONING BOARD OF ADJUSTMENT
21 Academy Avenue
Atkinson, New Hampshire 03811

Public Hearing Meeting Town Hall
Wednesday, September 12, 2007

Present: Frank Polito, Chairman; William Friel, Vice-Chairman; Hank Riehl; Kate Rochford (*after first public hearing*);
Alternates: Samuel Zannini; Maggie Osborn (voting after first public hearing)

Mr. Polito called the meeting to order at 7:50 P.M.

Approval of Minutes 9/12/07.

Page 3, last paragraph, fourth line, change “there” to “their”.

Mr. Riehl made a motion to approve the minutes as amended. Mrs. Osborn seconded and the motion and it was approved. Mr. Polito abstained.

Correspondence:

Incoming

1. Sumner Kalman dated 9/12/07 re: Atkinson v. Zannini, Notice of Decision ‘Approved’.
2. Letter to Sheldon Wolff from James Kirsch dated 9/27/07 re: Accessory Structure.
3. Sumner Kalman dated 9/25/07 re: SBA v. Atkinson, Discovery Plan.
4. Letter to Michael Saviano dated 9/24/07 re: Occupancy Permit requirements.
5. Home Business Renewal Application, Norma Smith, 52 East Road, Map 14, Lot 81. ***Mr. Friel made a motion to approve the request for renewal based on the application as presented and there being no changes, Mr. Riehl seconded the motion and it was unanimously approved.***
6. Home Business Renewal Application, James Miller, 79 Maple Avenue, Map 14, Lot 12. ***Mr. Friel made a motion to approve the request for renewal based on the application as presented and there being no changes, Mr. Riehl seconded the motion and it was unanimously approved.***
7. Home Business Renewal Application, Michele Dugdale, 11 Old Coach Road, Map 7, Lot 199-34. ***Mr. Friel made a motion to approve the request for renewal based on the application as presented there being no changes, Mr. Riehl seconded the motion and it was unanimously approved.***
8. Society for the Protection of NH Forests dated 9/28/07 re: Commercial sign on Town of Atkinson land under conservation restrictions.

Outgoing

1. Mr. & Mrs. Blake Baker dated 9/17/07, 16 Chase Island Road, Map 22, Lot 34 re: Variance & Special Exception/Conversion approval.
2. Mr. Ronald McDonald dated 9/13/07 re: Attending October 10, 2007 meeting.
3. Zoning Board Legal Notice for Meeting of 10/10/07.
4. Ms. Norma Smith dated 9/27/07 re: Notice of Home Business Renewal.
5. Ms. Michele Dugdale dated 9/27/07 re: Notice of Home Business Renewal.
6. Mr. Michael Murphy dated 9/27/07 re: Notice of Home Business Renewal.
7. Mr. James Miller dated 9/27/07 re: Notice of Home Business Renewal.
8. Ms. Billie Gage dated 9/27/07 re: Notice of Home Business Renewal.

Public Hearing – 8:10 P.M.

James Kirsch, Code Enforcement Officer request for Appeal from Administrative Decision of the Building Inspector’s issuance of a Building Permit to Rebuild a Dwelling

destroyed by fire. Property located at 21 Stonewall Terrace, Map 17, Lot 30-22, RR3 Zone.

Abutters' list was read with the following present: James Kirsch

Mr. Kirsch said that after speaking with Attorney Kalman, he drafted a notice of violation letter that he was going to present to the Board of Selectmen. Mr. Polito asked Mr. Kirsch what he was asking the Board to address in his appeal. Mr. Kirsch explained that a permit was granted to build a detached garage in 2003. Mr. Jones gave him a stop work notice because a kitchen was installed. Mr. Edmondson removed the kitchen and an occupancy permit was granted, but made very clear that this was not to be used as an apartment. Since then, it has been made into an apartment and his daughter's family has been living there. There was an in-law apartment in the house that burned down. Mr. Kirsch contends there is already a dwelling on the property now and building a new house will allow two dwellings on one lot; a violation of zoning. He is asking the Board to not allow the applicant to build a new house until this issue is resolved. Mr. Polito said that because the applicant was never given an occupancy permit for what is over the garage, it is not a legal residence. Therefore, it would be an enforcement issue. Mr. Friel questioned whether this applicant would abide by this, as it appears he already has violated the use of the space over the garage. Mr. Kirsch said Mr. Edmondson agreed to remove the apartment and was supposed to submit plans for an accessory living unit to be constructed in the new house, but he missed the deadline to come before the hearing. Mr. Kirsch said the applicant was granted a special exception for the in-law apartment in 1986. Mr. Polito questioned this and thought this did not exist in 1986. Mr. Polito said the other venue available to the building inspector, would be to deny the occupancy permit after the house is built, until the garage comes into compliance. Mr. Jones said he found it hard to deny a building permit to someone, whose house burned down. He was not aware of the in-law over the garage at the time he issued the permit. He said he was told that Mr. Edmondson's daughter will move into the in-law in the house once it is built. He believed this was the same situation as another in Town and thought it was an enforcement issue. He wanted to let Mr. Edmondson build the new house and then give him a 30 day period to remove the in-law over the garage prior to issuing an OC. Mr. Jones believed he issued the permit in good faith and would do it again. Mr. Polito asked for the Board's input as it was a serious matter to pull a permit that had already been issued. Mr. Zannini asked if the enforcement could continue while the new house was being built. Mr. Kirsch said if the Selectmen followed his recommendations. This could cost \$100.00 a day. Selectmen Sullivan said he had a meeting with Mr. Kirsch and Mr. Edmondson and he felt comfortable with the fact that Mr. Jones issued a building permit to start to rebuild a dwelling. Mr. Edmondson is going to have the builder present plans for an in-law apartment and he knows he has to come before the ZBA. He is confused as to why at this point Mr. Jones issuance of the permit is being questioned. He believed Mr. Edmondson knows what that he has to dismantle the in-law above the garage, to what it was permitted for, and the permit should go forward. The Board agreed this is an enforcement issue and not under the purview of the ZBA.

Mr. Friel made a motion to deny the appeal based on the discussions. The house that burned down was the only legitimate and approved dwelling on that property. An application has been made to rebuild a single family dwelling unit on that property. The permit issued is legitimate and can proceed. Any other violations that exist on the property are under the purview of the Board of Selectmen. Mr. Zannini seconded the motion and it was unanimously approved.

Public Hearing – 8:20 P.M.

William & Diane Bingham request for Variance from Article IV, Section 410 to allow construction of a detached garage 65' from wetland (35' variance) as opposed to 100' on property located at 9 Amberwood Drive, Map 19, Lot 2-4, RR2 Zone.

Abutters' list was read with the following present: William and Diane Bigham; Mr. Dube, representing the Bighams

Mr. Dube explained that they would like to build a detached garage. It cannot go any closer to the house and they are 30 feet from the lot line. The current garage is being converted to a home office. The Garage can not be attached to the house because of the grade of the driveway. It would come straight down into to garage and there is all ledge in that area. The proposed garage is a slab on grade as opposed to a garage under. Mrs. Bigham said the wetland was greatly increased when all of the road reconstruction was done. The pitch of the road was changed and there were not proper impact studies done on the drainage. Mr. Polito asked if the wetlands were delineated. Mr. Polito asked for an Engineering plan. Mrs. Bigham said this plan is the septic plan and Mr. Dube drew in the garage. The surveyor measured the distance from the edge of wetlands. Mr. Dube said that right now there is vegetation, but no water. Mr. Dziechowski said he walked the property twice and agreed with the assessment of the property. He would normally be uncomfortable with this kind of proposal, but he believed the actual distance to wetlands may be more than 65 feet. The issues of drainage due to the reconfiguration of the road are significant. This garage's impact on the wetland is low and he would rather have the cars in the garage than to be parked outside near the wetland. Mrs. Bigham said there is standing water when the snow melts because there is no place for it to go. Mr. Dziechowski said he would not deny a variance for this and that the wetland does not appear to have high value. Mr. Polito was concerned that they did not have absolute evidence that the garage was 65' from the wetland as all that is being provided by the applicant is a marked up septic plan with now surveyor stamp to certify the distances. Mrs. Bigham asked if the Town could do a survey as they did not conduct impact studies. Mr. Polito said she could ask, but the Selectmen would have to make that decision. Mr. Dube was confident that this was 65' from the wetland as his surveyor measured and would be willing to produce a letter stating that.

The Board reviewed the criteria:

1. The Board agreed that based on the input from Mr. Dziechowski, this was not a high value wetland. **There was a consensus of the Board that this criterion was met.**

2. The Board agreed that cars parked in a garage would offer more protection to the wetlands. The topography of the lot makes it unique. **There was a consensus of the Board that this criterion was met.**
3. a.)When the road was reconstructed it affected the drainage.
b.) There is no other place to put the garage. **There was a consensus of the Board that this criterion was met.**
4. **There was a consensus of the Board that this criterion was met.**
5. Protecting the wetland meets the spirit of the ordinance. It is not a high value wetland. **There was a consensus of the Board that this criterion was met**

Mr. Friel made a motion to approve a 35' +/- variance as indicated on the marked up septic plan, based on the conditions having been met. The approval is contingent upon receiving a letter from the surveyor that the proposed garage is 65' from the wetland and the letter must be received within 30 days or the variance will be rescinded. Ms. Rochford seconded the motion and it was unanimously approved.

Public Hearing – 8:45 P.M.

Adam Pappalardo, Little River Properties II, LLC request for Variance from Article IV, Section 470:9 to erect a Commercial 40 +/- sq. ft. sign as opposed to the required 15 sq.ft. on property located in Atkinson (building in Plaistow,NH) 4 Main Street, Map 5, Lot 67, C Zone.

Abutters' list was read with the following present: Board of Selectmen for the Town of Atkinson; Adam Pappalardo;

Mr. Pappalardo said he was asking for a variance to put a sign back on Town owned property. The State of New Hampshire required them to remove it from its original location when it reconstructed the route 121 bridge. Mr. Pappalardo gave the Board letters from the State of New Hampshire indicating the sign needed to be removed for the reconstruction project. Mr. Pappalardo presented the Board with pictures of the proposed sign and the old sign. Mr. Polito asked how many tenants the building had. Mr. Pappalardo said there is the capacity for 10 – 12 tenants. The building is no longer visible from the road due to the bridge. Mr. Pappalardo contends that when you come over the bridge you only have about two seconds to see a sign. With the increase in the speed limit allowed on that road, it is impossible to read the sign. This causes safety issues. Mr. Pappalardo presented a letter from Chief Consentino to the State of New Hampshire to have the speed limit reduced in that area, which the State refused to do. Mr. Pappalardo said the sign was originally in the Town of Atkinson and he is just asking to relocate the sign. It was originally relocated to another spot and then the Town of Atkinson asked him, for safety reasons, to put another driveway to the Community Center off of his driveway. Mr. Pappalardo removed the sign again, which was already in disrepair. Mr. Pappalardo showed the Board the original site plan from 1985 showing where the sign was previously located. All he wants to do is put a new sign back in Atkinson, as it was before, of roughly the same size. Mr. Polito asked if any of the land that he owned was in Atkinson. Mr. Pappalardo said the driveway was in Atkinson and that in 1982 there was an exclusive right given to use the area and driveway by the owner of the land. Mr.

Pappalardo does not pay any taxes in Atkinson for this property as it is located in Plaistow. The Board reviewed the site plan. The building was also built in 1982. There are no records before 2000 in Plaistow that are available.

Mr. Polito said that given the complicated nature of this issue, he called Attorney Kalman. Attorney Kalman said this Board should not be dealing with civil issues regarding deed restrictions and ownership rights. The Board deals with zoning, so whether the applicant has a right to put a sign on Town property based on easements or other deeded restrictions is immaterial to the Board. The Selectmen and the applicant are aware of the issues. Mr. Polito said the Board needs to ask the Selectmen whether they have voted and agreed that the applicant can place a sign on Town property. This is all the Board needs to make a decision on the zoning aspect of the proposed sign. Sarah Callahan asked to be recognized and indicated she was from the Society for the Protection of New Hampshire Forests. She is an eagle steward and the Board was sent, as a courtesy, a letter sent to the Town Administrator, as well as the Chair of the Board of Selectmen. She stated there was a conservation restriction on this town owned 5 acre property and when the property was conveyed, it extinguished the Town's right to place a commercial sign on the property. Mr. Polito stopped her and said it was not material to the Zoning Board and their decision for this hearing. He said that as far as the Board is concerned, the Town owns that land and if the town grants permission to Mr. Pappalardo to place a sign on the property, the ZBA is satisfied that Mr. Pappalardo has standing to apply for zoning relief to erect a sign. Ms. Callahan contended the Board did not have the right to give permission to erect a sign. Mr. Polito said that under RSA, the Selectmen have authority over town owned land and that any assertion of deed restrictions on the town's use of that property is a civil matter. Ms. Callahan claimed a legal interest in the property. Mr. Polito said that if the town owns the property, sorting out what rights other parties may have by deed restriction is a legal matter for those parties to take up with the Board of Selectmen or the Courts and not with the ZBA. Ms. Callahan said it was not clear to her that the Board of Selectmen authorized the placement of the sign. Mr. Polito said they would get to that.

Mr. Polito wanted the record to be clear that if the Board granted approval for a sign, it would only be an approval for the sign with respect to zoning; period. Such an approval, if granted, does not address or undermine any party's legal rights regarding any deeded easements or restrictions. Mr. Polito understands there are issues and claims being made, but they are not for the Board to decide. Mr. Polito said the applicant is asking for permission to place a sign, in a commercial zone, on property owned by the Town. If the Selectmen grant permission to the applicant to put a sign there, then the applicant has standing to come before the ZBA and apply for a variance. Ms. Callahan contends the Selectmen do not have the right to grant the ability to put up a commercial sign. Mr. Polito said unless she could demonstrate the Town did not own the property, they would continue with the application. Mr. Polito asked Ms. Callahan who the legal owner of the property was. Ms. Callahan said the Town is the owner of the land but the Forestry Society holds a legal interest in the property. Mr. Polito said the Board would treat this as the Town is the owner. Mr. Dziechowski believed it was not clear that where the applicant has indicated they wish to put the sign is even Town owned land. Mr. Polito

reiterated that lacking information to the contrary, the Board is dealing with zoning only. There are other processes that the applicant has to follow even if the Board grants a variance to erect a sign. For example, at the very least the applicant needs a building permit. If for some reason it is determined that the location of the sign is not on town property, the variance would not be valid as the variance, if granted, is for a specific sign, in a specific location, on a specific property.

Mr. Pappalardo stated that this was originally approved in 1982 and the Forestry Service got ownership in 1990, well after they were already there and the sign existed.

Mr. Sapia stated that the Town Engineer marked off where the State right of way ended and marked where the sign could go. This was originally a safety issue and the Pappalardos were gracious enough to allow the Town to put a second point of egress from the Community Center for when it was over used such as during elections. Working with the State Engineer, the Selectmen concluded that the Town owned the property and the sign had to be moved because of "line of site" issues. The Selectmen agreed and they gave permission to Mr. Pappalardo to erect the sign and they believe the Town owns the property. Ms. Callahan asked at what meeting this was decided. Mr. Sapia said it was a posted meeting.

Mr. Polito said the Board of Selectmen could not grant a variance. Mr. Sapia said the Selectmen were very clear that the sign had to conform to the zoning, required a building permit, and be approved by the ZBA if necessary. They believe that relocating the sign is reasonable, due to public safety, and is beneficial to the Town to have the second point of egress.

The Board agreed they were dealing with an application for relief of the size of a sign in the commercial zoning. This falls under Section 470:9. Mr. Polito was looking for guidance and read the criteria under 470:12. He asked the Board if they thought this applied. Mr. Polito thought this implied that any relocation fell under the new zoning. Mr. Zannini asked if it made a difference if it were not voluntary. Mr. Polito said it did not appear to take that into consideration. The consensus of the Board was that the sign fell under the new zoning and would need a variance. Mr. Polito did tell the applicant they may have been able to apply under an equitable waiver, but he did not know if they would have met all of the conditions. Mr. Polito asked the applicant if they wanted to proceed with the variance. Mr. Pappalardo indicated they did.

Mr. Pappalardo said the zoning allows a 3' x 5' sign. The sign that they originally had was 40' square feet and they want to replace it with one the same size. The application originally stated the existing sign was larger. Mr. Pappalardo said it was measured incorrectly and the Board changed all the references in the application to reflect that the proposed sign was about the same size as the original sign and not smaller. The proposed sign is 12 feet in height, which includes the entire structure. The placard is located within the structure. The Board discussed signs that are placed on the building themselves versus what would be allowed on the placard and if in fact each business was allowed a 10 square foot sign. Mr. Polito asked Mr. Jones how he usually interprets this. Mr. Jones

said the business is allowed a directory sign, in which multiple businesses located in a building or park, are put on that one sign. Item No. 1 is applicable, and item No. 2, is if you drive down to the business itself, each occupant is allowed a sign over the doorway of 10 square feet. Mr. Polito said that is in the Commercial Industrial Zone. This is a Commercial Zone.

The Board agreed that Item No. 1, Directory Signs applied and that is how they would proceed. Mr. Polito said that size and location are applicable to this request.

The Board reviewed the criteria:

1. Mr. Polito read the application. Mr. Dziechowski thought it was clear that it diminished value of the Conservation Land. The first thing you see when you enter the Town of Atkinson is this huge sign. Mr. Sapia said this is not out in the middle of some beautiful forestry land or a meadow. It is between an access road and a highway. It is being upgraded from its original condition and is being moved less than 10 feet. It is reasonable in the light of safety and the Town should be thanking the Pappalardos for working in conjunction with the Town. He respectfully disagrees with Mr. Dziechowski. This is a commercial zoned area and there are other businesses located on this road with signs. Mr. Polito said he was hard pressed to think that putting a sign there diminishes the value of Town owned land. Mr. Riehl agreed. Mr. Friel questioned the size and whether it was too intrusive. Mr. Polito agreed this could be an issue for another variance criterion, but believed the Board needed to decide on diminished value only and only with respect to the request to have a larger sign than zoning allows. Mrs. Osborn asked if the Board is deciding on the impact to other property values in the area or just the Town owned property. Mr. Polito said none of the abutters are at the hearing and it is up to the Board to make reasonable judgments on the surrounding properties. Ms. Rochford asked if this would be setting a precedent. Mr. Polito said every application stands on its own merit. Mr. Pappalardo said that is situation is unique because other businesses do not have the safety issues he has and were not forced to move their sign because of bridge construction. Mr. Polito asked if this sign were materially different than what was already there. Mr. Riehl agreed that was the key for him. This already existed, just in a different location. Based on the discussions, the Board agreed this did not diminish surrounding property values. **There was a consensus of the Board that this criterion was met.**
2. Mr. Polito pointed out that the Board must use the Supreme Court's Malachy decision for a definition of Public Interest. In a nutshell, public interest is best served when there is no adverse impact to the public's health, or safety and that the objectives of zoning are met. Mr. Pappalardo said there is a safety issue because of the speed cars are traveling. People need to be able to see the sign. Mrs. Osborn said that one might argue that putting all of the businesses on the sign might create a safety issue and it might be more reasonable to place the address of the building there instead. People would then look for that address and once inside the parking lot, could proceed to the office they are looking for using signs on or near the building. Mr. Pappalardo said they have tenants that are

affected by there being no sign at the present time. They use the sign as a form of advertising. The existing clients may know where the building is, but how are they to get new clients if they don't have advertising. Mr. Zannini, speaking as a resident believed that an established business owner who has had an office in this complex for the last ten years, and has had a sign out there, would be extremely upset if now it were taken away. Mr. Polito said the Town wrote an Ordinance that took away that vested right. Mr. Sapia said the only reason the original sign was removed was to create a better, safer condition and the Pappalardos moved the sign at the Selectmen's request to increase public safety. The Board of Selectmen, Town Engineer and the Pappalardos looked at every other option as to the placement of that sign. This was a matter of public safety. Mr. Baglieri said he rented an office in this building in 1987 and if you took his sign away, he would move. He needs name recognition and this would be very important to his business. Mr. Riehl said he agreed. A sign had to be moved because of road construction and the applicant wants to put a substantially similar sign in a reasonable location. Sometimes there has to be judgment calls and there are very special circumstances in this case. The Board agreed this is not a typical situation and the applicant was forced to move the sign. Mr. Dziechowski wanted the board to be aware the applicant had plans before the Town of Plaistow to increase the size of his park. Mr. Pappalardo said any expansion would not affect the requirements of the sign and they would not be asking for any additional signage. Based on the application and discussion, the Board agreed the public interest was met. **There was a consensus of the Board that this criterion was met, with Mrs. Osborn dissenting.**

3. **1.) Based on the application and the discussions there was a consensus of the Board that this criterion was met.**
2.) The Board agreed that the applicant had a use and there was a material physical change that occurred on the property that was not caused by the applicant and was beyond any control of the applicant. The Board agreed based on the Selectmen's input that all other options for the placement of the sign were looked at. **Based on the application and the discussions there was a consensus of the Board that this criterion was met.**
4. The applicant had a sign and it was taken away. **Based on the application and discussion there was a consensus of the Board that this criterion was met**
5. Mr. Polito said the applicant is looking for relief only to the size. Ms. Rochford said this is different because they already had the sign and it was taken away from them. It meets the height requirement. Ms. Callahan believed the Board needed to address the issue of signs located off of the premises, in addition to height and area requirements. Mr. Pappalardo said it was already there, located in Atkinson since 1987. Mr. Callahan said that right was taken by the State. Mr. Polito said the driveway to the Community Center is in Atkinson. Based on the discussions, the Board agreed the public interest was met. Mr. Polito said it does violate the letter of the ordinance, but questioned whether it violated the spirit of the ordinance. Riel said it came back to the applicant already had the sign. This is not a brand new application for a sign that never existed. Mr. Polito said the location also comes into play, because if it were in an open area, the size would matter, but

relative to the topography of the land and the reconstruction of the bridge, the size is necessary. This does not change the character of the location in which the sign will be placed. Mrs. Osborn did not agree and thought as the first thing that was seen when entering the Town, it did affect the character. Although she sympathized with the applicant, she did not feel that a larger sign was warranted. **There was a consensus of the Board that this criterion was met, with Mrs. Osborn dissenting.**

Mr. Riehl made a motion to approve a variance for the construction of a sign approximately 39' +/- square feet, 12 feet in height, as represented on drawings submitted 10/10/07, which are part of the public record. The sign is to be located on Town owned property of the Atkinson Community Center and is to be maintained in good order. Ms. Rochford seconded the motion and it was approved 4 -1, with Mrs. Osborn dissenting.

Next Zoning Board of Adjustment Hearing scheduled for November 2007

Motion to adjourn was made and seconded. Mr. Friel adjourned the hearing at 10:15 P.M.

Minutes transcribed from tape.
submitted

Russo

Respectfully

Rebecca