

ATKINSON CONSERVATION COMMISSION MINUTES

OCTOBER 4, 2004

Present: Carole Hall, Scott Kukshel, Tim Dziechowski, Peter McVay, Michelle Veasey, Paul Wainwright

Guests: Denise Legault, Patricia Parker, Marianne Bonaiuto, Margaret Osborn

Scott Kukshel, chairman, called the meeting to order at 7:37 pm and introduced himself as chair. Quorum was present.

Wetlands Variance Request from ZBA for Daniel and Margaret Osborn for property on Hemlock Shore Drive, Map 22, Lot 57. Mrs. Osborn was present. Other guests present are abutters or neighbors to the property and are listed above. Scott Kukshel, chair, read a letter into the record from Attorney Campbell, representing Mr. Osborn. The lot is currently a vacant parcel. The request is for a two bedroom house to be located 41 ft. from the shoreline of Big Island Pond, a waterbody meeting the definition of wetlands and also under NH Shoreland Protection Act. The variance request is because the main structure would be located 41 ft from the shore with a deck in front of the house to be located 31 ft from shore.

Mrs. Osborn was present at the Atkinson Conservation Commission meeting at the request of her attorney to review her request for a variance to the local wetlands ordinance to construct a house 41 ft from the shoreland edge of Big Island Pond with a deck proposed to be constructed 10 ft. in front of the proposed house construction.

Mrs. Osborn read a letter from Attorney Campbell, that he had requested her to meet with the commission prior to her appearance before the ZBA to rectify our concern that they hadn't met with us before. The letter also described the parcel as a currently vacant 11,200 sq. ft parcel on the shore of Big Island Pond and that his office had filed a variance request with the Atkinson ZBA for permission to build a two bedroom structure 41 ft. from shore with a deck to be 31 ft. from shore and that wetland setback variances were needed. And he extended his apologies at not being able to attend our meeting.

Mrs. Osborn presented an approved plan for a septic system to be located 75 ft from the edge of the shore of Big Island Pond. She said the approved plan was for a two bedroom structure and that five people would be living in the house. Questions were asked as to whether the system would be overloaded. She said the plan was state and town approved. The plan showed the house and deck which she said had been designed by an architect to fit the lot. The lot rose steeply starting not too far back from the edge of the shore, so that it was impossible, according to the owner to place the house further back on the lot. The proposal did not even meet the state shoreland act, which requires 50 ft to the edge of the water for a new house structure. Other plans showed the house and its levels against the steep incline of the land and erosion controls in place.

Questions were asked about the fact that the state shoreland act could not be met, erosion concerns during construction, cutting of trees for the work that could cause destabilization of the steep bank adjacent into the water and subsequent degradation of the water. The owner said that only the trees needed to be cut for the work, would be cut, that her husband would tag each tree, so they would protect as many as possible. The plan as shown was for the septic system approval only. The commission was

concerned that more erosion controls would need to be in place other than the fencing shown. There was a concern that not only did the house extend beyond the 50 ft allowed, but there was also a deck in front of that. The commission stated they wished to work with any applicant who comes into the meeting, but expressed concern that there was no where to go on this lot to bring it into any type of compliance with the state setback, let alone the town 100 ft. setback to wetlands. The owner said this was an old non-conforming lot of record. The members of the commission checked the historical tax record and found that this was taxed as an unbuildable lot at least up to 2000. The recent records were not available at the time. The owner said that for the past two years, they have been taxed as a buildable lot. She said the taxes per year were assessed at \$230,000 and that was one reason why they were pursuing building there. There was no tax record there to substantiate that statement. Only the previous records as to the lot being non buildable. The owner showed her deed, which stated it, was deeded as a buildable lot and said that was the record they were using. The owner stated that her husband's family has enjoyed the lake in that area since the 1950's and it was their desire to live there to continue to enjoy the area and that her husband was very knowledgeable about the land.

When asked about the status of an application to the NHDES for the Shoreland Protection Act, due to new construction adjacent to the water and less than that allowed by state law, Mrs. Osborn stated that her attorney had talked with Collis Adams of DES and was in the process of getting a letter from DES stating that they didn't need a waiver from the state in order to build, since they had this deed saying this was a non-conforming building lot which existed prior to the enactment of the state law.

The owner showed photographs of about four or five homes along the shoreline, which she said did not meet the 50 ft. setback required by the state, with the argument that since these properties did not meet the setback, she should be granted a variance. Members and abutters present noted that the photos shown, showed pre-existing houses which were rebuilt within an existing footprint. They were not new construction.

The abutters and neighbors present were given opportunity to comment. They said they had followed this proposal from its first inception last year, showed the original conservation letter recommending denial, and noted the withdrawal of the original application. One person, Denise LeGault said she was not clear on the erosion during and after construction and after how the run-off would be handled. The abutters noted that during the winter, the snow is plowed out onto this beach and right of way, that the town plows block this driveway. There were questions about the steep slope and tree removal canopy, that this cove is an L- shaped area with a lot of runoff. Concerns were expressed about erosion and importantly that the state setback could not be met. The lack of being able to meet the setback was a real issue. One abutter noted she wasn't allowed to build a sunroom, so was puzzled how this could be an approvable project.

Commission discussion focused on several areas. An approved septic system for two bedroom dwelling in which five people will be living sets the system up for failure. It was noted that the house has 2300 sq ft of livable area, which seems to be more than the house size of nearby properties. The question was asked, what is different this year about the proposal from the discussion the commission had last year and recommended denial at that time. Was there more done to come into compliance with the local ordinance and state required setback? The commission's responsibility is to see the plans, know the rules and regulations, to help the owner make adjustments to be able to

come into compliance with local ordinances and state laws. A real issue with this proposal is the NH Shoreland Act 50 ft requirement for setback, that there is no way to meet that rule on this lot.

Based on the lengthy discussion with the owner, the plans and other information shown to the commission, knowledge of the state statutes and local ordinances, input from the public, the commission discussed the proposal and came to the following decision.

Motion made by Pete McVay, seconded by Paul Wainwright to reaffirm the Atkinson Conservation Commission's original decision dated October 8, 2003 to recommend denial because there was no substantial change to the shoreland setback from what was proposed last year and to recommend to the ZBA that as part of any of their action that the owner be required to submit an application to NHDES Shoreland for a waiver for new construction less than 50 ft from shore. **There was a quorum present and the action was unanimous.**

A letter will be prepared for the ZBA meeting to be held next Wednesday.

All guests left the meeting. The commission took a short five minute recess.

Discussion was held as to need for new members, as commission is currently one member down.

Budget discussion. Scott needs to present conservation budget to the selectmen, so members reviewed current and proposed budget. Discussion was held on need for mowing of three fields and the cost and number of days needed. Repair of equipment and postage costs needed for one mailing. Suggestions to take \$750 from Other Prof Services and split between printing, binding and postage. Under Care of Grounds, to leave at \$600 for trail maintenance and add new line for field mowing at \$2100, to put in equipment maintenance \$100, so that total budget would be \$5545. Increase was \$2190 due to field mowing. Signs would stay at \$400.

Motion made on proposed budget as discussed by Paul Wainwright, seconded by Carole Hall. **Passed Unanimously.**

Trail workday to be held on October 23. Michelle Veasey gave update on what to bring (bag lunch, gloves, loping shears, etc.) and press release prior to event to be held at Sawyer Ave 9:00 on until dark or done. Commission will provide drinks.

Update of commission website was discussed. This is being done between Scott Kukshel and Pete McVay. Notice of trails day will be added to site.

Wetlands Zoning Draft: The commission reviewed the document draft and suggested some minor changes to draft. Public hearing to be held Oct 20 at 8 pm by Atkinson Planning Board.

Motion to adjourn by Pete McVay, seconded by Michelle Veasey. **Unanimous.**

Next meeting will be Monday November 1, 2004 at 7:30 pm at Atkinson Town Hall.

Respectfully submitted,

Carole Hall, Secretary