

TOWN OF CENTER HARBOR
ZONING BOARD OF ADJUSTMENT
Hearing
Monday, July 11, 2016

Chairman Bernie Volz called the meeting to order at 7:07 p.m. Present were Members, Karen Peranelli, George Lamprey, Anthony Avrutine, and Clerk Aimee Manfredi-Sanschagrin. In the audience Attorney Stephan Nix, Bill Cutillo, Justin Cutillo, Doug Cutillo, Brian Hurley, Rob Robillard and Ken Ballance Code Enforcement Officer.

I. **MINUTES**

George Lamprey approves the minutes as presented from March 14, 2016, seconded by Anthony Avrutine. All were in favor minutes pass.

Voting Members: Bernie Volz, Karen Peranelli, George Lamprey and Anthony Avrutine.

II. **HEARING: CENTER HARBOR ASSOCIATES, LLC APPLICATION FOR VARIANCES (PORCHES AND DECK & WALKWAYS 5:3:1)**

Chairman announces that due to the fact there are only four members of the ZBA present, the requirement of the Board is to ask for the approval of the applicant if they would like to proceed with only four members or if they would like to have their hearing continued. Chairman states "if you chose to proceed you cannot use the fact that the Board consisted of only four members as grounds for a rehearing should the application be denied." Chairman asks the applicants how they would like to proceed.

Steven Nix Attorney representing Center Harbor Associates, LLC states he explained this situation to them and he defers to the applicants to respond. Applicants Justin Cutillo, David Cutillo and Bill Cutillo state they would like to proceed.

Chairman provides instructions on how the hearing will be conducted and then turns the floor over to Attorney Steve Nix representing Center Harbor Associates, LLC.

Variance Case No. 2016-0711A Construction of 5'x18' porches on Lake Front (5:3:1)

Attorney Stephan Nix asks the Board if he can make the presentation for both cases because they are very similar in nature and when the Board is ready for the second case he will cite the specific details pertaining to that request. Chairman asks if anyone is opposed, a question raised by George Lamprey for clarification would be that if it's a single presentation each case would be voted on separately. Chairman states yes. The Board agrees on the format requested.

Attorney Nix asks the Board to accept into the record the application and the summary in its entirety. The application and summary in its entirety have been entered into the record as part of the minutes.

Following the presentation the Chairman asks the Clerk how notice was given, Clerk responds application was hand delivered one day prior to due date. Chairman asks if anyone wants to speak in favor or opposition of the application hearing none Chairman asks if there are any questions from the Board. George Lamprey wanted to know if any of the abutters had submitted any written statements pertaining to the application, Clerk responds no.

Karen Peranelli if the proposed would increase the room capacity from the current 33 rooms? Justin Cutillo responds the main lodging facility will remain 33 rooms but completely renovated and 2 rooms that are currently over the office building will remain at 2 rooms.

Anthony Avrutine asks if the room will be sold as motel rooms or are there plans to sell them as time share? Justin Cutillo responds, lodging room only. Reservations through the central reservation office or onsite by people stopping in. We are not going to encumber the property or sell time shares, we are not going to allow any day usage of the property. Only people with reservations at the motel will have access to the beach and amenities at the motel.

Karen Peranelli, there is no change in capacity for the rooms meaning if it's a 2 person room will it be increased to a 4 person? Justin Cutillo, we have actually reduced the room capacity. The configuration when we closed on the property were 2 queen beds in all the rooms and we have changed that to 1 king bed in 25 of the 33 rooms.

Chairman asks if anyone else has input. Ken Ballance, I'm sure this will be addressed but I want to make sure we have a discussion about it. If this is approved we want to make sure we have a methodology for getting the roof water off of the porches and spread as opposed to being dumped down to ground level.

Attorney Nix states Paul Fluet of Fluet Engineering is working on the engineering for the shoreland. They are working on the run off from the roof and the broken culvert off the side of the building. Justin Cutillo, I can speak to that, currently the beach is quite eroded so we are going to put a french drain above the retaining wall and funnel that water down to the lake. We have met with DES and they are very comfortable to what we are proposing. We have another drain that would tie into the foundation drains that have been newly set. Effectively the intent would be to carry the water from the roof runoff into this same drain and then into a cut back culvert, set a basin to catch any sediment and then have some rip rap rock to help reduce the impact of that water flow to the lake area. Bill Cutillo, that basin would allow us on a regular basis maintain and clean out any sediment that would go into the lake. George Lamprey, the drainage and proposal you have described was submitted to DES and you received a response on that. We have not submitted an official application because we wanted to have our meeting with the ZBA first but DES will have notes on file of our meeting.

Doug Cutillo, when DES looked at Fluet had proposed they saw lots of improvement in mitigation. Bill Cutillo, the comment made to us from the representative from DES, Adams I believe was his last name, was everything you showed us to date is improving the current situation so we think it's a good idea.

Chairman, anything else? Hearing none the Board moves to the second variance application.

Variance Case No. 2016-0711B Construction of deck and walkways for Jacuzzi (5:3:1)

Attorney Nix reiterates some of the information that was contained in the previous hearing. He then moves on to the specific location of the Jacuzzi and why that location was selected. There is a lower level with a common room which will have handicap bathrooms and a showering facility. The first reason we selected this location is because it fits behind the States 50' set back but it does not fit behind the Town's 75' setback and the reason for this is due to the location of the Town sewer line. The sewer line is approximately 3' below grade which is not very far down. The second reason for this location is because of the concrete retaining wall which is holding back the parking lot. The engineer and architect have told us to avoid that area especially based on what was found with the foundation or lack thereof. The third and critical aspect for this decision is the Jacuzzi tub is designed for handicap access. The existing stairs coming off the parking lot will be wide and there will be a lift added, there is another set of stairs that will be added on the other side and a lift added there as well. Once someone is on the shaded area (showing this area on the site plan) this is a handicap accessible area with ramps that can up to the building and down to the beach. The deck will be removed and the land will be graded so that wheel chairs can make it over the lawn area. A lot of the same arguments apply, what I will point out when this deck and Jacuzzi

area are lowered down from the existing grade you will not be able to see it from the water, you will not be able to see it from the Town property and you will not be able to see it from the residential property. Looking at it from the lake because it will be flush with the grade you won't see a structure. You may see the ramp and the stairs but you won't be able to see a structure. The same drainage applies to this proposal.

Attorney Nix continues, one of the biggest reasons the applicant is proposing this it to provide a year round amenity to the motel which it's never had. The hot tub will run during the winter so anyone staying there will have the ability to use it. Again the existing deck will be removed as a mitigation feature to this facility and as for substantial justice the ability to upgrade the facility constructed in 1969 will allow modern times amenities.

Chairman asks the Clerk if notice for this application was given the same way Clerk responds yes. Ken Ballance asks what the proposed size of the patio area will be. Attorney Nix states the area is 25x29 which includes the walkways. Ken responds, so we allow 150sf flat surface patio in that zone by our ordinance so we are adding an additional 350sf approximately to what we already allow but we are getting rid of the deck.

Chairman asks what kind of material will be used for the walkway and patio. Doug Cutillo, some pavers and machine laid stone for retention. Bill Cutillo, the walkway and apron will be heated so it can remain open during the winter. We will have particular times when we will uncover the tub, having the hot tub is a very critical amenity, without it we will have a very difficult time getting people to stay here in the winter. Justin Cutillo, between the slopes for ADA and access to the common room and heating it, a lot of the design and also where we are setting it is a life safety thing. It's a nice amenity to market for a ski and stay package but keep it set up where it's open and not covered with snow and with heating the patio and walkway area keeping it safe for everyone. Doug Cutillo, the ADA access really determines the length of the walkway and how many landings you need to have.

Anthony Avrutine, what is the capacity of the hot tub? Bill Cutillo, I think it's 8 x12 but I don't know what the State regulation rule is but there will be a sign. Doug Cutillo, there is an official capacity of the State.

Anthony Avrutine, what kind of filtration are you using? Doug Cutillo, it's all by State standard which will probably be sand. Bill Cutillo, it will probably be sand. We have pools and hot tubs at our other facilities and we stay with sand and automatic chlorinators. The water will be tested 4 times a day the regulators will be inside the building. Justin Cutillo, the proximity to the mechanical room is important as well to have the boiler be able to heat the walkways and the hot tub.

George Lamprey, you intend to have a closing time for the hot tub? Bill Cutillo, yes we typically have a 10 p.m. close time this is for the peaceful enjoyment for everyone staying there and we do enforce it. We certainly don't want this open in the winter longer than we need to be because we don't want it uncovered for all that long.

Chairman anyone else? George Lamprey I will just ask the same question on this one did we have any correspondence from anyone? Clerk responds no.

Chairman closes the hearing at 7:55 p.m.

Board goes into discussion of the criteria to grant or deny the variance for case 2016-0711A Porches.

- Criteria 1: George Lamprey, I do not see that granting the variance would create a contradiction with the public interest. I don't see an increase in density, I do see an allowance of an enhanced amenity in the use but not a change in the use so I don't have a problem with it. Karen Peranelli and Bernie Volz agreed. Any further comments on this criteria? Hearing none.
- Criteria 2: George Lamprey, I would say the same thing for this criteria as stated for criteria 1. Remaining Board members agree.
- Criteria 3: Chairman, I don't see any real gain or loss to the general public. Anthony Avrutine, if anything it seems like a gain. Karen Peranelli, I think it actually may look better with the porches.
- Criteria 4: Chairman, this is somewhat ties to the previous criteria that it may enhance the properties in some ways. Anthony Avrutine, there were no issues with the abutters, if anything they seemed ok with it. Chairman, well we didn't hear anything from them and they were noticed so we can only assume they don't care one way or another. Karen Peranelli, I don't think surrounding values will be diminished at all.
- Criteria 5: George Lamprey, I certainly think there are unique features to the property and its footprint. It makes it difficult to deal with on several levels. Chairman, correct there is not much they could do without getting a variance. Karen Peranelli, they are already in the setback. George Lamprey, so I guess I go back to the point that given the context of what they have to work with that the changes that are being asked for do not change use increase a transgression of nonconformance if you will beyond physical extension of a deck or whatever. There are buffers, it will be minimal in terms of a site or view issue and for this particular property there are not a lot of options. Chairman, so it sounds like we are generally in favor of the application, we should discuss if there will be any conditions to put on the granting of any variance. George Lamprey, and we are talking about the porches? Chairman, correct.
- Discussion: Karen Peranelli asks if the porches will be open. Bill Cutillo states yes. Karen asks if there would be any need to keep them as open porches and not allow them to be enclosed. Attorney Nix, with the shoreland protection act the porches cannot be closed for living space purposes. Screens could be added but it couldn't otherwise be enclosed. George Lamprey, we could also handle that by accepting the applications schematics as part of the record as shown. Chairman I think the water issues we definitely need to be clear on. It sounds like its being dealt with but we would definitely want to make sure it would get dealt with. George Lamprey, and how would we handle that? Ken Ballance we could handle it very simply by making a requirement that the water that will flow out to the Lake area be picked up by a gutter system that will get it to a drain system which I'm sure they are going to do anyway. George Lamprey, and this discussion is not questioning whether or not they are actually going to do it, it's essentially putting sand on the tracks in the record to see that it gets done. Ken Ballance, that is correct.

Motion: **George Lamprey: I move to approve the application for a variance as presented for case number 2016-0711A with the following conditions:**

- 1. Subject to DES Approval**
- 2. Appropriate water disbursement for porch roof area as determined by Center Harbor Code Enforcement Officer.**
- 3. Design as presented on sheet A.1 dated May 5, 2016, prepared by Stewart Associates Architects and compliance determined by Center Harbor Code Enforcement Officer.**

Seconded by Anthony Avrutine, all were in favor.

Board goes into discussion of the criteria to grant or deny the variance for case 2016-0711B Jacuzzi and Deck.

- Criteria 1: George Lamprey, I would reiterate my comments on the decks which is simply the property is locked in given the special circumstances of its location and proximity to the lake. That there is not additional density, so I think by accepting the Variance we are not treading on the intent or spirit of the ordinance. Karen Peranelli, I would agree with that. Karen continues, I think it would contrary to the public interest if they put the Jacuzzi on top of the sewer line. George Lamprey, does the current deck go over the sewer line? Attorney Nix, yes but the deck is on sonnet tubes and is coming down anyway.
- Criteria 2: Chairman, the spirit of the ordinance would certainly be observed. Board agrees.
- Criteria 3: Chairman, granting the ordinance would do substantial justice, the Board agrees.

George Lamprey, I don't want the silence on the recording to make it seem like people are befuddled, it is a just a reiteration of the conversation we just had for the previous case. Chairman, yes the arguments are very similar.

- Criteria 4: Board does not see how property values would be diminished, Chairman states and there is no one here to comment otherwise.
- Criteria 5: Chairman, I think again as George said earlier, there are a lot of special conditions to the property. George Lamprey, I think creating the additional amenities to the units and the rehabilitation that is going on, there is not a trampling of the spirit of the intent of the ordinance for what is being asked for.

George Lamprey continues, when we get to the motion, if granted, we may want to discuss about a time limit for noise during the summer. I'm not even sure about that but just something we should discuss. Chairman, are there any other comments? Board members say no they are comfortable with what has been discussed.

Chairman, did we want to make sure the existing deck would be removed? George Lamprey, if you want to discuss that, that is fine but I guess I didn't feel the need for an explicit trade off on that. Chairman to Ken Balance, what is your position on that. Ken states the deck is outside of the 75' set back so it does not make a difference. Karen Peranelli states she does not need a condition set for removing the existing deck.

After some discussion the Board was comfortable with the Town's noise ordinance and did not set a time limit on the use and noise of the outdoor Jacuzzi. Karen Peranelli asks if there should

be a reference to the proposed plan for the deck area. George Lamprey, yes we should reference the plan as presented for the deck design.

Chairman, and again we will leave it up to the Code Enforcement Officer.

Motion: Anthony Avrutine: I move to grant the variance to construct an outdoor Jacuzzi and deck with heated accessible walkways within the 75' lake setback as an amenity to the existing Center Harbor Inn, as presented on proposed plan designed by Ames Associates Plan dated June 20, 2016 case number 2016-0711B.

Seconded by Karen Peranelli. All were in favor.

Chairman, the Clerk will draft a letter in the next few days. You should be aware there is a 30 day appeal period.

III. **OTHER BUSINESS**

Board discusses the Election of Officers and concluded Bernie Volz would remain Chairman, Aimee Manfredi-Sanschagrin would remain Clerk and Jean Meloney was UNANIMOUSLY voted as Vice Chair.

Clerk updates the Board regarding potential ZBA Alternate Members. Selectmen sent letters to 3 residents in the Town of Center Harbor inquiring if they had any interest in serving. Evelyn McAuliffe expressed interest in serving, the Clerk has requested the Selectmen complete the appointment paperwork for Evelyn to be sworn in and receive her ZBA materials. George Lamprey requested the Clerk reach out to the other two residents by month end if a response has not been received by that time.

IV. **ADJOURNMENT**

Meeting adjourned at 8:55 p.m.

Respectfully submitted by Aimee Manfredi-Sanschagrin.