

TOWN OF CENTER HARBOR  
ZONING BOARD OF ADJUSTMENT  
Hearing  
Monday, March 13, 2017

Chairman Bernie Volz called the hearing to order at 7:01 p.m. Present were Vice Chair Jeanne Meloney, Members, George Lamprey, Chris Williams, Alternate Member Palmer Smith and Clerk Aimee Manfredi-Sanschagrin. Absent with notice, Karen Peranelli, Anthony Avrutine and Evelyn McAuliffe. In the audience Ken Ballance Code Enforcement Officer and Keith and Pamela. Markley.

I. **MINUTES**

George Lamprey motioned to approve the minutes from November 14, 2016, seconded by Chris Williams. All were in favor minutes pass.

**Voting Members: Bernie Volz, Jean Meloney, George Lamprey, Chris Williams and Palmer Smith.**

II. **HEARING: PAMELA MARKLEY VARIANCE 5:3:1**

Chair provides rules of protocol to all of those in attendance, stating if there is dialogue with the Board it is to go through the Chair. Clerk states Mr. and Mrs. Markley hand delivered the application for Variance on February 23, 2017 citing Section 5:3:1 to add patio pavers to lawn area within the 75' setback of the shoreline.

Chairman asks applicant to read the application. Mr. Markley reads the application into the record. Chairman asks if there is any additional information that the applicant would like to add.

Applicant makes one adjustment under Criteria 1. The adjustment is in the proposed square footage, the application was submitted requesting 350 to 400 sf. of pavers at existing grade. The applicant feels the square footage should be adjusted to 250-300 sf. of pavers.

The area highlighted in yellow on the plan is the only area of discussion. That area is previously disturbed lawn, there is sod that has been placed in that area and underneath the sod sub base material has been installed. There would be no additional excavation that would be required to install the pavers.

**Chairman:** When you say that it is previously disturbed for what reasons was it previously disturbed?

**Mr. Markley:** It was previously disturbed for the purposes of turning it into a patio.

**Chris Williams:** In your drawing is this a retaining wall and there is also another wall? (See plan attached to application case number 2017-0313)

**Mr. Markley:** Yes it is. That is a downhill slope to the lake and then drops off. The retaining wall closest to the water I can't tell you the exact vertical drop but it's probably 5 ft. to an area that is reasonably damp at certain times of year. Everything you see on that plan is built except for the laying of any pavers.

**Jean Meloney:** So you have an existing walkway there?

**Mr. Markley:** No. Mr. Markley asks to approach the Board and show them on the plan what items are in place. The area not highlighted is what we are permitted to do now but we would like to do the entire project at once. The planter is in place.

**Chairman:** Is anyone opposed to this request.

**Ken Ballance:** The Town is. On the drawing and what has been stated, in the ordinance and in that zone we allow 150 sf patio in the set back. We need to be specific in what we are giving them as far as space goes. There is a lot of disruption there, far more than what our ordinance allows. I understand the need for the retaining wall but it's not part of any calculation neither is the upper wall. If approved we

specifically want the exact amount of paver that will be installed, including the 150 sf that they have already been allowed.

**Chairman:** When you say there will be 250-300 sf is that included in the 150 sf or in addition.

**Mr. Markley:** In addition to.

**Chairman:** So we are looking at a total of anywhere from 400-450 sf.

**Chris Williams:** Can I ask again, these two walls are existing and the steps are existing?

**Ken Balance:** Yes they are existing because the walls were being installed when I went down and told them to stop because we don't allow it in the zone. There was no town permit for this work. I went down and spoke with John Stephens of Stephens Landscaping, they stopped working came into the office where we went over the ordinance and that is why they are here now for a variance. The decision obviously is up to the Board but we just want to ask that you are specific in what you are giving them.

**Mr. Markley:** I would like to propose that we commit to 350sf.

**Ken Balance:** 350 total or 350 plus the 150?

**Mr. Markley:** 350 plus the 150 to total 500 sf.

**Ken Balance:** That is three times the size allowed.

**Mr. Markley:** Let's understand something, we are in here for a variance because we are looking to do something outside of the rules, we knew this when we walked in otherwise we wouldn't be here. Mr. Markley continues, it is probably beneficial to the Board to know how all of this happened. Last summer we hired Stephens Landscaping to design, permit and install a patio on our property. At the time my belief is if you looked at a company like Stephens Landscaping or Chris at Miracle Farms, I think we think of them as companies that actually know what they are doing. They were both handling a lot of projects on the lake front. We entered into a contract, they started working pursuant to a DES permit and then the construction was stopped by Mr. Ballance. To the best of my knowledge I never met Mr. Ballance but he was the one that went onto the property and told them to stop and so the project was halted. John Stephens had a problem on his hands because he has a contract with us that stated clearly it required all necessary approvals. He met with Mr. Ballance and to the best of my knowledge, submitted a construction permit and design and received an approval. At the time it was a difficult situation because they had already started excavation on the property. I think John was looking at pretty tough fall back considering the nature and the language of the contract. We told John to work out what he could. He apparently had a constructive conversation with Mr. Ballance because he managed to come up with something other than a big hole in the ground and a law suit. We managed to fix and stabilize the parts of the project that we could not do anything with at the time and were told you can't put pavers on the other areas unless you apply for a variance so that is what we did.

Mr. Markley continues, I think it's fair to say that none of the local contractors that were handling some of the major projects last year were aware of this. Most certainly Miracle Farms and Stephens Landscaping were not aware of it because I had lengthy conversations with both John and Chris this past fall. I basically said "how did we get here" and they responded "they didn't know". I know ignorance is bliss and ignorance is the fault of the people that are not there but that is how we got where we are now. We are now left with a big flat area in our front lawn that is grass and what we are asking for is approximately 300 sf of pavers that are beyond what we are permitted for.

**Chairman:** This ordinance goes back quite a ways, March 2000 or so.

**Jean Meloney:** March 2008.

**Mr. Markley:** No the reference line goes back to 2016 doesn't it?

**Ken Balance:** No the reference line has always been there, us allowing these patio's in the setback was added in 2016. Up until 2016 we didn't allow anything in that zone other than what is stated above under that section.

**Chris Williams:** Did they get a shoreland permit?

**Ken Balance:** Yes they did.

**Chairman:** Any other questions?

**Jean Meloney:** Would you consider downsizing it from 500 to maybe 300 closer to what is allotted making it easier for us to say yes to because three times is a substantial amount.

**Mr. Markley:** I hear you. I am in an awkward position because of what I have there now. The reality is we are going to deal with whatever it is we are going to be able to do.

Board discusses some options with the property owners, such as pervious pavers and how to mitigate water runoff into the lake such as adding a lawn buffer at the retaining wall. Chairman asks Ken about the retaining walls and Ken responds they are part of the calculation.

**Chairman:** Variances are supposed to address issues on a property that make normal standards difficult. That is really my hang up here, what is unique about this property that would say a variance would be appropriate.

George Lamprey asks if there was any correspondence submitted to the Town by abutters, Clerk responds no.

**After much discussion the Board closes the hearing 7:53 p.m.**

Board goes into discussion.

Jean Meloney comments she would like to see the patio sized down. Chairman, I think if we were dealing with this at the start we may not have allowed anything but we are in a tougher position now because of the current state of things. Chris Williams, I agree we are responding to a situation that already exists instead of them coming to us first.

**Discussion of each criteria:**

**Criteria 1:**

**Palmer Smith:** I think if permeable pavers were to be installed I believe it would be within the spirit of the ordinance. Board members agreed with this statement. Chairman states reducing the proposed patio size would also be beneficial.

**Criteria 2:** The Board agreed that the stipulations in criteria 1 would also apply to criteria 2. Chairman, so for criteria 1 & 2, granting the variance would be in the public interest and meets the spirit of the ordinance if we require the use of pervious pavers and reduce the area that would be the patio. It's all because of the current conditions that we have to do that.

**Ken Balance:** I missed something I forgot to bring up and it would be favorable to the applicant. Chairman states the Board will hear it. Ken, one of the reasons they are in this dilemma, they had a permit for their dock. When Stephens Landscaping went in to do this work we would have picked this up had it been a normal shoreland submission but it was a PBN (Permit by Notification). Shoreland does not send that to the Town they only send it to the property owner and then they are supposed to come in and get a building permit. So when they received the PBN, they presumed everything was good. If it had come to us as a regular shoreland I would have had all the documents and would have immediately contacted them and said no this is not allowed in that zone. I just want to clarify that point because the Board has made statements that they did this work prior to getting permission from the Town. They got permission from the State not realizing it needed to come to us and had it come to the Town they would have immediately been told they needed a permit.

**Chairman:** On the flip side of that I think the project is more than would have triggered the requirement of a building permit.

**Ken:** Oh no it would require a building permit but at that time it was issued for the 150 sf which is allowed, but because it was a PBN the Town did not get it in advance of the work starting.

**Chairman:** Let me understand something, was the building permit obtained first?

**Ken Balance:** No it was obtained after I caught it.

**Chairman:** So I guess what I am trying to say is that they never applied for a permit for anything, not even the 150 sf that is allowed.

**Ken Balance:** Very true but a lot of people when they get a permit approval from the State, just like septic systems, they just go ahead not thinking they need a building permit from the Town. I am not saying that was the case here, all I am doing is clarifying that they would have had a heads up from me prior to any work being done if it was not issued as a PBN.

**George Lamprey:** How many state options are there, the PBN vs. a regular shoreland permit?

**Ken Balance:** Right. They already had a shoreland permit to put in the dock and what you can do is cycle off of that permit for so many more years. It is set up this way to keep the applicant from spending two thousand dollars each time for additional work on the shoreland that is not being completed all at once. I just want to clarify that with a PBN we don't always get the information. I thought about what Chris was saying and unfortunately, a lot of people that receive the approval from the State see that as the permission to go ahead, notwithstanding that in the Town of Center Harbor, \$1500 fair market value anything in the zone in our town you need a building permit.

### **Criteria 3:**

**Chris Williams:** For me the moving of furniture does not impose an injustice.

**Chairman:** I agree and I think in this case based on the current situation something needs to be done to address the current state of the property as it is today. For me I think that would be the only argument that I could see to allowing the variance under this criteria because it addresses the current situation.

**Chris Williams:** I would agree with that.

**Chairman:** For this one granting the variance would do substantial justice because it rectifies the current situation.

**Criteria 4:** All Board members agreed with this criteria that there would be no impact to surrounding properties.

### **Criteria 5:**

**Chairman:** Had we received this request prior to any disruption at the property I don't think I could find very many special conditions of the property that would justify granting the variance.

Chris Williams and Jean Meloney believe the sloping of the land and the current conditions.

**George Lamprey:** I agree that it may be inadvertent, the circumstances of the property now in regards to information falling through the cracks but on the other hand, ignorance is not an excuse. The landscaper went ahead and did it. So I am struggling with that core principal, so when we go to "it's reasonable because" I go to the circumstance.

**Chris Williams:** I am proposing a 5ft grass strip between the pavers and the wall. I think it reduces the paving and from an environmental standpoint it works better in filtrating the water.

**Chairman:** I agree, I would personally like that better and reduce the pavers.

**Chris Williams:** There are some points I do not agree with and would like to be on the record. Patio's and structures are normal for these types of properties and they typically have to meet the requirements of the town, that doesn't mean that some don't exist and maybe didn't get a permit.

**Chairman:** Or it could mean they were built before the ordinances were in place.

**Jean Meloney:** It is a normal want for these types of properties not that everyone gets them.

**Chairman:** I would agree that it is a normal want.

**Chris Williams:** The second issue I have is in the application it states it is less impactful than other permitted projects.

Jean Meloney and Chairman state they have that same issue.

**Chairman:** A good answer for the hardship question? Chris Williams and Jean Meloney state the sloping of the land towards the lake.

**Chairman:** If this had come to us first I don't see how we could have allowed more than the 150 sf per our ordinance. It is too bad that we are in this situation.

**Chris Williams:** I agree this is not a good position to be in.

The Board goes through the criteria again in their discussion, on criteria 5 Chris William's states that he does not like this because it sets a precedent. Chairman, agrees the work was started then stopped and now the Board is faced with the challenge of fixing the damage that has been done. Jean Meloney finds this to be the fault of the Landscaper this is their business they should know better. Chairman, agrees.

**Chairman:** Maybe we should talk to the Selectmen and the building commission maybe there is a way to encourage the landscaping companies to do the right thing and maybe penalizing them somehow if they don't.

**George Lamprey:** If Ken had received an accurate description of the plan, we probably would not be here today. In terms of preventing abuse in the future from innocent activity, it is easily resolved.

**Chairman:** They should know they need a building permit as well. Those are the two places where this failed, the permitting from the state and the failure to get a building permit. If either of those had happened, we might still be here but we might be talking about it before it started as opposed to now where we are kind of stuck. You would like to say put it back the way it was and follow the process.

**George Lamprey:** Let's reiterate that everything is case by case. Every property and circumstances surrounding that property are different so I am not so concerned about the precedent. Do we believe the circumstance was inadvertent and do we believe this to be the best outcome we are talking about without jeopardizing the ordinance?

Ken Ballance wants to make sure there is language in the decision, if approved, which incorporates work being completed in the 50' zone. According to the plan provided, it shows disruption in that zone. Board agrees the language will be reflected in the decision if work in that zone is allowed. Based on the Boards discussion, they would like to reduce the area of pavers in the 50ft zone and come up with a modified plan. Chairman asks if this would affect the DES approval, Ken Ballance says no the language is in the shoreland permit for that.

**George Lamprey motion's to accept the application, all were in favor.**

1. Granting the variance would not be contrary to the public interest because: the previous pavers and the reduced area mitigate the already disturbed area.
2. If the variance were granted, the spirit of the ordinance would be observed because: the previous pavers and the reduced area mitigate the already disturbed area.
3. Granting the variance would do substantial justice because, the current situation needs to be addressed and requiring the restoration of the area and relocating the patio are likely to be more disruptive to the area and the lake.

4. If the variance were granted, the values of the surrounding properties would not be diminished or otherwise impacted.
5. Unnecessary Hardship, Owing to the special conditions of the property, (i) there is a fair relationship between the general public purpose of the ordinance provisions and the specific application of that provision to this property because of the slope of the land and given the desired to limit impact within the 75 foot setback buffer, and (ii) the proposed use is a reasonable one because smaller patios are allowed and the current conditions require addressing the situation promptly.

**Motion: George Lamprey moves to approve the variance submitted by Pamela Markley with the following conditions:**

1. **Patio to be built with pervious pavers to State standards with a filter fabric and waterproof membrane to prevent water running thru the soil toward the lake under the wall**
2. **Paver area to begin at least 5 (five) feet in front of the wall (opposite water side) and NOT to exceed 300 sf. in TOTAL (excluding the 5 ft. walkway). Note: This is 300 sf. total (which includes the 150 sf. allowed and as approved on Town Construction permit #2594).**
3. **And, with no more than 60 sf in the 50' setback.**

**Seconded by Jean Meloney. All were in favor, motion to grant the variance passes with set conditions.**

### III. **ADJOURNMENT**

Meeting adjourned at 9:20 p.m.

Respectfully submitted by Aimee Manfredi-Sanschagrin.