

TOWN OF CENTER HARBOR
ZONING BOARD OF ADJUSTMENT

Meeting
Monday December 10, 2018
7:00 p.m.

Chair Bernie Volz called the meeting to order at 7 p.m. Present were members Vice Chair Jean Meloney, George Lamprey, Chris Williams, Anthony Avrutine, Alternate members Karen Ponton, Susan Patz, Stephany Marchut Lavallee, Gregory Hime and Clerk Aimee Manfredi-Sanschagrin. In the audience Code Enforcement Officer Ken Ballance, Surveyor David Dolan, William Twombly, Anne and Rudy Ruggles, Joe Keller, Ms. Gaufberg and Gary Laflamme.

Voting Members: Bernie Volz, Jean Meloney, George Lamprey, Chris Williams and Anthony Avrutine.

I. MINUTES

Anthony Avrutine motions to accept the November 5, 2018 minutes as corrected. Seconded by Bernie Volz. All were in favor minutes pass.

II. PUBLIC HEARING – APPLICATION FOR VARIANCE SLAVA GAUFBERG 215-023; 542 DANE ROAD CASE 2018-1105B – CONTINUED FROM NOVEMBER 5, 2018

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.

Chris Williams recused himself from this case. Voting Members: Bernie Volz, Jean Meloney, George Lamprey, Anthony Avrutine and Karen Ponton.

David M. Dolan of David M. Dolan Associates is representing Slava Gaufberg for the variance request for construction of an attached deck located 48' from the shoreline. 75' is the required set back of the Town.

David Dolan provides a recap of the details made during his original presentation on November 5, 2018. David Dolan has supplied a new proposal to the Board which reduces the size of the deck from the original proposal of 545 sf down to 214 sf. David introduces Joe Keller to the Board, Joe is handling the new project and for clarification he was not involved in any of the work that had been done prior.

The existing building is 43.2' from the shoreline, the proposed deck as revised is 58.4' from the shoreline. We added a walkway from the deck to the shoreline.

Chairman: The deck is going to be about 12' or so and that is 214 sf, if I am reading that correctly, does that include the steps?

David Dolan: No it doesn't

Ken Ballance: We allow 6' of width for the steps and walkway. We do not deny safe access to the lake. A maximum of 6' of width.

Chairman: The new proposal reduces the size from 545 sf down to 214 sf and you are requesting a deck not a patio correct?

David Dolan: That is correct.

Gregory Hime: For clarification you are stating that 214 sf encroaches into the setback not the entire deck area?

David Dolan: That is correct.

George Lamprey: The first plan did not have the pathway, could you just describe that a little bit.

David Dolan: We tried to incorporate the walkway into the landscape that is there. It's hardscape to provide a smooth walkable surface. We added those numbers into the lot coverage and have filed an amended application with the State.

Chris Williams: I'm curious as to why the new path is wider than the existing path.

David Dolan: I believe it is 4' wide but we are allowed 6'.

Anthony Avrutine: I don't recall, we have already taken care of the balconies under the equitable waiver is that correct?

David Dolan: That was my understanding.

Chairman: I believe that is what we concluded the last time they were included in the waiver.

Joe Keller: The lake side of the property was left in a condition by the previous contractor where there were deposits of large stone and rubble and we can't get equipment around the house at this point to get to it. There is a significant grade change, I would estimate about 15'. It would be pretty much impossible to walk down to the water with this grade change without adding some type of walkway to handle the steepness of the land.

Ken Ballance: I just want to add the guy that did the site work was not too forthright. When we received the first plan by a licensed surveyor everything appeared to be ok. I don't think the presumption was made that the stuff that was dumped on the site would be left there so I made a decision. I probably could have used Town money and the property owners money to get that stuff out of there, it would have cost quite a bit. Not to mention the damage that would have been done to get it out so I thought it was better to let it become part of the landscape. It makes a significant difference in the slope of the land.

David Dolan: There is about a 4'-5' drop in the area Ken is referring to.

Karen Ponton: If I'm understanding you, this is why the option of giving them a deck as opposed to a patio would be the best option for them to have an area for outdoor entertaining.

Ken Ballance: Absolutely.

David Dolan: To level this lot in order to build a patio and then provide safe access to the lake would cause more damage to the land.

Board discusses the 5 criteria.

Criteria 1 and 2

George Lamprey believes it's not contrary to the public interest and I would like to express appreciation to the applicant for coming back with a revised plan that reflects consideration over the ordinance. Chairman feels the increase is relatively small over what the ordinance stipulates. The Board feels the new proposal is reasonable.

Criteria 3

Board agrees.

Criteria 4

Board does not see any impact to the surrounding property values.

Criteria 5

Board believes the statements in this criteria are true.

Motion: Chairman moves to approve the variance allowing for construction of a 214 sf attached deck to be built between the 50' and 75' set back line from the shore. Seconded by Anthony Avrutine. All were in favor motion passes.

Chair states there is a 30 day appeal.

III. PUBLIC HEARING – APPLICATION FOR VARIANCE HUKWEEM REALTY TRUST 213-007; 340 COLLEGE ROAD

Voting Members: Bernie Volz, Jean Meloney, George Lamprey, Chris Williams and Anthony Avrutine.

Clerk provides information to the Board on how the application was submitted and how notice was given. No response to the clerk from any of the abutters for or against the proposal. The applicant would like to construct an attached deck within the 75' set back from Squam Lake. The application was entered in its entirety into the record.

Rudy Ruggles 340 College Road and his wife Anne Ruggles provide an overview of the project they are proposing. Rudy states there is currently a deck and a closed porch and they would like to have more visibility to Squam Lake from an outdoor seating area where currently the view is from the interior of the home. The applicants provided the Board with a handout that includes photos that show the natural setting of the land. Rudy states by adding a deck instead of a patio, they would not have to disturb the land with the exception of adding footings. There would be no rock removal or tree cutting. The deck would protrude off the house by approximately 18' but would not interfere with any trees. This would allow the deck to be built around the large rocks and ledge in and around the house in order to avoid causing land disruption. The proposal would connect the deck to the existing deck (shown on the plan).

Gregory Hime asks if the existing deck stops short of where the proposed deck would be built. The applicants responds there is access to the garage so the current deck does stop there but they would build over the garage access to connect the decks. Gregory Hime asks applicant to point out the 75' set back on the plan which Rudy points out to the Board and states the house is already in the setback. Chairman responds most of the deck is in the 75' set back. Rudy Ruggles concurs that all of the new deck would be in the 75' set back.

Chairman: Is the semi-circle the proposed design of the new deck?

Rudy Ruggles: Yes that is our plan. For one it helps with some of the aesthetics and then it is to make sure we do not disrupt the trees or rocks that are there.

Chairman: So with the width at 18' and the length.....

Rudy Ruggles: It comes out to 970 sf +/-.

Gregory Hime: That is total or just what is in the 75' set back?

Rudy Ruggles: Total

Chairman: Which is probably close to 960 sf in the setback.

Anne Ruggles: We have owned the house for 10 years and we haven't done anything to the house and thought at this point it may be nice to enjoy the front view of the lake. Our neighbor and abutter Will Twombly whose father actually built the house is here in attendance.

Gregory Hime: But you do have a view of the lake from the existing screened in porch.

Rudy Ruggles: There is a small slice of a view from that area yes.

Jean Meloney: 18' because?

Rudy Ruggles: We thought this would become our main outdoor entertaining area. The existing deck faces the land and it's thickly treed so our hope was to be able to allow an outdoor seating area that we could entertain and enjoy the view of the lake.

Anne Ruggles: I would like to clarify, the trees are 25' out from the house, we chose 18' because that is the distance that puts the deck right outside the big boulder so we didn't have to move them and they could put the pilings right after the boulder.

Jean Meloney: If you put the pilings inside the boulder how far would it be?

Anne Ruggles: Substantially less approximately 13'.

Chris Williams: Why does the deck need to be that big? In looking at the ceiling tiles here and measuring that out it's practically the length of this room.

Rudy Ruggles: Again we are hoping to have this as our main outdoor entertainment area.

Chairman: It is just a huge area as to what our ordinance allows and they don't allow a deck in the setback in the first place so that's why you are here.

Rudy Ruggles: If 18' is too much and there is a different number the Board feels is reasonable we can try to accommodate that.

Gregory Hime: The ordinance allows 150 sf of patio normally, we are looking at a deck so I think there is a sense of criteria of 150 sf inside the 75' setback.

Karen Ponton: I was wondering if you have considered putting the deck in this area. (pointing to the south/west side of the home where the existing deck is) If you extend the existing deck over wouldn't you have a view of the lake and you would be outside of the setback. It's the same basic direction you would be looking based on your proposal it would just be slid over.

Rudy Ruggles: That area is all woods and we wouldn't be able to see much of the lake because the tree coverage is pretty dense.

Karen Ponton: Ok but perhaps you could limb some of the trees to provide a view.

George Lamprey: The direction you are referring to (based on Karen's suggestion) that would provide a view into the cove correct?

Rudy Ruggles: Yes, towards Chamberlain Reynolds.

George Lamprey: And you would like to be looking in the direction of Red Hill and Sandwich.

Anne Ruggles: Exactly, towards Mouse Island.

George Lamprey: I just wanted to make sure I understood the orientation.

Anne Ruggles: Yes, if we are allowed to build the deck the view would be of Mouse Island and Red Hill.

Rudy Ruggles: If you look at the photos we provided they show the view from the windows that is the view we would like to have. As you can see there is tree coverage as well which we are not looking to disturb. That coverage pales in comparison to the amount of tree coverage we would be looking at if we were facing the direction that was just suggested plus it provides a view of the cove not the view we are hoping to have.

Chris Williams asks about the rocks in the photograph. Rudy Ruggles shows where each rock is located on the plan. Gregory Hime asks about the plantings as mentioned under criteria 2 and what the plan is for those plantings. Rudy Ruggles states they would be placed to shield the bottom of the deck and fill in some areas that look barren. Gregory Hime states that the plantings wouldn't be high enough to hide the furniture on the deck. Anne Ruggles responds no, you would be able to see that as you would with any house on the lake front. Rudy Ruggles adds that anything that we may have to disturb in adding this deck that we provide appropriate coverage or re-coverage.

Chairman asks if there is anyone that would like to speak in favor of the proposal.

Will Twombly: 344 College Road asks to address the Board. My family used to own the property that Rudy and Anne now own. My family had owned the property since 1901. Five generations have enjoyed the property almost every summer since. The original camp was built in 1903 and when my parents aged, my father designed and built the house that Rudy and Anne now own to provide a more comfortable living arrangement. Due to changing family circumstances, the decision was made to subdivide the land and sell this house. It was a painful decision but we felt we had no alternative at that time. One of the greatest fears was that whoever bought the property would tear the house down and build a larger house as we see so often happen over the last few years or so. As you can understand, we had some sentimental feeling about this house and we were pleased that Rudy and Anne have decided to keep it the way it was and have in-fact improved upon it. We couldn't have asked for nicer more sensitive neighbors than Rudy and Anne. We feel so fortunate to have them there and they have shown so much love and respect for the property. As far as the deck is concerned, it would have no impact on us at all because we would not be able to see it. I believe the same holds true for our neighbors on the other side. There is enough tree buffer between the houses. I just wanted to say we are supportive of this petition and feel that the deck would enhance the property and would not detract from the original spirit and intent that my father had when he built it.

Ken Ballance: I usually stay neutral in cases, as you know, but in this particular case I felt it needed to be said. I have been dealing with this camp for about 30 years. The fact is they could tear the house down, backup behind the 75' set back and build a very large house with everything they want. Notwithstanding that, they are willing to

keep a 100+ year old structure and it would be far less destructive with all the large stones and the way the trees are for them to build a deck than to cut out a 150 sf hole and build a patio. It wouldn't really do them any good because the cover out front has to stay at 36" height minimum in the 50' zone. They could go through and cut all the trees out and leave just the required 50 points of trees and change the whole face of the lake legally, if they wanted to put the patio down on the ground. Whereas the deck leaves the trees and the cover and only disrupts minimal area on the ground. I very rarely come out and say this, but in this case, I am definitely in favor of this situation as to what could be done. I think this case deserves your consideration, the fact that they are willing to keep the house that is certainly something to think about. They definitely could, if they chose, drastically change the nature of that area.

Jean Meloney: Ken, could you foresee a way they could do this and reduce the size?

Ken Ballance: Yes I could but I don't like to get into that. When you go to the house there's no real view, one side looks out to Mr. Twombly's boat house and the other side looks towards Markarian's in the woods. The only place they have a sliver of a view is from the porch. I think what they are willing to do is not as obtrusive as it appears in size in this particular case. That is just my opinion.

Gregory Hime: I agree with Ken that the option for a deck is best for this property but my issue is the ordinance says 150 sf and we are looking at 970 sf +/- . It is a tremendous difference. My opposition is not the deck because I think it fits in this situation it's the size.

Chairman: I would agree.

Chris Williams: I would agree with that too, it's a big deck.

Chairman: I think the deck does work very well in this situation, it's just the size I have issues with.

Chair asks if there is anyone wanting to speak in opposition. Hearing none the Board goes into discussion. George Lamprey starts by stating early on in the hearing he thought he heard some degree of willingness for consideration on the size of the deck and he does think the Board has expressed it is the 970 sf proposal that becomes a bottle neck. The Board appreciates that you have given thoughtful consideration on non-disturbance, it's evident to me anyway that you have, but it's the size that is a real issue. Perhaps we should go through the 5 criteria or maybe you would want to come back with a somewhat revised plan.

Chair states that an option for the applicant would be for the Board to continue the hearing if the applicant would like to adjust their proposal or the Board could proceed to act on the proposal that's in front of them.

Rudy Ruggles: To be clear it's not the actual impact on the land because that will be minimal, it's the fact that the deck proposed extends out so far that the issue is the ground area that it covers?

Chairman: No, the issue is that our ordinance allows 150 sf of patio within the 50-75' set back, you are asking for a deck and you're asking for 970 sf.

Jean Meloney: And we understand the tradeoff here is that you are disturbing a lot less ground but we are all hung up on the square footage.

Chairman: You are covering ground that would not normally be covered. Depending on how you treat the deck there are chemicals that might come off that and so on.

Susan Patz: When you look at the Master Plan of Center Harbor it's a really small Town and it's very traditional. I think a patio that size is a big social event so it's the land, the water and the potential usage. In the area where you are it is quiet and then you have other areas that have large gathering areas and it's quite loud.

George Lamprey: We don't want to deny utility and greater enjoyment that's not our goal at all. We are trying to balance within the ordinance context of 150 to your proposal of 970 which is a sizeable leap.

Will Twombly: Quick question regarding the square footage, the 970 sf that includes the existing deck that is already there is that correct?

Rudy Ruggles: No that would just be the new.

Will Twombly: You said the new deck was 18 x 28 correct?

Chris Williams: That is only a portion of it because the area that extends is 18 x 28 and then you have deck that is extending to both sides.

Will Twombly: Well if I'm correct, and I was never great at math, but 18 x 28 is 504 sf.

Jean Meloney: That is very relevant.

Gregory Hime: But what about the steps that calculation needs to be added.

Ken Ballance: You would not count steps down to the water but you would count the steps from the deck to the ground level.

Gregory Hime: In my view it's significantly larger than what our ordinance would allow.

Jean Meloney: But if they cut it in half it would be significantly reduced too.

Chairman: We would like a decent calculation done.

Anthony Avrutine: There is a lot of positive feedback and we would like to be able to do something for you but you would need to assist. I would suggest you take a look at what else you could do to achieve what you want.

Rudy Ruggles: We would like to go back and look at this again. Is there a reasonable amount? If we bring it back to 15' instead of 18' or is it based on the square footage no matter what the profile looks like?

Gregory Hime: Ideally the ordinance says 150 sf but there is room for consideration and that is for you to come up with.

George Lamprey: Unfortunately, we cannot become the architect for you on what we think.

Jean Meloney: But you can ask for a continuance and ask to come back with a revision.

Chairman: Would you like to request a continuance?

Rudy Ruggles: Yes we would.

Chairman: Ok that will end our discussion on this matter, the case will be continued to January 14, 2019 @ 7 p.m.

IV. PUBLIC HEARING – AMMENDED SPECIAL EXCEPTION LAFLAMME 227-008; 28 DANIEL WEBSTER HIGHWAY

Voting Members: Bernie Volz, Jean Meloney, George Lamprey, Chris Williams and Anthony Avrutine.

Chair announces the case Clerk provides information to the Board on how the application was submitted and how notice was given no response to the clerk from abutters for or against the proposal. Application is entered into the record in its entirety.

Gary Laflamme introduces himself to the Board stating he bought the property in 2002. Gary was unaware of the owner occupied requirement set by the Board for the previous property owner in 1996. The property had two commercial businesses and two apartments when he purchased it. Gary states he was made aware only recently, that there was a restriction on my property that required one of the apartments be owner occupied. That would limit what a potential buyer can do with the property so if possible, I would like to have the owner occupancy condition removed.

Chairman: It seems like at the time it may have been applied for under accessory apartment instead of as a multi-family, is that you understanding Ken?

Ken Ballance: Yes.

George Lamprey: It wasn't because the Board made the requirement that it had to be owner occupied was it?

Ken Ballance: No it was Eddie Valpey that did. The thought at that time was the building was originally built and set up as a home occupancy. Ed bought it and there was a business downstairs and he came in never having the intention of living there but thought the best way to do it was through accessory apartment which we now call an ADU. Instead of the Board telling him he didn't have to do that they just went with it, he asked for owner occupied and that's what they granted. I can tell you right now, Gary has been the only owner that has occupied that apartment. It does restrict the sell ability of the property in my opinion.

George Lamprey: Valpey originally asked for it to go through as an accessory apartment but he never lived there?

Ken Ballance: No he didn't and to be honest back then the Selectmen weren't interested in following up on these things but it is different now.

George Lamprey: Well now we have these statutory requirements.

The Board discusses whether or not they need to approve a new special exception or removed the requirement of owner occupied.

Jean Meloney: They have already been granted the special exception to have two apartments and the commercial business the requirement of “owner occupancy” is the only thing that needs to be removed.

Chairman: They have been granted the special exception for an accessory apartment so I think we need to approve a special exception for a two family.

George Lamprey: Why wouldn't we simply remove the owner occupancy as requested because the next owner can decide if they want to come in and ask for a special exception or not.

Chairman: But can we do that?

Jean Meloney: Yes.

Anthony Avrutine: Why couldn't we?

Jean Meloney: It has been granted as a special exception with the two apartments. It was requested by the previous owner to have it deemed as owner occupancy.

Chris Williams: We can just remove that requirement.

George Lamprey: Which is all we are being asked to do.

Chairman: If we can do that that's fine.

Clerk states she spoke with Attorney Boldt and his response was that the Board could decide to remove the condition. (This was based on the information contained in the minutes and not as a direct result of a condition being placed on the property by the Board in 1996.)

Motion: Jean Meloney motions to remove the condition of owner occupancy. Seconded by Chris Williams. All were in favor. Motion passes.

For clarification, the new site plan from 2017 allows one business, if a new owner would like to expand they would be required to go before the PB for site plan approval. Gary Laflamme understands that requirement.

V. PUBLIC MEETING- MOTION FOR REHEARING–24 DEW POINT LANE

Board reviews the Motion for Rehearing submitted by Attorney Springer for property owner Mark Sudbey of 24 Dew Point Lane. Chair states he does not see anything in the request that shows the Board erred in any way in making their decision. Board agreed.

Motion: George Lamprey motions to deny the request for a rehearing for the reason there are no new facts presented in the request nor was there any case law cited in the request. Seconded by Jean Meloney.

George Lamprey states in reading the motion for rehearing, there is clearly a difference in how one interprets our ordinance. I think that in reading of the minutes and in reading the request for rehearing, it's clear they do not match up well. I leave it to the authorities that be, if it goes to a tribunal, to determine who has clearly presented their position or not. When we speak about the grass, and that's the one thing I will mention as an example, Attorney Springer articulates a great deal here that we were confused. When you read the minutes you will see that he says “may I play devil's advocate” and we say go ahead. He brought forth the non-germane controversy in an effort to stir up and confuse and that is what you see in reading his request versus what we have in the minutes. There are other examples but I will leave it with the clear one. The Board agrees with these statements.

Chair states Chris Williams will be recusing himself from the vote, Karen Ponton will be voting on the motion.

Chair asks for a vote on the motion to deny the request for rehearing. All were in favor of the motion to deny the request for rehearing.

VI. ADJOURNMENT

Meeting adjourned at 8:35 p.m. respectfully submitted by Aimee Manfredi-Sanschagrin.