

TOWN OF CENTER HARBOR
ZONING BOARD OF ADJUSTMENT

Meeting
Monday, March 11, 2019
7:00 p.m.

Chair Bernie Volz called the meeting to order at 7:00 p.m. Present were members, George Lamprey, Chris Williams and Anthony Avrutine. Alternate members Karen Ponton, Susan Patz, Stephany Marchut Lavallee and Clerk Aimee Manfredi-Sanschagrin. In the audience Code Enforcement Officer Ken Ballance, applicants Bill Ricciardi and Jill Weed and Pam and Keith Markley of Dew Point Lane.

Voting Members: Bernie Volz, George Lamprey, Chris Williams, Anthony Avrutine and Karen Ponton.

I. MINUTES

Karen Ponton motioned to accept the minutes from January 15, 2019 as amended. Seconded by Chris Williams. All were in favor minutes pass.

**II. PUBLIC HEARING – APPLICATION FOR SPECIAL EXCEPTION –TAX MAP 103 LOT 021
LOCATED ON 217 WHITTIER HIGHWAY BILL RICCIARDI AND JILL WEED** Request is to change

the type of business from a home occupation to a Low-Intensity retail business. Section 4:4:6:2:1:6.

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 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.

Bill Ricciardi and Jill Weed introduce themselves and provide an overview on their request which is to change their business to a Low Intensity Retail Sales business as allowed by Special Exception in the Residential Zone. The purpose of this request is for the sole purpose of being allowed to place a 3' x 5' OPEN flag on their property. Currently, the property in question known as "The Edge" located on 217 Whittier Highway is operating as a Home Occupation which restricts the use of an open flag. Home Occupations are allowed one "Open" or "Closed" sign no larger than one square foot in size. See Section 4:4:6:1:8. The applicant filed a Special Exception to change from a Home Occupation to a Low Intensity Retail Sales Business in order to allow the use of an open flag the business operation would remain the same.

Chair asks if anyone in the audience would like to speak for or against the application.

Keith Markley of 4 Dew Point Lane addresses the Board stating he is not for or against the proposal but he had a few questions. Keith explains his questions are not to cast a shadow on what Bill and Jill are requesting which is to have an open flag. We have absolutely no problem with that whatsoever. We are here because of we are part of the Dew Point neighborhood and the neighbors were asking questions on what this request meant and asked if we would attend to ask a few questions. The first question is if you look at the Section 4:4:6:2:1:4 or 4:4:6:2:1:6, they both appear to have the same sign restriction which is spelled out in 4:4:6:1:8 there is nothing we see that talks about the ability to have an open flag or an open sign. They both appear to have the same sign restrictions. The other part is if you look at 4:4:6:2:1:6 what Bill is suggesting what he wants to become, it's specific to retail sales of antiques and fine art and I don't know if that conflicts at all with the reality of what he wants to do.

Keith Markley continues, one of the other questions is whether or not the low intensity approval would run with the deed of the property of the owner. There was some question as to if they were to sell the property whether some commercial creeping would come into the residential zone. Generally the consensus from people in our neighborhood would be there is absolutely no objection to hanging out a sign or flag but we all remain a bit confused because the application seems to differ from the stated objective.

Chairman mentions it is an odd case and most zoning decisions run with the property. Clerk states the approval for the special exception, if granted by the Board, would run with the property for the business currently in operation. If the business changes to something else, before the business would be able to operate, a Non-Residential Site Plan Approval from the Planning Board would be required.

Bill addresses the Board by saying the property itself has strict deed restrictions and covenants by another party and that he has a conversation with the other party and he did not have an issue with what Bill is trying to accomplish. Bill continues, Keith Markley has a good point in which I did not intend to have this be an antique store, I do not want to change my business at all I just want to be able to hang a flag out.

Stephany Marchut Lavallee asks where the applicant sees that the flag is allowed. Bill states it is confusing and adds when he first was approved to operate as a home occupation he put an "Open" flag out and then was told he could not do that because it was not allowed.

Anthony Avrutine asks how long he has been in business and how long he had the flag out. Bill responds that he has been in business 5-6 years and that he had the flag out for approximately 1 year and then he was told the flag was not allowed so he took it down.

Karen Ponton states she recalls Ken Ballance saying that a flag was a sign and that if you look at the definition of what is a sign is on page 27 of the Zoning Ordinance, I'm not sure I agree with it but I do recall him making that statement. I think that is how we've gotten into that situation with Bill. Karen continues that she can appreciate attracting business to his establishment at the edge of the commercial village zone and adds that the Canoe Restaurant is a completely different business but has an open flag and is only a few lots down from Bill's property and thinks it's a reasonable request for his business. I'm extremely supportive of you having an open flag because I personally want to support our local businesses and I would think that is what our town government wants to do.

Bill adds, I want to be clear I do not want to have a parade of cars coming up my driveway because I live there but when I'm open, I want people to be able to see that I'm open.

Keith Markley, again I am here supporting Bill's flag but there is something we must understand and it's in response to one of the Board members statements. No matter how close our residential neighborhood is to the commercial district, it is a residential neighborhood period. The fact it's on route 25, I know there are times where people have thought of it as quasi commercial because of the traffic that goes through, but it is residentially zoned. One of the conversations that came up in our neighborhood meeting is that we don't want to see commercial creep coming down our road. What Bill and Jill are doing we are supportive of but we are not particularly excited about the property being deeded as a retail establishment especially when the interpretation by this Board is if it has the current use then it somehow survives what the next owner wants to do. I don't believe that is what the rules say I don't agree with that interpretation.

Chair states that is something we have to figure out. Most of the things we deal with such as setbacks etc. have to run with the property.

Keith Markley states that he thought the ZBA had the authority to offer a Variance. Chair responds he agreed. Chris Williams adds that yes they could but this application was filed under a Special Exception. Chair adds that the Board could change the application the whole signage section is in our purview.

Bill Ricciardi, if I may address the Board. I was going to apply for a Variance however, as I started to look at the criteria for a Variance I didn't think I was going to meet all of them I could be wrong. Again, the bottom line is I just want to put out an open flag and if we can accomplish that with a Variance application instead of a Special Exception application I would be very happy with that too.

Chair, so yes there are 5 conditions to the Variance so I think we would have to craft it in a way to make it work. Clerk states she would like Ken Ballance to be present for this discussion for it's the understanding and the direction given by the Code Enforcement Officer (CEO) that a Variance could not be used for this request. The direction the applicant was given was by the CEO and therefore the Clerk believes the CEO should be present for the explanation.

Keith Markley states that if an application for a Variance was submitted to the Board that they would wholeheartedly support it. This committee in my opinion, absolutely has the authority to grant the Variance. You cannot be crafted statutorily to prevent you from granting it. Chair agrees that he doesn't understand. Clerk, I would request that you discuss with the CEO because the application for Special Exception is what has been submitted based on his direction. Clerk continues, just so we can get some clarification, this was the direction that the CEO provided to Bill on how to get this through and there seems to be a lot of discussion about it so I suppose if the CEO realized that it would be handled this way he would have been in attendance. I would like him to give his input as to why the direction of a Special Exception was given to the applicant over a Variance. Board agrees to have CEO provide input for clarification.

George Lamprey, while we are waiting for Ken, I can see why in seeking advice and gathering input why the option of the Special Exception over the Variance, I would imagine that probably the hardship question would be what would be a challenge in how you make that fit. How you can articulate under a Variance with the hardship requirements. It has to be a hardship to the property something unique to the property.

Chair reads the criteria for hardship and states there is a paragraph (b) Chair reads both criteria. Clerk states that is the reason Ken did not have them apply for a Variance because he felt it would be difficult for this property to prove a hardship. George Lamprey states he agrees the hardship question is a difficult one.

Keith Markley makes a statement that because people when they drive on route 25 the lake draws their attention away from Bill's shop. Chair agrees that may be a special condition of the property.

Chris Williams refers to the Section 4:4:6:2:1:6 which the application for Special Exception is being filed under and states that if it was written "Low-intensity retail sales "such as" antiques and fine arts..." that would make a difference.

Keith Markley states nowhere in Section 4 does it say anything about flags. Chair agrees and states that is why we need to look at Section 6 and see what signs are limited which leads me to think do we even really have a problem here with you putting up a flag.

Ken Ballance Code Enforcement joins the meeting and provides the Board a quick overview of the situation. Ken adds that the ordinance specifically states under home occupation what is allowed as an "open" sign. Chair asks but it does not say a flag it mentions a sign and in the sign section it specifically excluded flags. Chair says this is unclear because under 6:3:1 it states "Each business under one ownership on a lot..." isn't a home occupation a business under one ownership? Ken responds yes it is but in the classification under that section for business signs are for what are considered a regular business and if it wasn't there would not be a need for a Special Exception for a retail business in the residential district it would be automatic. Chair responds, the problem we have with that section is that it is specific to low intensity retail sales of antiques and fine art and he's not doing that type of business and even if he was, there is nothing in there that says now he falls under the regular parameters for business signs. Ken, if he goes in as a retail business then he falls under the retail specifications for that zone. I'm quite sure there is a section in there for retail. Chair agrees there is and refers to the section applied for on the application but it's specific to "antiques and fine art". Ken says he's never noticed that in there because in all the years he's been here it's never been that way or looked at that way. Chair tells Bill as a PB member you may want to look at how that section is worded and see if there should be changes.

Keith Markley, let's understand something Chairman, even if you put in the words "such as" it still falls under the guidelines of home occupation. Chair states that was the next point he was going to make because he still does not

see how that fixes the sign issue as it pertains to having an open flag. The question is why we can't just grant him a Variance under the sign ordinance to put up a flag. Ken Ballance, that is what I said from the very beginning, go for a Variance from the sign ordinance to have an open flag. It stays as a home occupation and you are granting an open flag for that individual property.

Chair thinks the meeting should be continued. Clerk adds we went down this road when we started discussing allowing flags for a home occupation, a petition warrant article or working on changing the ordinance through a proposal of the PB. Chair yes but those things take a long time, Clerk responds yes but this started six months ago. We are here now and this was discussed to be the option for Bill to take. Chair, we are here for a Special Exception and it doesn't solve the flag issue. Ken Ballance, at the time we believed that it did. Chair we can't use the section he is referencing so we have to find some other way to address this and the best way would be for him to go for a Variance. We can just recraft it as a Variance we don't need the form filled out. Ken we did go down the road of seeking a Variance but then we are asking the Board to make a decision on an open flag we are not asking for a property Variance and thought it would be too difficult to reach the criteria of hardship.

Keith Markley, Mr. Chairman it's an easy Variance when you think about it because what you are going to have is one, neighborhood support because nobody is going to care and if you want to talk about a Variance that ever decided in the future to legally challenge it how it easy it is to go backwards and pull a stick out of the ground. Chair right, it's not like there is a building. So we will just go through a Variance.

Chair provides the criteria:

Criteria 1 & 2 – no discussion board agrees

Criteria 3 no discussion board agrees

Criteria 4 no discussion board agrees

Criteria 5 – Chair says we do have special conditions of the property people are looking in the other direction things like that. George Lamprey, it's being contorted anyway but if it gets us to the appropriate end and you want to articulate it that the scenery draws the eye in the other direction then that makes this unique. Chair the one foot sign is not big enough to be noticed.

Motion: Karen Ponton motions to accept the application for Variance. No second on the motion all were in favor. Chris Williams asks if there needs to be clarification that the application in front of us is for a Special Exception and we are changing that to a Variance. Ken Ballance adds as the gatekeeper he is authorizing the change from Special Exception to Variance.

Karen Ponton makes a motion to approve the Variance which would be to allow a 3' x 5' open flag for the applicant's home occupation. George Lamprey seconds the motion. George Lamprey suggests the Board goes through the 5 criteria again now that the application has been accepted.

Chair provides the criteria of the Variance:

Criteria 1 & 2 – Board thinks it is in the public interest and not contrary to the ordinance and that the Spirit of the ordinance would be observed. George agrees.

Criteria 3 – Would not do substantial justice

Criteria 4 – Would not impact to surrounding properties

Criteria 5 – location of the barn and because of property being on a major route and with a scenic attraction in the other direction.

All were in favor of the motion.

Chair states there is a 30 day appeal period.

III. ADJOURNMENT

Meeting adjourned at 8:15 p.m. respectfully submitted by Aimee Manfredi-Sanschagrin.

