

TOWN OF CENTER HARBOR  
ZONING BOARD OF ADJUSTMENT  
**WebEx Hearing**  
Monday, April 13, 2020  
7 p.m.

**Due to COVID-19, this hearing was conducted via WebEx. Participants, which included the public, could join the meeting through video web or by telephone. Slide show presentation on the case was created and conducted by the Chair. Video participants were able to view the slide show live, participants joining by phone were provided a .pdf file a week prior to the case to follow along. Roll call of ZBA Members/Alternate Members performed at the beginning of the meeting; Chair announced the meeting was being recorded.**

Chair Bernie Volz called the meeting to order at 7:00 p.m. Present were Members George Lamprey and Karen Ponton, Alternate members Stephany Marchut Lavallee, Gregory Hime and Clerk Aimee Manfredi-Sanschagrin. Applicant John MacKinnon and Benchmark Engineer Joseph Maynard presenting.

**Voting Members: Bernie Volz, George Lamprey, Karen Ponton, Stephany Marchut Lavallee and Gregory Hime.**

**I. MINUTES**

Karen Ponton motioned to accept the minutes from June 10, 2019 as presented. Seconded by Stephany Marchut Lavallee. All were in favor minutes pass.

**II. PUBLIC HEARING – APPLICATION FOR VARIANCE J&C HOLDINGS, LLC MAP 227 LOT 008**

The Board received an application for Variance citing Section 5:3:1 of the Town Ordinance. The property in question is located at 28 Daniel Webster Highway owned by J&C Holdings, LLC. The request is to install a new septic system within the 15' setback of an abutting property. The new septic is to replace an almost 40-year-old system. The placement of the new septic will be in a different location on the property from where the existing septic is installed.

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 the following information to the Board:**

This is an application for a Variance. Applicant is J&C Holdings, LLC with a property location of 28 DW Highway Map 227 Lot 008. The application was hand delivered to the Clerk on March 9, 2020 and has been assigned case number 2020-0413. Variance request is to replace a septic system which is to be constructed within the 15' setback of an abutting property.

Notice for the hearing was published in the Laconia Daily Sun on March 31st. Public notice was also posted at the Post Office and on the home and ZBA pages of the Town Website.

Abutters were notified via certified mail on April 2nd, two out of five certified cards have been received back. The cards received back were from J&C Holdings and JMB Willwerth Rev Trust. The Town Office has not received any written or verbal statements from any of the abutters.

**Chair turns the hearing over to the applicant's agent.**

Joseph Maynard Benchmark Engineering in Londonderry NH representing J&C Holdings, LLC in the application before the Board. The parcel is an existing lot of record with existing structures and largely covered by paved area. The lot is about 150' deep and 3.68 acres in size. In the 1980s there was a septic system permitted through the State of NH that is in existence today which the bulk of that system is under a paved surface. After conducting test pits on the site, we could determine where to best fit a new septic system to adhere to the State

guidelines. What came out of that review was that the best spot to put the septic system was not to replace in the existing location for two reasons. One, we would have to cut and remove all the pavement and two, the grade where the pavement is would have to be elevated because it's up hill of where the system is being proposed. Based upon the water table we are still trying to maintain this as a gravity septic system. What we are looking for relief on is to have a portion of the leach field about 5' from a boundary line where 15' is required under your ordinance.

Joseph Maynard goes through the 5 points on the Variance application, the application and plan will be entered into the record in its entirety.

Chair, via WebEx is able to share the septic plan schematic that was submitted with the application. Chair shows the letter that was provided to the applicant by the abutter Thomas Weeks. The letter was not originally contained in the application submission packet clerk requested a copy of the letter which was provided by the applicant prior to the hearing. Chair reads the letter for those participating by phone. A copy of the letter is contained in the file and was read into the record by the Chair.

Chair asks if anyone has questions.

**Karen Ponton:** What is the reason for the replacing the septic, has it failed or will there be a different use of the property that would require a new septic?

**Joseph Maynard:** My client purchased the property last fall and during the home inspection it was determined the septic was deemed poor. During the winter months it would see light use so they decided to get this taken care of first thing in the spring. As we went through the permitting process the setback issue came up so we decided to go through the process and once it gets approved we can have it installed.

**Karen Ponton:** So, it was just noticed on the home inspection report it was in poor condition?

**Joseph Maynard:** That is correct.

**Gregory Hime:** Has a State waiver been received?

**Joseph Maynard:** No, we cannot submit to the State of NH until we receive approval on this variance. The building inspector is holding our application to see if this is granted or not.

**Chair:** If we do grant the variance, I think it would depend on what the State ultimately rules.

Chair shows via the slide show the lot in question using aerial view and indicates the location of the proposed septic. Chair also shows the abutter's property where the encroachment into the setback would occur. Chair provides a slide of the ordinance pertaining to the structure setback under 5:3.

Chair asks if anyone would like to speak in favor or in opposition of the proposal. Hearing none Chair asks for a motion to accept the application.

**Motion to accept the application:** Karen Ponton motions to accept the application. George Lamprey seconds the motion.

**All were in favor of accepting the application.**

**Discussion:** Gregory Hime states when he looks at the proposal and applies that to the 5 criteria, he does not see how it may meet the criteria. If you look at the plot plan, I don't think all options have been explored. I think certainly given the large parking and paved area, there would be a better location for the new proposed septic system that meets the criteria of the 15' setback, that would have a small impact on the total paved parking area but still would be in the public interest because it's meeting the 15' setback. It would also be in the spirit of the ordinance. I don't think there is anything unique about this property other than the large amount of area that is paved.

George Lamprey directed a question to Joseph, I think during your presentation you mentioned something about grading or topography and that you were seeking a system where you did not have to use a pump. Is there a grade issue topography between the parking area and the proposed location of the leech field? Joseph Maynard

responds, yes there is a grade change in there of a couple of feet across that rear turn around area where the existing system is underneath the pavement. What happens with septic system design is we have to base our field upon our highest grade that the field touches so if I were to try and tweak the field in and push everything to meet that 15' setback, I would end up having to raise a considerable amount of that pavement grade in order to maintain cover making the field a pump situation in order to meet the State's criteria for that based on the water table. With the way the pavement is like I said I just can't cut out that one little area and replace the system where it is now. If I were to meet the 15' setback I would have to raise the grade in that section and then I would have to also regrade a good portion of that paved driveway from where it widens out to get to the building in order for it to blend back in. That would also impose on the drainage across the site.

Stephany Marchut Lavallee asks what percentage of the pavement would have to be disrupted. Joseph Maynard, the percentage or how much of it would need to come out to meet the setback would result in cutting out more than the area where the septic is. This is because I would have to raise the grade of the leach field and pump up to it which would require regrading to blend that into where the driveway widens out on the side of the building in order to be able to keep the water flowing in the same pattern it does now. I don't want to raise that grade and just shoot the water in the other direction. I would have to remove about 2500 sf of payment and regrade that lower end of the site in order to make the water flow in the same pattern.

Gregory Hime asks if the septic system needs to be pumped. Joseph Maynard responds no it's a gravity system but when we established what the water table was out there, I think it's not what they thought it was back in 1980 when they did that system. Gregory Hime, you are saying that the water table is higher now? Joseph Maynard, yes, the system that's in the ground now should have 4' of separation of the bottom of the field to water table, it's probably somewhere around 2.75-3' right now above water table. What we are proposing will maintain 4'.

Chair, there is one other piece of information we should bring up. Everyone should see that in the packet that was sent, Ken Ballance Code Enforcement Officer submitted a statement to the ZBA. Chair reads the statement into the record; Ken has no problem with what is being proposed.

Chair asks Gregory Hime if he had a different location in mind. Gregory Hime responds that he thought in the general location of where the septic is being proposed but pulled back to meet the setback but after hearing the explanation by the engineering pertaining to the grading and area that needed to be removed, it is now clearer that would not be an option. Gregory Hime continues, I understand now by moving that further back to adhere to the 15' set back that would require more work than the proposed design.

Chair asks the applicant John MacKinnon if he wanted to add anything? John MacKinnon responds no, I will leave it up to the experts, I like the design and I think it will work really well.

Chair goes back to the plan for clarification showing 5' on Weeks property and 5' on the applicant's property pointing to the corner between lot 8 and 9. Lot 9 is owned by Mr. Weeks who has submitted a letter stating he is not opposed to the application. Chair asks if we have anything on record from the other property owner which would be lot 7. Joseph Maynard states no we don't have anything from them. Chair, so the abutter that is being impacted has no problem with this but the other abutter has not provided any input either for or against.

Chair asks for any other questions. George Lamprey, just a procedural question based on the manner in which we are holding the meeting. If someone from the public wanted to attend, they had notice of this manner in which the hearing is taking place and how to access? Chair yes, Aimee has made that information available on the website and letters have been sent to the abutters. Clerk adds, the agenda was posted at the Post Office which gave instructions on how to access the meeting. The information was added to the ZBA's page with links and information on how to access the hearing as well as an instruction sheet was contained in the letters that were sent to the abutters.

**Chair provides the criteria via the slide show on WebEx:**

**Criteria 1 & 2** – Gregory Hime, I do think on both it is contrary to the public interest and the spirit of the ordinance. It is substantially closer within 5' of the property line not 15', it's even closer than the requirements for the State. George Lamprey, I would speak from a different perspective that in my opinion, you have a lot here that you wouldn't have today, a situation you wouldn't have today in today's knowledge and in today's requirements. The existing lot limits you as to what the options are. George Lamprey continues, it would be an easier resolution and aesthetically more pleasing under the proposal in my opinion, than to get into a bunch of grading issues. Therefore, in my opinion, I don't consider it contrary to the public interest or to the spirit of the ordinance. Chair, also they are replacing the system with a newer more modern system. Is there any statutory requirement to replace it or is it just because it's in poor condition that this is being done? Joseph Maynard, from a health hazard standard I did not observe anything that would be a health hazard at this time the field was full of fluid but it wasn't leaching out on the surface. My client wants to be proactive here and not wait until next winter when frost is in the ground and then have to replace it at that point in time. George Lamprey, correct me if I'm wrong, if you having leaching there in that area with that terrain in that neighborhood it could spread pretty quickly couldn't it? Joseph Maynard, yes it goes considerably downhill towards the abutter south of us that gave us the letter granting permission to put the system close to their lot line. Gregory Hime, with that elevation going downhill like that, is that a concern then with the placement of the new system? Joseph Maynard, no as long as I can meet grade and that field is pretty much in the ground at that corner I'm not concerned. Joseph Maynard continues, I think what's happened to that old field is that it's just seen its time. It's pushing 40 years old and it's served that property well. I'm not concerned about anything downhill once a new system is in, I think if anything you will get 30-40 years out of the new system once it's installed. Chair, while this definitely does not meet the setbacks, there are exceptional cases where you may not be able to meet those setbacks and I think this is one of those cases.

**Criteria 3** -George Lamprey, I believe the general public is benefitted by having a revised updated system. All Board members agreed.

**Criteria 4** – Chair adds, if we had letters from both abutters that they were not opposed that would be ideal because they would be the ones impacted. We have a letter from one abutter that states he is not opposed so he does not feel that will diminish their property value. We don't know the position of the other party. George Lamprey, I think the same point applies, if you had a failed system you would be hearing from the abutters. I think they are benefitted by having a revised system. Gregory Hime, I would think a prospective buyer of these abutting properties would need to be made aware they have a septic system closer than what our ordinance allows. Board agrees the values of surrounding properties would not be diminished.

**Criteria 5** – Chair, I think the use is a reasonable one. Certainly, they could take other steps but it would take a hardship to do so. The question is, are there conditions on the property that distinguish it from others in the area. George Lamprey, the unusual condition is the pre-existing lot of record and its size but also the existing improvement on the property. Those are both factors that boxes them into that corner. Gregory Hime, existing improvements isn't one of the things I look at as a hardship to the property. After Joseph's explanation and looking at the elevation in the detailed map of the property, I felt the hardship was deemed by the elevation of the property and the drop off which forces that back rear corner to require significant grading according to Joseph. Karen and Stephany had no additional comments to add.

Board reviews the criteria outlined in the application to confirm it matches what the Board discussed.

Chair asks if there should be any conditions if an approval were granted. (It was originally discussed there would be a condition that the variance approval was to be contingent upon State approval of the Septic System, but whereas the State would have to approve the proposal in order for the variance to stand, there was no need to have it added as a condition to the variance approval itself). Chair asks if there is any further discussion. Gregory Hime asks if the State does not approve the proposal and they require a redesign does the applicant need to come back before the Board? Chair, if the redesign is within the parameter of the variance, we granted them then no. If we approve this, we want to stipulate the approval is based on what is shown on the schematic plan that is part of

the submitted application to the Board under case 2020-0413.

**Motion to approve the Variance: Karen Ponton makes a motion to approve the application and plan as presented. Seconded by Stephany Marchut Lavallee. The Board had no conditions to add. All were in favor of approving the variance.**

Chair states there is a 30-day appeal period.

**OTHER:**

**ELECTION OF OFFICERS:**

Board discusses election of officers. Karen Ponton motions to appoint Bernie Volz as Chairman, Jean Meloney as Vice Chair and Aimee Manfredi-Sanschagrin as Clerk. Seconded by Stephany Marchut Lavallee. All were in favor.

Karen Ponton would like to extend a sincere appreciation to Christopher Williams for his decades of service on the ZBA and wish him well. Chair states we did add an acknowledgement in the 2019 Town Report for both Chris and Palmer's service but we will also reflect our appreciation in this set of minutes.

Gregory Hime adds he wanted to thank the Chair and the Clerk for their efforts in setting up the WebEx, that considering the circumstances and our new approach to how we are conducting business this hearing went really well. The forum was extremely professional, well done. Chair, it was nice that Gov. Sununu issued the orders he did in recognition that holding public meetings would be a challenge and allow us to use this forum to still conduct our business efficiently. It is a thought that we may be able to do this in the future. Obviously if we are dealing with the same circumstances of Covid-19, this is how we will conduct business but it may also be useful if when we are able to go back to business as usual, we have the majority of people in the office but if we have members that cannot attend in person, this may be an option to consider.

**ADJOURNMENT**

No other business for the Board to discuss, meeting adjourned at 8:09 p.m. respectfully submitted by Aimee Manfredi-Sanschagrin.