

APPLICATION FOR A VARIANCE
TOWN OF CENTER HARBOR - ZONING BOARD OF ADJUSTMENT

Name of Applicant: Mark Sudbey

Owner: _____

(If different from applicant)

Physical Address: 24 Dew Point Lane, Center Harbor

Mailing Address if different: 27 Old Black Road Turnpike, Fairfield, CT 06824

Email: _____ Phone: _____

Map 103 Lot: 015-000

Town Office Section Only
Case No. <u>2018-0910</u>
Date Filed: <u>8/21/18</u>
Received By: <u>Aimee</u>

****Note: This application is not acceptable unless all required statements have been made. Additional information may be supplied on a separate sheet if the space provided is inadequate. According to the Center Harbor Zoning Board of Adjustment By-Laws, Section 6 (b), the application shall be read into the record by the applicant, applicant's designee or clerk ****

A variance is requested from article 5:3:1 section _____ of the zoning ordinance to permit See attached

Facts in support of granting the variance:

1. Granting the variance would not be contrary to the public interest because:
See attached

2. If the variance were granted, the spirit of the ordinance would be observed because:
See attached

3. Granting the variance would do substantial justice because:
See attached

4. If the variance were granted, the values of the surrounding properties would not be diminished because:
See attached

5. Unnecessary Hardship

A. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:

See attached

and:

ii. The proposed use is a reasonable one because:

See attached

B. Explain how, if the criteria in subparagraph (A) are not established, and unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

See attached

Applicant Signature: _____



Jonathan Springer, Esq.
Attorney for Applicant

Date: _____

8/21/18

ABUTTERS LIST

Name of Applicant: Mark Sudbey

Address: (of Property) : 24 Dew Point Lane
Center Harbor

Property Concerned: Tax Map 103 Lot 015

The following are the abutters to the above property. Please include those across the street.

Tax Map 103 Lot 14 Name: Duymazlar, Mehmet H.
Address: 10 Sudbury Dr., Nashua, N.H. 03060

Tax Map 103 Lot 16 Name: Watson, Harold E. & Deborah C.
Address: 639 East Shore Rd, Jamestown, R.I. 02835

Tax Map 103 Lot 21 Name: Ricciardi, w.m. & Weed, Jill
Address: P.O. Box 1261, Center Harbor, NH 03226

Tax Map 103 Lot 20 Name: George, Paul
Address: 57 Tyler Rd., Belmont, MA. 02478

Tax Map _____ Lot _____ Name: _____
Address: _____

Tax Map _____ Lot _____ Name: _____
Address: _____

Tax Map _____ Lot _____ Name: _____
Address: _____

Tax Map _____ Lot _____ Name: _____
Address: _____

Tax Map _____ Lot _____ Name: _____
Address: _____

Tax Map _____ Lot _____ Name: _____
Address: _____

SUPPLEMENT TO APPLICATION FOR VARIANCE
TOWN OF CENTER HARBOR NH ZONING BOARD OF ADJUSTMENT

A variance is requested from Section 5:3:1 of the Town of Center Harbor's Zoning Ordinance ("the Ordinance") to permit a patio within fifty (50) feet to seventy-five (75) feet of the shoreline which exceeds 150 sq. ft.in footprint, as follows:

Background.

The owner of the property at 24 Dew Point Lane, Center Harbor ("the Property") is Mark Sudbey ("the Applicant"). The Applicant purchased the Property on April 27, 2018 from the prior land owner, Joseph Battaini. Prior to that date, Mr. Battaini had filed a variance application with the ZBA seeking a variance from Section 5:3:1 of the Ordinance.

Mr. Battaini had supplemented an existing 587 sq. foot (+/-) bluestone patio with fieldstone walls, granite steps and stepping stones with a 750 sq. foot (+/-) bluestone patio/kitchen area with fieldstone walls, granite steps and stepping stones. Mr. Battaini, through Stephens Landscaping, LLC, obtained a shoreland permit from the State of New Hampshire Department of Environmental Services prior to doing the work, but had not obtained a variance.

The ZBA accepted the prior variance application and held an initial hearing on April 9, 2018. A site walk was conducted at the Property on April 16, 2018. At the ZBA's April 19, 2018 hearing the ZBA, by a vote of 4 -0, with one abstention, denied the variance request, for the following reasons:

(a) Granting the variance would be contrary to the public interest because the requested amount of impervious surface is five (5) to six (6) times in excess of the permitted area and therefore violates the basic zoning objective unduly and in a marked degree.

(b) Granting the variance would be contrary to the spirit of the ordinance because the requested amount of impervious surface is five (5) to six (6) times in excess of the permitted area and therefore violates the basic zoning objective unduly and in a marked degree.

(c) There are no special conditions unique to the property which warrants a variance of this magnitude because the slope is both gentle and shared by neighboring properties, and the shape of the parcel does not make the Ordinance affect the property differently.

(d) The improvements could have been constructed in compliance with the ordinance on other portions of the property.

Following the denial of the that variance, the Applicant (who by then had purchased the Property) filed a timely motion for rehearing with the ZBA. The ZBA denied the motion for rehearing.

It is important to note that the prior owner Mr. Battaini, purchased the Property in 2014. It was at that time that Stephens Landscaping also first got involved with the Property. The current Applicant, Mr. Sudbey, and Stephen's Landscaping are aware that the Town has stated, in the denial of the motion for rehearing, that the original patio area, that is, one that was installed by Mr. Battaini's predecessor, was itself "illegal." Prior to that time, neither Mr. Sudbey nor Stephen's Landscaping were ever informed that the patio was somehow illegal; the same is true of Mr. Battaini, to the best of the knowledge and belief of both the Applicant and Stephen's Landscaping. Undoubtedly, this was because the patio, even at the "original" size of 587 sq. ft was unobtrusive, tastefully done, and not visible from any public way. The Applicant, and Stephen's Landscaping, have no knowledge as to when the original patio was installed.

At the time the "original" patio was expanded, during the ownership of Mr. Battani, both the homeowner and Stephen's Landscaping were under the belief that the only approval which was necessary was state permitting. Stephen's Landscaping obtained a shore land permit from the State of New Hampshire Department of Environmental Services prior to doing the work.

After the ZBA denied that variance request, in an effort to resolve this matter on a mutually agreeable basis, the Applicant has authorized Stephen's Landscaping to prepare a new patio and landscaping plan. A copy of this Plan is attached as Exhibit A. As can be seen, the new plan significantly reduces the square footage of the patio area, so that the resulting square

footage is 892 square feet of pervious surface and 51 square feet of impervious surface. The new plan:

- (a) Removes the existing bluestone patio and re-vegetates the area with turf grass.
- (b) Removes existing impervious bluestone patio and replaces with stepping stones set in turf grass.
- (c) Removes “sandloc joints” and replaces with pea gravel so that existing impervious patio area is changed to a pervious patio area.
- (d) Installs a new driveway infiltration trench to tie into the existing property line infiltration trench.

For these reasons, the Applicant believes that the variance criteria are satisfied as follows:

1. The values of surrounding properties are not diminished.

The patio area at issue is not visible from any public way. It meets all set back requirements. The two neighboring properties have only a limited view of the area. The patio area is landscaped in a very tasteful manner, with ample screening towards both abutting properties. The overall effect is extremely attractive and will not diminish any surrounding property values. As a practical matter, the ZBA found that that the Battaini variance application would not diminish any surrounding property values.

2. Granting the variance would not be contrary to the public interest, and
3. The spirit of the ordinance will be observed.

These two variance criteria are often considered together. See Farrar v. City of Keene, 258 N.H. 684 (2009), and Chester Rod & Gun Club v. Town of Chester, 152 N.H. 577 (2005). Pursuant to these variance criteria, the ZBA has to determine whether granting the variance would “unduly and in marked degree conflict with the ordinance such that it violates the ordinance’s basic zoning objectives.” The variance in this case would not, in a marked degree, conflict with the ordinance such that it violates the ordinance’s basic zoning objectives. The variance, if granted, would not alter the essential character of the locality.

Section 5:3:1 is contained in the Ordinance section entitled Construction Buildings, Non-Conforming Uses and Structures, and specifically, under the “Setback” subsection. Therefore,

Section 5:3:1 is a “setback.” The purposes of any general setback requirement are the free circulation of light and air, aesthetics, protection of neighboring property values and property rights and ingress/egress purposes. In this case, none of these setback purposes are violated or interfered with in any way by the patio area identified in the variance application. Further, Section 5:3:1 is also incorporated by reference in Section 10:6:2, entitled “Permitted Uses within the Protective Buffer.” Thus, an additional purpose of Section 5:3:1 is to limit run-off impact into the lake. The variance does not violate that purpose and, in fact, improved the Property’s ability to handle rain water and drainage issues. Regardless of the increase in the square footage of the impervious surface, the variance plan achieves exactly what the ordinance intends: limited water run-off into the lake.

4. Substantial justice is done by granting the variance.

The loss to the Petitioner is severe should the variance not be granted, whereas there is no loss to the general public should the variance not be granted. If the variance was granted, the general public actually gains by having better drainage close to the lake.

5. Literal enforcement of the ordinance would result in unnecessary hardship.

There are special conditions unique to the Property. The Property is irregular in shape, and, in the affected area, not visible from public way or from neighboring properties. The Property slopes towards the lake. Abutting lots are more level without the degree of sloping the Property presents. Because of the special conditions of the property, run-off comes from the top of the Property and there is a narrow portion of the Property that leads down to the lake. The variance makes for a more controlled condition for run off containment and are reasonable improvements which do not alter the essential character of the neighborhood.

The new patio area is a reasonable use for the Property, and a patio area is a permitted use under both Section 5:3:1 and Section 10. The patio is designed to be a lake-front patio and thus has to be situated where it is on the Property. The Property can easily accommodate the

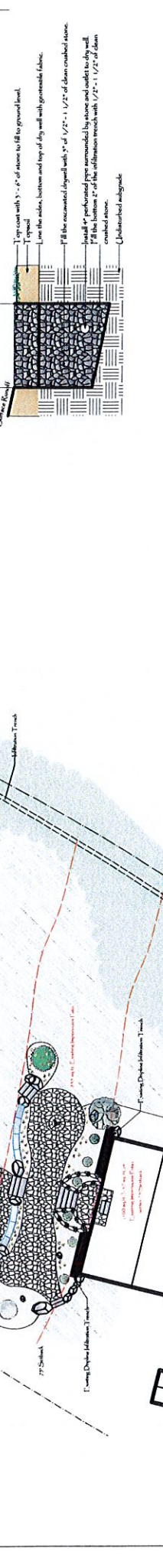
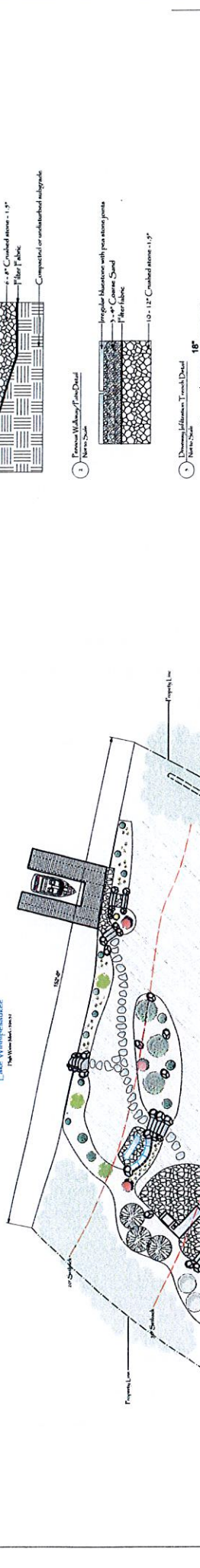
patio area in terms of set backs and physical layout. The new patio area, as set forth in the variance application, was approved by the State of New Hampshire DES, and actually improves the Property's ability to handle drainage and run off.

Further, pursuant to RSA 674:33, an unnecessary hardship will be deemed to exist if, owing to special conditions of the Property that distinguish it from other properties in the area, the Property cannot be reasonably used in strict conformity with the ordinance, and a variance is therefore necessary to establish a reasonable use of it. In this case, given the size and shape of the Property, the existing patio and the location of the house on the Property, especial conditions exist which support granting the variance.

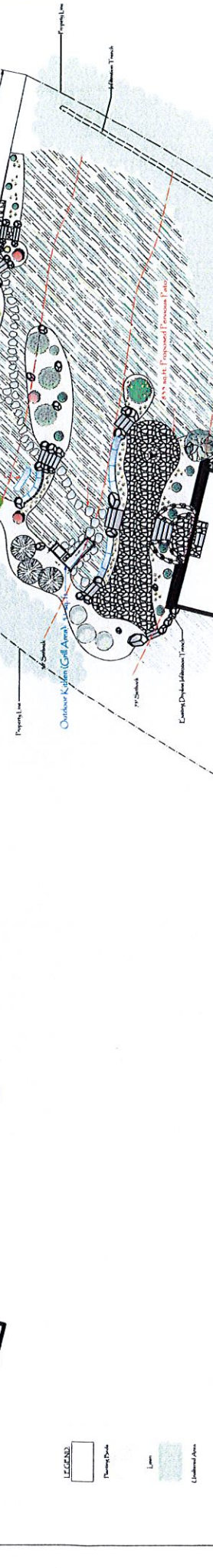
Dew Point Lane Patio Revisions
 REVISED Plan Date: July 18, 2018

Property Owner & Address:
 24 Dew Point Lane
 Center Harbor, NH 03226

Plan Prepared By:
 Stephens Landscaping Professionals, LLC
 62 Moultonborough Neck Road
 Moultonborough, NH 03254



1 Existing Conditions Plan
 Scale: 1" = 20 ft



2 Proposed Conditions Plan
 Scale: 1" = 20 ft

Within the 75' Buffer

Existing Impervious Conditions	Proposed Impervious Conditions	Existing Patio Square Footage	Proposed Patio Square Footage
Couch Patio	70 Sq. Ft.	0 Sq. Ft.	0 Sq. Ft.
Outdoor Kitchen Patio	410 Sq. Ft.	0 Sq. Ft.	0 Sq. Ft.
Firepit Patio	835 Sq. Ft.	0 Sq. Ft.	835 Sq. Ft.
Entrance/Landing Patio	37 Sq. Ft.	37 Sq. Ft.	37 Sq. Ft.
Outdoor Kitchen (Grill area)	51 Sq. Ft.	51 Sq. Ft.	51 Sq. Ft.
Total	1,423 Sq. Ft.	1,423 Sq. Ft.	943 Sq. Ft.

Propose to completely remove the Couch and Outdoor Kitchen Patio for a reduction of 440 sq. ft. Propose to convert the firepit patio and entrance landing from impervious to permeable technology.

Notes:
 1. Remove existing bluestone patio and re-acceptance with turf grass.
 2. Remove existing impervious bluestone patio and permeable with stepping stones set in turf grass.
 3. Remove existing patio and replace with permeable patio.
 4. Install a new drainage infiltration trench to tie into the existing property line infiltration Trench.