

TOWN OF CENTER HARBOR
ZONING BOARD OF ADJUSTMENT
Hearing
Thursday, October 15, 2015

Chairman Bernie Volz called the hearing to order at 7:00 p.m. Present were Vice Chair Chris Williams, Member George Lamprey, Alternates Palmer Smith, Anthony Avrutine and Clerk Aimee Manfredi-Sanschagrin. In the audience were Planning Board Chairman, Charles Hanson, Harry Viens, Selectman, Ken Ballance, Code Enforcement Officer, Mike Izard, LRPC, Attorney Michael Kasten, Tom Carpi owner Center Harbor Inn, Edward N. Dane, Monte Fiske, Amy Elfine and Harry Manager Center Harbor Inn.

Chairman calls the meeting to order at 7 p.m. members and alternates announce their names and title. Chairman announces the five members and alternates in attendance will be the voting members. Chairman provides instructions on how the hearing will proceed.

I. HEARING – CENTER HARBOR INN – RECONVENED FROM 9/29/15

Chairman explains the meeting was reconvened based on the notification to the Town of Moultonborough and the Lakes Region Planning Commission (LRPC) based on the Boards interpretation of the RSA surrounding regional impact.

Chairman states the Board received correspondence from the Town of Moultonborough and LRPC, Chairman asks if everyone in the audience received a copy which they confirmed. Chairman asks if Mike Izard would like to provide any input on the material submitted. Mike Izard speaks of the notification under regional impact and that the Planning Commission has not submitted a letter to address that as of this date. Mike states he has reviewed a draft form on their position and the final letter would be issued next week. Mike Izard continues by stating he provided a report to the ZBA based on the Town Ordinance and how it applies.

Chairman responds by stating the official response from LRPC is technically late and may not be admissible but that the Board will review the report that was submitted prior to the hearing. Chairman asks if there is anything else Mike would like to add. Mike responds no, other than he has seen the draft form and can answer any questions the Board may have relevant to the DRI. The Planning Commission was thankful the Board considered whether it was a development or regional impact or not, it's an important statute. When Boards do that we typically respond to any specific requests which in this case was relevant to the possibility of noise being an annoyance both to property owners in general proximity and also because sound travel on the lake fairly readily. In the past a lot of times noise was subjective and enforced on behalf of law enforcement officers when they were called to the site or by neighbors and had to make a judgment call. Today there are certainly ways to engage appropriate levels of sound and the letter certainly encourages if the Board is concerned about that you can have a study done to make a determination of what may be appropriate if sound is an issue.

Chairman asks if representation from Center Harbor Inn would like to respond.

Attorney Kasten representing Center Harbor Inn, certainly we cannot deny that noise is something the ZBA has to consider. We spent a lot of time and effort on the application in trying to tailor the proposal and the use which we believe is unique and believe the use is reasonable. Some of the testimony that has been developed within this Board also confirms that it is not a motel with people just driving to stay overnight, it's really a hotel. This is a grandfathered commercial hotel, I think those facts have been developed pretty substantially. In addition, the approval of the observation deck for the commercial use on the property was another commercial use that was recently approved. Center Harbor Inn spent over 50K to build this deck as a vested right for commercial use. All the arguments that have been made still hold and stand. Attorney Kasten refers to use of the property by way of gatherings on the beach, boat docks, cookouts, bike week activities. Attorney Kasten, in our view this is a natural extension of the use. When it comes to noise, when we were out on the deck you could really hear the noise from the highway it is not a quiet property. This is a property that is a commercial hotel on a State highway. There are

also other activities. The band stand is right across the street, bands play in the bandstand whenever the Town decides to have something there. We are talking about a use we are proposing for just the bumper months of the summer. The noise issue overall is within the limits of reasonableness. Attorney Kasten continues, we are limiting this to DJ's as stated in the application. DJ's can turn the volume up and down, not to say there couldn't be a band here and there but the two weddings that they had there were DJ's. As far as I can tell there were no complaints last summer. Some of these events are going to be in the afternoon. If there was a curfew of say 11 o'clock, I'm sure you would find a way to limit that. It's something the Inn will deal with as necessary. Overall we've gone through limiting to 125 guests, we've been very mindful and careful of how we proposed this. That is a 125 invited to these events chances are there will be less. We are trying to keep it so that the parking of the activities is all contained on the property. Attorney Kasten makes reference to this being the third hearing and the residential abutter has not attended, based on that it would appear the abutter has no problem with what is being proposed. The Select Board has come here speaking in favor of the proposal. I saw the Town of Moultonborough weighed in, it was a well thought out letter and they seem to be ok with this.

Public Input:

Chairman: Anyone want to add anything in favor?

Amy Elfline: I own the Mug by the Bay Restaurant and we are certainly in favor of this. It's a great way to combine a lot of the restaurants in Town to perhaps assist with catering and it certainly benefits a lot of the businesses in the community which is what we are trying to do in the Town of Center Harbor.

Chairman: Anyone else want to speak in favor? Hearing none, Chairman asks if anyone wishes to speak in opposition.

Edward Dane: Residing at 252 Dane Road in Center Harbor, I also own property on the Lake shore going towards Meredith. When I came to the first meeting I spoke in opposition to this plan and I still speak in opposition because I think this is a big change from what is now a motel, to a facility that will hold events and have other functions going on. I think it will be a drain on the Town as far as policing these activities. I don't know what the ordinance is for music in the Town but I do know years back, and Chris Williams should remember this, the Music Festival of NH was going to build a facility that during the discussions surrounding that project it was made very clear there would be no music outside of the building because of the noise that would trouble the neighbors. In this situation, music carries over the water better than anything else I know of and I think that having that potential for a number of noisy events down the lake is not going to help the people that enjoy the lake, the beauty of the lake and reside comfortably there. I don't see it as a great addition for what this Town has tried to be for years which is a quiet, rural, agricultural Town as it used to be. To have to live in a circumstance where this kind of disruption is going on all the time would certainly not meet my approval.

Chairman: Anyone else?

Charley Hanson: Coe Hill Road, I won't reiterate what I said at the first meeting although I still believe strongly in those comments. Two things I respectfully disagree with Attorney Kasten, it is clearly based on our Ordinance a motel, there is no question. Second, putting myself in your shoes I would really be looking hard at this hardship question. I have been trying to understand what the hardship is because when I travel around the Lakes Region and I see many successful cottages and motels very similar to this. This is a wonderful facility where it's situated on the lake, what is the hardship then? This can be operated, other people operate these sorts of venues very well. So I personally I don't believe this fulfills the hardship criteria.

Ken Ballance: Center Harbor Code Enforcement, I also take issue with hotel vs. motel. I did a little research myself and so I called a couple places around. I drove to Campton, Laconia and over to Tilton and this is essentially the word "well this is not Key West." You don't see a motel here where you have open hallways to the parking lot. You do have closed hallways to the parking lot that is what makes it a motel. A hotel, you go into a central lobby

to go to your rooms. By our Ordinance I also sincerely believe this does not qualify as a hotel in any way shape or form.

Chairman: Do you want to rebut? Directing the question to Attorney Kasten.

Attorney Kasten: In regards to the hotel/motel issue the Town uses the Miriam Webster Dictionary for the definitions in their Ordinance. The definition that is closest to what this property is: **Motel:** an establishment which provides lodging and parking and in which rooms are usually accessible from an outdoor parking area. **Hotel:** A place that has rooms where people can stay, especially when they are traveling. A place that provides food and services for paying guests. Maybe we are somewhere in between, I don't know.

Ken Ballance: Isn't there another line in the definition?

Attorney Kasten: There are two definitions, I read the first one. The other says, an establishment that provides lodging and usual meals and entertainment and various personal services for the public. I believe that is the definition we have from Miriam Webster's Dictionary. If this is an issue of whether this is a hotel/motel, it has several stories and I think a really important question that was asked was whether people come here just to sleep and stay overnight. The answer is no, people tend to stay for longer periods of time. A question was asked regarding the average length of stay and the response from Mr. Carpi I think was two, but I think on average it's between 2 and 3. I didn't think about that question before coming to these meetings, but that I thought was a relevant question for me. People are not coming here just to stay for a night, they are coming here for a destination. In terms of the hardship question, that view point was relevant before the Simplex case but now the relative inquiry is whether the use is reasonable based on the uniqueness of the property. It's not a question any more of whether you can make use of the property and that's important and I think we have established that very well in our application.

Chairman: Anyone else?

Ken Ballance: I would just like to clarify the definition clarification I brought up was specific to the Special Exception.

Chairman: Does the Board have any questions of anyone?

George Lamprey: I did have one. There was a comment made, and perhaps we have it in the minutes, but there was a comment made that a Selectman spoke on behalf of the Selectmen and that is not the impression I had. It was a Selectman, or maybe a former Selectman at this point, that had rendered his opinion at that time. I don't think he was speaking for the Board.

Attorney Kasten: May I address that? Maybe that is correct but in the minutes with our meeting with the Selectmen, it is in the minutes that they said they support (inaudible).

Chairman: We have a Selectman here, Harry would you like to speak on that?

Harry Viens Selectman: Yes, at this point the Board has not taken any official position on this. We have split opinion, and rather than try and inappropriately influence the decision of the ZBA, we will remain silent.

George Lamprey: I appreciate the clarifications all the way around.

Chairman: Any further questions?

Palmer Smith: This Center Harbor Inn, has been in business for a quite a while. Not sure if it's always been the same people but I don't think you built it?

Tom Capri: No I've owned it 12 years.

Palmer Smith: Zoning became established and the Town saw fit to consider this a residential area. Not sure whether that should influence us, and possibly the fact that they presume this may become a residential area as time goes on. It makes me feel that maybe it's less appropriate to make changes that I might have thought of otherwise. That's what I'm suggesting for the Board to consider.

Chairman: If there is nothing else, we should move to close the hearing so we can start our formal deliberations.

George Lamprey: So moved.

PUBLIC INPUT CLOSED AT 7:28 P.M.

Board starts their deliberation. Discussion on whether this proposal qualifies as a Special Exception. Member Chris Williams states he believes a major piece of that is whether it's a motel or hotel. Property was sold as a motel, there has been no change of use and there are no function rooms. There are a lot of amenities that a hotel offers that are not here. I don't know whether the beach and the whole issue of boat docks existed to the prior owner or not. Board asking the question responded to by Ken Ballance, they did exist with the previous owner Mr. Lee. There have been moorings and docks right along. I don't recall anything that shows Mr. Carpi has added any Ken Ballance concludes.

Chris Williams speaks about a sound meter application on his cell phone which measures decibels. Describes the range in which the meeting has been measured at which ranged from 57-62 decibels. Chris continues, the point in which it becomes uncomfortable to people is typically over 90 to 100 decibels.

Chairman: The first question is do we accept the application.

George Lamprey: Question, if we thought that it does not meet or that it does not conform with the list of items under Special Exception either specifically or generally, is that the grounds in which you would not accept it? I cannot think of any other reason we would not accept it, except that it does not fall under the category of being a Special Exception. I will acknowledge there is a lot going on here on whether it's a motel or a hotel but that is to be expected. We would not have a Zoning Board of Adjustments if it was black and white. I fall in favor of the view this is a motel not a hotel and Special Exception allows a motel. We would have to add hotel to the other section "change in non-conforming use". That is where it does not work, because if you change it you will undermine the motel. It is a motel and it is operating under a non-conforming legal use.

Chris Williams: Did building the observation deck go before the Planning Board.

Ken Ballance: No it did not.

Chairman: Was there a deck there?

Ken Ballance: Yes there was. Like I said the work was started and then I stopped it because there was no building permit for it. In the section the Attorney is referring to as commercial use, it was never that. The property is under commercial use yes, but the deck was strictly an accessory structure. It fell within the parameters and I made them go to shore land to get a shore land permit before I would issue the building permit to continue the deck. It met the criteria for shore land so we allowed it as an accessory, as you would anybody.

Chris Williams: Was it enlarged?

Ken Ballance: It is larger than it was, yes. This was in lieu of making them take it apart and having them start again we just made them stop and get permission to do this properly.

Discussion –Special Exception

Chris Williams: 5:10:4 states a non-conforming use may be superseded by another non-conforming use provided the Board of Adjustment determines (as a Special Exception) that the proposed use is not more objectionable than the existing use. If a new non-conforming use is allowed, the original use shall not thereafter be resumed.

Chairman: Correct, so it's an interesting question. If it was a change from a motel to a hotel would it be more objectionable. There is no Special Exception to allow the hotel.

George Lamprey: That is the point I was trying to make.

Chairman: If we accept it we have to deny it.

Chris Williams: We have to determine if it's a motel or a hotel. Personally I feel it's not a hotel.

Chairman: Yes I think I agree.

Anthony Avrutine: But we really need to vote to decide whether we are going to accept the application at this point.

Chairman: Right. If you want to make a motion you can.

Special Exception Application

Anthony Avrutine motions to accept the Special Exception Application, Seconded by Chris Williams. Four in favor of accepting the application for Special Exception. One opposed.

George Lamprey: It still comes down to in my mind is it a motel or hotel and how that relates to that additional non-conforming. If you accept the argument it is additional non-conforming, then in my reading of it you would not be operating it as a motel which is why I did not think it fits a Special Exception.

Chairman: Well that becomes a different question.

George Lamprey: We are now voting on whether or not

Chairman: Yes

George Lamprey: And I'm stating why I will be a negative.

Chairman: It is interesting that they allow hotels in the agricultural zone and not by Special Exception. I guess it's the density. Agricultural Rural does allow hotels.

Chris Williams: Personally I feel the proposed use is more objectionable than the existing use.

Chairman: Yes.

Chairman: Any further discussion? Hearing none.

Attorney Kasten asks if he's allowed to ask questions while the Board drafts their motion. Chairman responds no he can only answer questions he is asked.

Special Exception Decision

Chris Williams, I move that the Special Exception be DENIED in that the proposed use is more objectionable than the existing use to members of the public. The new use proposed is not allowed by Special Exception.

George Lamprey, for purposes of discussion I second the motion although I would have used a little different language. I think that the fact it is not listed as a Special Exception is the major thrust but I'm seconding the motion.

All were in favor of denying the Special Exception.

Variance Application

George Lamprey moves to accept the application for a variance. Anthony Avrutine seconds. All were in favor of accepting the application.

Discussion – Variance

Chairman: We have 5 criteria, so first we will have a general discussion and then we will go through the criteria.

Anthony Avrutine: I would like to hear more about the restrictions that would be placed on such events. I believe during our site visit it was discussed the event would be over around 8 and then here this evening I heard a mention of 11 p.m. I would like clarification.

Attorney Kasten: I don't think we said that it would not go past 8.

Anthony Avrutine: Maybe I misheard.

Tom Carpi: I think I said that I didn't think it would go that late because of mosquitos, and in the fall I don't think it would go that late either because of the cold.

Attorney Kasten: I know there is some concerns about this opening the flood gates for events that could happen every night, the reality is that the use would be May up through bike week, or up until the beginning of bike week and then after Labor Day. These events are not going to happen during the week we are talking about Saturdays.

Chris Williams: One thing that has been unclear to me, and I think you just said it, there would be no events during bike week.

Tom Carpi: No, bike week is bike week the hotel is full.

Chris Williams: I mean you might have a band playing out there.

Attorney Kasten: This is a specific use here, we are trying to make it reasonable in light of the circumstance. I don't think we will have any weddings during bike week.

Chris Williams: But you are not excluding events during bike week.

Tom Carpi: We have excluded bike week. From bike week to Labor Day there would be no weddings.

Anthony Avrutine: Would be excluded?

Tom Carpi: Yes.

Chairman: I think we can put the restrictions on, that we feel are appropriate. If there was some concern about some of these things we can tighten it up. Now whether that's acceptable to them that will be their determination.

George Lamprey: I believe the applicant has certainly shown several interests to mitigate the issues of traffic, noise and number of events. I think there is sincere reference on that part, but even given that and even with limitations, I believe and think the underlying question is that things like a DJ and catering service and all those are a third party and is outside the control of the proprietor anyway. If one is an issue of noise, I'm not sure how you control that. I think the underlying question becomes one of congestion, noise and if you believe there are higher levels or greater density of one or the other, is it in the spirit of the ordinance. That is the major question for me.

Chairman: We have to go through the criteria, but we should discuss how people feel about this, is it good or bad.

George Lamprey: Number two of the five criteria is whether or not it's in the spirit of the intent of the ordinance and I'm having trouble there.

Chairman: Let's just go through those to set the frame. The first is granting the variance will not be contrary to the public interest.

Anthony Avrutine: What about establishing a precedent by doing this?

George Lamprey: Each case is its own case.

Chairman: The ZBA is there for special circumstances of a particular property. People can argue it sets precedence but what it comes down to is the special circumstances of that property.

Chairman: The second criteria, if the variance were granted the spirit of the ordinance would be observed.

George Lamprey: I spoke to that, and that I have difficulty thinking the spirit of the ordinance would be observed by granting the variance. But again, my ears are open for other opinions.

Chairman: There is an interesting sentence in 5:9:1 the last sentence in that section, it's hard to know whether that applies or not.

Chris Williams: That was originally written because there were several properties in the Town that had no use.

George Lamprey: I don't see it as fitting this situation.

Chairman: The third one, granting the variance would do substantial justice. Again, we will go through these in greater detail but if anyone wants to briefly discuss it we can.

George Lamprey: I am sensitive to the property owner's argument about maximizing the utility of the property as he can. That's a goal here and the effort undertaken here. The issue is whether or not it fits under the ordinance as it currently is.

Chairman: It sounds like there are other businesses that will benefit and that is certainly a plus.

Chairman: Number four, in granting the variance the values of the surrounding properties would not be diminished. The application states (read from the application) "The Applicant does not believe that adding this activity as an amenity for guests (and limiting the use to less than full capacity) would diminish the value of other surrounding properties or affect their tax assessed value."

Chairman: Number five is the hardship question.

Palmer Smith: It's hard to read these various questions against the full background of this case.

Chairman: This case is a tough one, I agree.

Chris Williams: I think part of the issue here is (Chris reads applicant's response on criteria five section ii of the application aloud) frankly my concerns are noise and parking. The issue of noise across the water I think is substantial. I live near the water and I can hear everything on the other side of the Lake where I am, and sometimes it's extremely annoying. I am also concerned about the parking. I don't know if everyone in Town can rely on the Church for their parking lot.

Chairman: I definitely think the parking would be an important condition, and probably that one we would have to send to the Planning Board to figure out because that is really their specialty. They have ordinances around that.

George Lamprey: In the first part of hardship (George reads Criteria five Section i in its entirety aloud) I think there is a relationship between the general public for the purposes of the ordinances and this case, and if you go to part B (George reads criteria five sub paragraph B in its entirety aloud) I think it can be used and is being used within the context of the ordinance and that it is reasonable use of it in the context of the ordinance, as is. So it's not being denied i.e. by virtue of not accepting the variance.

Chairman: We went through these at a high level, let's go back through them again.

Chairman: Criteria one, the variance will not be contrary to the public interest.

George Lamprey: My point of view would be that it would be contrary to the ordinance because it runs against the spirit and the intent of ordinance.

Chairman: reads from "requirements for variance applications" criteria one (a) alter the essential character of the locality or (b) threaten public health, safety or welfare.

Palmer Smith: In that case that would be in regards to the noise.

Chairman: "alter the essential character of the locality?"

Palmer Smith: Yes, "alter". If it makes it less quiet or noisier.

George Lamprey: This noise is traffic, third party activities beyond the control of the property owner.

Chairman: Criteria two, the spirit of the ordinance is observed.

Chairman: I think we have discussed that in length anything to add?

Palmer Smith and Anthony Avrutine state criteria one and two are tied together.

Chairman: Criteria three, Substantial justice is done.

Chris Williams: I think it would do substantial justice to businesses but not to residents.

Chairman: Reads from “requirements for variance” Criteria three, second paragraph “the only guiding rule is that any loss to the individual that is not outweighed by a gain to the general public is an injustice”.

Chairman: The only positive would be it would help out the other businesses.

Chairman: Criteria four, the values of surrounding properties are not diminished. This is a little tougher, there are only a few events a year and there are not many abutters to the property.

Chris Williams: But if we take into consideration the water. Chairman agrees it becomes a bigger issue.

Palmer Smith: I find it difficult to balance my thinking on this one. Certainly any effect on values of the surrounding properties is negative. Whether this is enough to consider here or not.

Chairman: You think it would be negative.

Palmer Smith: Negative but very close to zero.

Anthony Avrutine: We have heard quite a bit from the public and they have voiced their opinion to the negative as far as the noise goes. The question is would that have the same impact if it was restricted to certain time frames. Basically cut off at an earlier point where the noise would not become a problem. I don't know.

Chairman: I think it would definitely reduce the impact if it was restricted.

George Lamprey: This one is not a large problem issue for me.

Chairman: Criteria five, unnecessary hardship.

George Lamprey: I'm not going to repeat my comments but I hold by my earlier comments that it does not fall under a hardship as far as my reading of the hardship requirements. In my opinion.

Chris Williams: I would agree.

Chairman: Any further discussion? Hearing none the Board submits the following motion.

Variance – Decision

George Lamprey, I move the variance be denied because granting the variance would not be within the spirit of the ordinance, and because there are no special conditions whereby the denial of the variance would result in unnecessary hardship.

Seconded by Palmer Smith

Board has some further discussion.

George Lamprey: By granting a variance it would run contrary to the spirit of the ordinance, and there are not conditions whereby if you turn down the variance there is still reasonable use of the property in my opinion.

Chairman: Any other discussion? Hearing none, Chairman requests a vote.

All were in favor of the motion as written.

Chairman tries to let the applicant know they have 30 days to appeal but applicant and their counsel left the meeting room.

Attorney Kasten returns and asks if there will be a full tape recording on this case. Clerk confirms there is a recording and it is up to the applicant to request. Clerk does admit she is not familiar with the process and will find out how to handle it. Attorney asks clerk if she has the Selectmen's meeting minutes in a wave file, clerk responds she does not because she is not the clerk for the Selectmen but did state she would find out from the administrator. ZBA Chairman lets Attorney Kasten know there is a 30 day appeal.

MINUTES

Board approves the September 29, 2015 minutes. George Lamprey questions one comment he made in the minutes and asks clerk to verify if in fact that is what he said. If a correction is required, the Board approves the minutes as corrected. Meeting adjourned at 9 p.m. Respectfully submitted by Aimee Manfredi-Sanschagrinn