

TOWN OF CENTER HARBOR  
ZONING BOARD OF ADJUSTMENT  
Meeting Minutes  
Monday July 14, 2014

Chairman John Foley called the meeting to order at 7:00 p.m. Present were Bernie Volz, Steve Condojani, Chris Williams, Vice Chair Jean Meloney, George Lamprey, Aimee Manfredi Clerk. Karen Peranelli and Palmer Smith were absent with notice. Also attending were Code Enforcement Officer Ken Ballance, Charley Hanson, Harry Viens, Richard Hanson, Steven McGuff, Bob Heath and Leigh Ulm.

Chairman John Foley identified the voting members Bernie Volz, Chris Williams, Jean Meloney, and George Lamprey. John Foley also explained the rules of addressing the Board during the meeting and the process in which the meeting is conducted.

**Hearing: McGuff & McGuff Dining, Inc Application for Special Exception**

Mr. McGuff addressed the Board, starting his case by summarizing the application he had submitted to the PB in June which was denied and referred to the ZBA. Mr. McGuff gave examples of concerns that had been put forth by the PB, and confirmed he has addressed all concerns from the PB hearing. The application for the Special Exception was read by the ZBA Clerk. John Foley states per the application, **Appendix A Special Exception # 5 in the CV district allows restaurants except those with drive-up and/or window** take out services. John Foley opens the dialogue for anyone wishing to present any information that is in favor or opposed to the application.

Charley Hanson addresses the ZBA and provided some information on the PB process. Charley Hanson's observation was the Board seemed relatively supportive to Mr. McGuff's request but that there were some specific concerns that the PB was working through. The PB arrived at the point where the Board needed to make a decision and were not able to approve the application based on what had been allowed in the past. Charley Hanson explained Mr. McGuff has been following the process and working through the steps required by the Town. Charley Hanson states he is supportive of what Mr. McGuff is trying to accomplish.

Ken Ballance Code Enforcement addressed the Chairman, stating as far as opposition to Mr. McGuff's request, the only building permit we have is for the building itself which allowed 100 seats. John Foley recalls an approval for an increase, Ken Ballance states an increase in patrons was granted but it was not done through the building permit process. The only building permit on file is for 100 seats, Ken Ballance is not stating the building cannot handle more, he is just stating that is what building permit we have on file allows.

Bob Heath speaks in support of what Mr. McGuff is trying to accomplish, stating that he felt it was time that all of the Boards work with the Selectmen and cooperate with the business in the town. Bob Heath continues to say it's been rather difficult over the last 20 years, the anti-business atmosphere in town and he feels that if the Selectmen are going to

try to get the businesses in Town to economically develop the town, that generally speaking, all the Boards although not stating anything specific about the Boards there should be more cooperation in their thinking of business. In this particular situation as with other business related situations, the person that's trying to do something has invested the time and money for new equipment or for advertising and so forth, and then may or may not be allowed to go ahead with their plan. "The business owner is taking all the risks and the Town is reaping all the benefits through rooms and meals tax, business profits tax and property tax." Bob Heath also thinks "there should be a little more general business orientation geared towards the rules and regulations. For example the PB in the future should look over their laws and rules like they do every year and submit to the town, maybe tinker with those so there is a little better business atmosphere, but I do speak in favor of this."

Leigh Ulm addresses the Chair, he shares much of what Bob Heath just spoke to except the one thing he does not agree with is that he thinks that the Town and the Boards have always been pro-business, that's been his experience. He does support Mr. McGuff's application 100%, he thinks it's a good idea, it's good for the town.

Richard Hanson addresses the Chair, some observations of what has been said earlier he concurs with those statements. The idea of welcoming and working with businesses has been a big focus for the Selectmen. The focus is working with business, and to work with the community to encourage and support businesses wherever we can. To work towards enhancing the beauty of the community and take advantage of the beauty that we have. Richard Hanson feels the petitioner should be complimented coming on his own free will, having a history when he purchased the building and very capable of making assumptions that certain things were in place. With no knowledge to the validity of the zoning ordinances, he came forward to remedy the situation and work in compliance. Richard Hanson personally respects what Mr. McGuff is doing. Businesses help our community flourish, Richard Hanson supports what Mr. McGuff is trying to accomplish and in support of reviewing our Zoning Ordinances, to see if there is anything we can do.

John Foley addresses the audience by saying "Please understand we are a legal Board, and we are constrained to work within this document here, (holding up the zoning ordinance binder), and the State Law. There are a lot of times where I would have loved to vote for something that I can't. On one side you could say well go ahead and let the person do it and on the other side an abutter can sue us and cost the Town \$50,000 worth of legal fees if we don't do it right, so please understand that in the process."

Ken Ballance addresses the Chair, "listening to everything going on number one, as far as what goes on with the Boards it needs to be brought up that all of this stuff that goes on and that is being said about it is all wrong. The individuals who volunteer for this situation are constrained by what the people of this Town, the same people that elected the Select Board have said they want. And I think it needs to be brought up that these are volunteer individuals, these are people that are not paid or stipend or anything, and to work within this parameter is what we have to do and what we should do until the people of this Town change the rules. Not the Select Board or anyone else for that matter."

John Foley, to add to what Ken Ballance stated we legally have to abide by the Ordinances and stay within the law. John Foley asks if the conversation can stay on the Special Exception.

Richard Hanson speaks to the people of the Town, petitioning to have changes made. Certainly no one is implying any fault to the Boards.

Bernie Volz is questioning, why if it's already a restaurant, does the ZBA need to rule on outside seating. John Foley clarifies as the Special Exception allows a restaurant but prohibits a drive-up, the Board has to approve any change to the current set up, as would be the same as increasing the number of seats. Chris Williams, is the current set up 99 seats? Mr. McGuff states currently 137 seats inside and 50 seats outside allowed by Chief Manville but 149 is what had been approved by ZBA previously. Chris Williams brings up the question about parking and bathrooms and Mr. McGuff states he understands that the parking and bathrooms were all approved under the 149 seats. Mr. McGuff is proposing they are allowed 149 patrons he would like to have some of them outside and the option to eat and some inside. Ken Ballance, restaurant is limited to 149 as voted by the ZBA in 1999. John Foley closes the hearing on the Special Exception at 7:26 p.m. and moved to the hearing for the variance.

#### **Hearing: McGuff & McGuff Dining, Inc Application for Variance**

Mr. McGuff presents his case for Variance, requesting the ability to have outside live music up to twice per week. Mr. McGuff explains it's a seasonal opportunity he would like to have the ability to provide his guests with background dinner music from May to September. Currently the restaurant offers music indoors two times per week. The type of music is acoustical background music to enhance the dining experience at the restaurant. The application for a Variance was read by the ZBA Clerk.

Chairman John Foley explains the Variance requires the ZBA to vote on all five criteria listed on the Variance ruling. The most difficult is number five which is the hardship. To clarify the Variance is an actual change on the zoning, ZBA will essentially rezone the area and it goes with that property from now on. Hardship is something unique to the situation presented that can't be found elsewhere. In this case it's a use variance.

Mr. McGuff part of the hardship would be financial from the restaurant standpoint. The purchase was made and he knows now that prior approvals did not exist for the previous owner in terms of what was done, with this there is now an expectation of people that dine at Lavinia's. By not having this, it does put a burden on what type of patrons the business will attract during the short season. Mr. McGuff states that for him, it's a broader issue. He joined the towns business committee put together by the Selectmen. Mr. McGuff states that for him the pie is only so big for Center Harbor versus the other towns like Meredith and Wolfeboro, and it is his attempt to grow the pie and make Center Harbor more of a stopping point. Where people can recreate, dine and truly explore the benefits of this community. Mr. McGuff would like to be a proactive part and that it not only creates a hardship for him but for the community as well.

Charley Hanson addresses the Chair and feels the major hardship in Mr. McGuff's case is that the location is a historical building. The building has to stay the way it is, this is a significant factor that meets the requirement for hardship.

Harry Viens addresses the Chair as a resident of the town, he feels that withdrawing music from the restaurant which is what people expect when they go to Lavinia's will diminish their business, it will essentially cost them business. Harry Viens says he's very pro-business and having businesses in town that are successful not only improves our tax revenue for the town but it also provides a quality of an experience and ultimately why people come here in the first place. Ultimately, it will create jobs, and the town doesn't have many jobs to begin with.

George Lamprey Member asks the question if this would even be an issue if the music was being held inside. John Foley responds no he didn't think so, George Lamprey then asks what makes it a question if it's outside, it is a use of the property I know of nothing that distinguishes the difference between inside and outside for this type of use.

Ken Ballance addresses the Chair by stating the only ordinance we have regarding noise has nothing to do with music. Nothing in the zoning ordinance that speaks to this. Perhaps when the ordinances were put in, outside music was not prevalent. Speaking for myself, if it were agreed upon to limit it to a certain time of night I would think personally, I would see nothing wrong with it what so ever. I was surprised there was a variance request on this, I couldn't personally find a reason for it.

George Lamprey, I too was struggling with that very issue. I want to be clear what triggered bringing it forward as a variance was because it was outside.

Bernie Volz member does state that according to the application Mr. McGuff agreed to stay within the noise ordinance. Ken Ballance, to be exact the noise ordinance does not specify anything to do with music. George Lamprey, I will go back to the original question because I thought it could be covered as a Special Exception. Part of my concern, down the road changes could come out of this and if we could handle this under a Special Exception then we should do that.

John Foley, if someone were to try and run a concert out in the parking lot, would that be legal. Ken Ballance states that would be a function and would need a special permit. Chris Williams, questions the letter from the Selectmen giving Mr. McGuff permission to allow live music outside until the ZBA makes their decision. Chris Williams thought it may be beneficial for the ZBA to have legal counsel on making their decision under the Variance Application and still allow Mr. McGuff to continue by way of the Selectmen's letter until the ZBA could discuss with the Town Attorney. Ken Ballance asks if he can continue doing what he's been doing and if we find out it needs a Variance we will then have to bring Mr. McGuff back before the Board. John Foley states the ZBA has the ability to withdraw the Variance request and include the music as a condition under the Special Exception. Bernie Volz states there is still a 30 day period where someone can appeal this decision. John Foley we still can decide that this doesn't qualify for a Variance.

Harry Viens, clarifying the letter that during this period the Selectmen had no interest in enforcing until after the ZBA had made their decision. Charley Hanson, it's my understanding based on the process, if the ZBA did grant the request then it would come back to PB for site plan review so we record the site plan and all of the conditions is that correct? John Foley, ZBA would approve it as far as the ordinances are concerned and

then it would go to PB. Richard Hanson, ZBA can still set conditions. John Foley said correct we can set the conditions. Bernie Volz, questions if the music has been going on outside for a while. Mr. McGuff states yes previous owner had approval for four events. Bernie Volz, questioning if there were any complaints and Ken Ballance states there were a few but they were addressed. No one opposed to the music was in the audience. ZBA closed the meeting at 7:50 p.m.

**Motion Application for Variance:**

Bernie Volz, motion to refuse the Application for a Variance, motion was seconded by Jean Meloney, and all were in favor of refusing the Variance Application motion passes.

**Motion Application for Special Exception:**

Bernie Volz, moved to approve the motion for Special Exception to allow 50 seats outside, with a maximum of 149 total seating; music be allowed twice a week, provided it is live background music limited to 10 pm from May 15 to Sept 30th. Seconded by George Lamprey. Vote taken, all in favor motion passes Special Exception has been approved. 30 days to appeal this decision.

**APPROVAL OF MINUTES:**

George lamprey moves to approve the minutes of March 10, 2014 and March 24, 2014 Bernie Volz seconded the motion. All in favor of approving the minutes.

**OTHER DISCUSSION:**

John Foley resigns as Chairman, motion to nominate Bernie Volz as new Chairman, John Foley would become an alternate. Board voted unanimously in favor. Jean Meloney motioned to nominate Chris Williams as Vice Chairman, Board voted unanimously in favor. Jean Meloney resides as member. Board officially votes Aimee Manfredi-Sanschagrin as clerk.

**ADJOURNMENT:**

John Foley adjourned the meeting at 8:30.

Respectfully submitted,

Aimee Manfredi-Sanschagrin  
Clerk