

TOWN OF CENTER HARBOR
ZONING BOARD OF ADJUSTMENT
Hearing
Monday, September 14, 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 members, Charles Hanson (Chairman), Bill Ricciardi (member), Richard Hanson, Selectman, Ken Ballance, Code Enforcement Officer, Attorney Michael Kasten, Tom Carpi owner Center Harbor Inn, Edward N. Dane, John and Monte Fiske and Marty Leroy.

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 – APPLICATION FOR SPECIAL EXCEPTION AND VARIANCE

Chairman requests the applicant or his representative read the applications that have been submitted to the Board. Attorney Michael Kasten representing Tom Carpi of Center Harbor Inn reads the proposed use submitted with both applications. Attorney Kasten reads both applications and provides a visual on the site plan submitted to the Board.

Attorney Kasten in his introduction discusses the parking concerns citing these events would be held during “bumper months” which he identifies as the beginning of June and then in September therefore, alleviating some of the traffic and parking concerns. Attorney Kasten emphasizes the uniqueness of the property and because of this unique setting, the applicant, with certain restrictions should be granted approval from the Board. Opening presentation complete.

Chairman Bernie Volz asks if there is anyone in the audience that would like to speak in favor of the proposal.

Public Input:

Selectman Richard Hansen, identifies himself as resident of Center Harbor. “I would like to speak in favor of this proposal, a cogent argument was presented in terms that I was especially impressed with. The unique situation and location of this property and its uniqueness commercial use is undisputed. Its commercial use is grandfathered I presume, it’s commercially used and I presume is taxed as such. I don’t personally see a major difficulty especially given the restrictions that have been presented in terms of noise levels and other things. With its positioning, noise is buffered. Certainly the Lake and the Inn itself is a buffer as pointed out, and of course Rte. 25. My interest is to make businesses operate as efficiently and economically and profitably as we can within the community that is my personal prejudice towards that. In that sense, I would personally be in favor of this.”

Chairman asks if anyone would like to speak in favor. Hearing none, the Chairman asks if anyone would like to speak in opposition of granting the Special Exception or Variance.

Edward Dane, residing at 252 Dane Road, my family has lived in this area for 4 generations and have enjoyed the area tremendously. “I guess my concern is that while this looks nice on paper because it’s limited space, because I have property on the Lake and have children living in property on the Lake I know very well that these kind of events are very noisy. Noise on the water gets louder and expands now I am not certain whether the Town has regulations on when music needs to be cut off. I think having listened to a rock band until 2 in the morning, you would certainly hear music a mile or more down the Lake, does not do much for the people that have to listen to it. I also would like to remind people, as you probably know, this same issue came up a few years ago for a similar use for what used to be my grandfather’s cow barn and it was turned down. Not quite the same because that property was not in commercial use at that time and the owners of Canoe would have liked to have made it that way. Parking was a big issue in that case. To me it’s sort of an issue on whether the Town wants to be promoting these kind of commercial activities in the Residential Zone. Mr. Dane continues, this is not the only site that would like to do this

kind of activity. There are others in Town that without a doubt would like to do this same sort of thing if this were to pass. Again, I would be opposed to this proposal.

Monte Fiske, I've been a resident for 50 years and live at 160 Whittier Highway on Lake Winnepesaukee and I echo what the last gentlemen said with regards to sound over the water. The noise is horrendous. We hear the band stand that is lovely we enjoy it, it's over by 9 and it's not amplified. Dance music or whatever it is called at weddings is amplified and that will impact, do we care about Moultonborough? Probably. The noise will be awful coming down the Lake. How do you enforce restrictions? We've all heard cases about shore line protection and trees being cut and a fine being paid. Fines are meaningless, no one cares about them they will just add the fine into the price of doing business. Thank you.

Charley Hanson, I live at 112 Coe Hill Road and I am Chairman of the Planning Board (PB) and I am here tonight representing the PB. We are keenly interested in the project, it had come before us a year ago at which point we denied it because it needed to come to the ZBA. As of a result of learning this was coming to the ZBA, we had an informal discussion at our last meeting regarding this project. We shared some of the concerns that were mentioned here because if you approve this, the applicant will come back before the PB for site plan review to work out the details. Details such as the noise issue; which is a very big one, the traffic issue is a general concern, PB is concerned with the precedent again, like Mr. Dane mentioned. We already have one that runs almost parallel to this one and another business that would be interested. Is it a bad idea? I wouldn't say that, but I don't think this is the right process to go through. The PB uses the Master Plan which was just revised 4 year ago. The Master Plan is very clear on the way people would like the Town to grow and develop in its limited fashion. This is a big change for the Town of Center Harbor, if the Variance or Special Exception were to be granted. While we will do our job and make it work if you approve it, the PB felt it should go through the Town Meeting process rather than the ZBA and let the Town decide. Let the arguments be heard at a public hearing that's presented to the entire Town. We would strongly suggest you consider the Town Meeting process which is the process the PB feels would be the best for this particular situation. Thank you.

Ken Ballance, I'm speaking just as a Code Enforcement Officer and some observations and clarifications that need to be made. As far as noise goes, there is a huge difference between 4 or 5 people that may be staying at the motel and getting together as opposed to 125 people in one place for a particular event. There is a large difference on the amount of noise that will be generated. Also, there are some inconsistencies that need to be cleared up. Number one, there are residential properties that abut this property across the parking lot. All the dwellings on Lake Street are in the Residential Zone, it does not end at the Beach. The parking is another issue that "definitively" needs to be brought forth. Everybody keeps using the Church stating they are going to make an agreement with the Church. Everyone wants to park there and make a deal with the Church. If this happens and an event comes forth with the Church, such as a funeral or a wedding, where is everyone else going to park? The language in one area says "the events will be primarily" it doesn't say exclusively. Primarily means, well maybe we will have 3 or 4 or 5 events there is no definitive statement that we are not going to hold events during the peak time. So now Canoe is operating at 100 percent, someone else is trying to use the same parking area and an event comes along at the Church. From an enforcement standpoint we are opening up a serious issue with other areas in town. Lastly, the statement that says the deck was approved for commercial use, it was not. The deck was never approved for commercial use, the deck was approved as an accessory structure in a commercial environment. I don't want people to misunderstand. To be quite frank, I stopped that deck at the end of frame because there was no building permit for it, so there is no possible way that we would have given that permit based on them coming in and us being informed this would be used the way it's now being suggested. It was strictly an accessory structure and it was an after fact permit.

Chairman asks if there is anyone else wishing to speak in opposition. Hearing none Chairman asks if the applicant would like to rebut and of the comments presented.

Attorney Kasten: It was expected the noise issue would come to mind, so that would be an issue for PB or for you to deal with in your analysis. On the observation deck I just went by what was written on the building permit that is what I thought it was approved for. The part about "primarily" since this is a use approval, if the PB were to say you can only have this use in May, June and September we would have to live with that.

Charley Hanson: Just to comment on those comments, this issue came to us because they were non-compliant. There was a wedding planned already, and one of the concerns of the PB, again if this is granted and comes to us, we can put all the restrictions we want but we need to come up with a way, in my opinion based on the history based on the way the operation has gone, that is easily enforceable. That is not always easy, words like primarily and such we would need to come up with something iron clad and that can be very challenging for this sort of event. Therefore, again I go back to the fact it would be straight forward if this went back to the voters and they approved a change in the Zoning. We would have a clear cut mandate, and I would ask the Board to consider that option.

Monte Fiske, I just have a question because I'm not quite clear on this. If the property were to be sold, does the permit go along with the new owner? Chairman answers yes.

Chairman: Anyone else want to speak in rebuttal?

Marty Leroy: Coe Hill Road I would like to agree with what Charley said. I know of two other properties within a half a mile of there that would be applying for the same application and you have to think about that. If you open one can of worms you are going to open three cans of worms. Special Exceptions are not granted equally and they shouldn't be, I just think you really need to think about this.

Chairman: anyone else has anything to add?

Richard Hansen: I agree with what Charley said and some others and that it would be a very appropriate thing to have a petition come before the Town, but the Zoning Board exists within a certain legal frame work. Your job is not to say "oh I think it would be better if you went to the Town" your job I believe is to take what is presented to you, apply the Law, the reasonableness or lack thereof and make a decision. I, in many senses would like to see it go to the voters but that is not where it is right now so I don't think that should be the major consideration. You people should try to apply the law and standards and listen to the arguments that are presented both for and against and make a decision.

Charley Hanson: I understand what this Mr. Hansen says, but using that logic I would say you have a precedent. It's clear cut, this should be denied on both levels there is a parallel situation right up the road end of story. But again, I do think it would be best to take this by petition. Thank you.

Chairman: Anyone else for or against?

Tom Carpi: Massachusetts, Center Harbor Inn. As far as the other property you are talking about, is that the Barn Canoe wanted? Charles Hanson confirms. Tom Carpi continues, I just want to address the business aspect of it. We will actually be able to attract customers to there, we have the parking we have the facility. As far as restrictions, we are open to all of them. It is apples and oranges, I know dictionary definition of motel but it did have the beach and docks, which motels really don't have and it's unique area. It's different. We are talking maybe four Saturdays in a year and not in the peak time. Again, it's not like a barn it's a unique thing it has a house a set up for this. I'm sure if they had this idea years ago, the Lee's who I bought it from didn't take care of it that well, if they could think of a way to increase business and what the wedding has become, someone would have thought of it before that. I know there will be problems with the sound, as we all do on the water. I don't think my next door neighbors are here, are they? The Finn's. Chairman asks if there are any abutters present. None present at the hearing. Tom Carpi, I have a great relationship with their family. In regards to time restrictions, again we are talking four Saturdays a year in off times when a lot of people won't be here for the summer. May up until Bike week and then September up until Columbus Day and that's it. Whereas the barn, is there parking at the barn? (Unannounced attendees of the hearing said no).

Chairman: Anyone else?

Charley Hanson: I appreciate Mr. Carpi's comments but I would have to humbly disagree. You can talk about your immediate neighbors but the fact of the matter is, I live up on Coe Hill and I can hear a lot of stuff going on in Town. Sound does travel across the bay and to address that, it's going to take some thoughtful consideration. And

I disagree with him in that even though that Barn is separate, it's identical in a sense that what was proposed there was totally interior and would have at least been inside the facility. This is an outdoor event, and outdoor events can get raucous. Has anyone here been to a wedding where people get a little crazy, not to make it ridiculous but the music gets loud and it's something to consider. Again, I think if the Town people came and said yes this makes sense, let's change that zone because we have this existing business. Which I believe Mr. Carpi knew what the zoning was when he bought it and nothing has changed since he owned it, why do we need to address this now in this manner. Thank you.

Tom Carpi: Why I would address it now is because it's a different market from when I bought it 12 years ago. Obviously, the Town wants to increase business that is why we keep getting on these letters from them and that's what you want to do. Again, in the hotel business sometimes we do get ruckus, at night there is always something happening. That's the nature of the beast but we have dealt with that for year. Things change and businesses have to evolve. Since 2008 we have been trying to figure out some way to increase business. It helps everyone in the community especially the hotel. When people are here in the morning they go to Center Harbor Diner for breakfast, they go to Heaths for groceries, they go get ice cream at the dairy bar or Lavinia's for dinner. The property is unique, the Barn is inside but there is no parking there. I'm sure Scott would do a great job whatever he were to do in there, the more the merrier I would think. It's become such a big business, places like Mills Falls and the Margate have events that's how they remain open they don't just have walk in guests. That's it, things have changed. Attorney Kasten states he does not know where the music would be located, but understands it is an issue and if you review the plan there is a large retaining wall that may mitigate the noise.

Member Chris Williams: How high is that platform off the ground? Tom Carpi responds, it's about level to 10 ft. Chris asks if it tapers down, Tom responds yes because of the slope of the lawn. It's been engineered for 200 people and does not have any stairs on it.

Member George Lamprey: I ask this to put your request in context of the Zoning Ordinance, I've heard the blanket statement "commercial use" and I've heard you state motel and then you state hotel and we have a distinction within our Ordinance between the two. Special Exception in the Residential district cites a motel not a hotel. Could you draw for me a little bit of the history of the property and which category you fall? I think traditionally you have been recognized as a motel, I think it's taxed as a motel but I realize that things do change over time so please address that.

Attorney Kasten: The Town follows Miriam Webster Dictionary definitions, "motel is a place next to a road and has rooms for people to stay in especially when they are traveling by car." A second definition "an establishment that provides lodging and parking in which the rooms are usually accessed from an outdoor parking area." In this case the Inn is a hybrid, maybe it is true it fits that definition but it is a multi-level and the rooms are accessible from inside. It's more of a destination not somewhere you just drive by and decide to stay in. The definition of hotel, "a place that provides food and lodging and other services for paying guest." I suppose the argument could be made that they have the boat slips so people do come here for other reasons. Ken Ballance, please finish that definition. It says "in which the rooms are usually accessible from an outdoor parking area." That's a motel, you walk in from your car to your room. A hotel you go into a central area and disperse. Attorney Kasten, I think there is an entrance in the center and they go into one entrance and access the room from there they don't go directly into each room, plus its multi-layer. You can access one level by the parking lot. Tom Carpi, only the basement level which has 3 rooms you can access from the parking lot.

Member George Lamprey: What is the typical length of stay? Tom Carpi, depending on the time of year. Bike week is four night, July 4th is four nights and during the summer is typically a two night stay. On average two nights. George Lamprey, do you have a function room, conference room and what is the extent if any of a food service. Tom Carpi, we have a continental breakfast in the morning, there is a meeting area, a recreational room called the beach room, kayaks paddle and paddle boats. George Lamprey, and just to be clear did I understand the ground floor rooms exit out to the parking lot and then there is a central area that goes upstairs and disperses? Or is it central on both levels? Tom Carpi, it's central.

Member Chris Williams: how many rooms do you have? Tom Carpi, 36 plus the house. Chris Williams, is that rented out too? Tom Carpi, yes. Chris Williams, how many people can stay there? Tom Carpi, 5 bedrooms and 5 baths so 10.

Member George Lamprey: Do I understand reading the packet that the total capacity is 140 for overnight? So when we say the event will be limited to 125, is that 120 in addition to the 140? I recognize some will be staying there as guests but was there a distinction made between the two and what is the total number of people that might be there. Tom Carpi, our business is selling rooms, we would like to sell as a package that we would like to rent the whole hotel “and that did go well that last couple times we did it. Well last year or whatever it was.” So that is what we believe. I know there are people that are not going to stay there because we are kind of steep on price so that is our main goal. It would be great to have no one from off site, but we are going to require for the wedding to book the whole hotel.

Alternate Palmer Smith: The application talks about the restrictions and then we note we are only talking about a few weekends. I’m not sure where we are here, I would certainly want to make that whole thing a restriction. We would have to set an agreement as to when this would apply. Tom Carpi, it would typically happen on Saturdays during the day. Attorney Kasten, when you talk about restrictions are you talking about the time of the season? Palmer Smith, you make the statement these would occur primarily during this time. I think if we were to approve anything it would have to be spelled out.

Alternate Anthony Avrutine: What were the specific dates, I noticed some mentioned in the application. Tom Carpi, the first weekends in May and then three weekends in June right before bike week and then September and maybe two weekends in October.

Marty Leroy: First of all that has always been advertised historically as a motel and that is the way it was sold. I know that because I am the original owner and my brother was the original builder. Second, I would like you to check the notes, it states four weekends. What is being stated now is twelve. Two in May, three in June, some in September and some in October which is a little different than four.

Tom Carpi: I am just referring to the availability I’m not saying it would be all of those weekend. Marty Leroy, how are we as a Town supposed to keep track of that if it is approved? Tom Carpi, I will just have four.

Bill Riccardi: Whittier Highway. My concern about all of this is the ambiguity in the language. Probably; typically; they may do this, it could happen like this, etc. However, your decision will not be ambiguous in any way shape or form, it’s going to be a precedent. It is going to open the door to any other person who wants to seek a Special Exception in another area for a commercial use and it is going to be hard for you to turn that down. As the Attorney cited other cases in his application, this particular case will then be cited as a reason for someone else to apply and then be granted approval. The other question I have is, does Mr. Carpi live here in Town? Because when I had a business I was a concert promoter. I traveled to cities all over, when I’m in the middle of promoting a concert I don’t care about the noise I’m expecting the noise.

George Lamprey: Just for informational purposes here, how far have we investigated the offsite parking issue and I’m presuming that the 47 spaces will be full. Also, where on the property would the tent be placed for the activities to occur?

Tom Carpi: Identifies on the plan where the catering truck and tent will be places. Ken Ballance, you cannot tent within the 75ft zone, you cannot have the tent flow over into the set back. Center Harbor considers anything on or above the ground 10 square feet or greater a structure. You would have to tent either on the platform or within the conforming zone. Tom Carpi, ok then it would be on the platform. Ken Ballance, ok you will put the tent on the platform? Tom Carpi, yes, we would put the tables out on the lawn but no tent.

Chairman: Does anyone else have any other questions? Do we think we should have a site visit? Board thinks a site visit would be helpful. Chairman asks Tom Carpi if he would be amiable to that request. Tom Carpi states he would. Chairman, we will continue our meeting to a later date and have the site visit first then

resume the hearing right after. Attorney Kasten asks if the continuation needs to be noticed. Chris Williams states no, it does not need to be.

Chris Williams: I wanted to go back and see if you wanted to respond as to who lives at the site. Tom Capri, the staff does. Chris Williams, so you don't personally? Tom Capri, no I do not but I am here every week. I'm between here and property in Littleton, NH.

Chairman: We need a motion to continue the hearing and determine a date that works best for the five of us and the applicant. Board goes into discussion about setting a date and time for the continued hearing before making the motion.

Ken Ballance: Can I just ask I guess I don't understand the logic behind the site visit. Isn't the issue not whether or not the property can withstand, isn't that really the Planning Boards when they look at the Site Plan Review, isn't this just about the question is it allowed in the zone or not? Chairman, there are two aspects to it, the Special Exception is about whether it's allowed in the zone. The Variance is not. Ken Ballance, the Variance is though it is that you are deciding you are going to allow it within the zone, what does a site visit have to do with that decision? Chairman, because it pertains to the special character of the property. This goes back to the comments about other properties, yes it may set a precedent but it really sets a precedent only about the parameters of that site. You can't necessarily say because we approve something here that the same can be approved elsewhere. That's why we have to take the special conditions of the property into consideration. Ken Ballance, but I didn't think the Variance is actually regarding configuration there was no mention of the configuration what so ever. George Lamprey, Ken we are not going to debate this with you, under Special Exception the question is, is it some form of accessory use and to know whether or not it's some form of accessory use an onsite visit can give us some of that information relative to that. Ken Ballance, ok just trying to clarify for myself because it seems a little unusual in this particular case based on the language of the application, that is what I'm saying. Site visit is open to the public.

Chris Williams, I motion to continue this hearing to September 29th, site visit at Center Harbor Inn at 5:30 p.m. hearing to continue at the Cary Mead room at the conclusion of the site visit. Seconded by George Lamprey. All were in favor. Chairman continues the hearing to September 29th.

OTHER BUSINESS.

Chairman, moves to the approval of the minutes. George Lamprey moves to approve the December 8, 2014 minutes as written, seconded by Anthony Avrutine. All were in favor minutes pass.

Board needs to approve new officials per the bylaws, Board agrees to keep the officials as is. Anthony Avrutine, motions the Board keeps Bernie Volz as Chairman and Chris Williams as Vice Chair. Seconded by George Lamprey. All were in favor.

Clerk discusses adopting an 18 day deadline for application submission for structure and consistency between the two Boards. Anthony Avrutine motions to approve the 18 day deadline policy for submission of Special Exception and Variance applications. Seconded by Chairman Bernie Volz. All were in favor.

Chairman discusses the bylaw change for section III; 6b. Clerk would like the applicant to read the application, clerk feels as though this is part of the applicant's presentation. Chris Williams motions to approve the change of the bylaw Section III; 6b to read "The applicant, the applicant's representative designated in writing by the applicant, or clerk shall read the application; also, in III; 6c, insert "The clerk shall describe the manner in which the public notice was given." Seconded by Anthony Avrutine. All were in favor of the amendment.

Meeting adjourned at 8:35 p.m.

