

TOWN OF CENTER HARBOR
ZONING BOARD OF ADJUSTMENT
Meeting Minutes
Monday October 20, 2014

Chairman Bernie Volz called the meeting to order at 7:00 p.m. Present were Steve Condojani, Jean Meloney, Bonnie Burgess, Anthony Avrutine, Palmer Smith and Aimee Manfredi Clerk. In the audience Nicole Rosebury of Ames Associates, Joe Dudek of JD Construction, Attorney Steve Nix, Herbert Dane and Sally Dane. Absent Board Members were Chris Williams, Karen Peranelli, George Lamprey and Alternate John Foley.

Chairman Bernie Volz identified the voting members, Bernie Volz, Jean Meloney, Palmer Smith, Steve Condojani and Bonnie Burgess. Chairman Bernie Volz also explained the rules of addressing the Board during the meeting and the process in which the meeting is conducted.

Hearing: Westview Center Properties, LLC TML 101-20 Variance 5:11:2

Clerk read the application for Variance as submitted by Nicole Roseberry of Ames Associates. Nicole Roseberry presents for the applicant Allison R. Frye/Westview Center Properties, LLC. (Letter of agent authorization on file).

Nicole provides the Board with a plan of the lay out of the existing building and setbacks. Currently the distance of the property from the shorefront is 49' if using the roof overhang the property is 47' from the shorefront. Currently there is 1080sf of impervious coverage within 75' of the water. The existing structure is in significant need of work, making the removal and rebuild of the structure the best option. Nicole refers to the builder to elaborate on the details of the structure.

Joe Dudek of JD Construction explains that the current building is on a block foundation and is caving in.

Nicole continues by showing the Board the proposed sketch of the building and the new setbacks. The proposed structure has been shifted trying to maintain a reasonable distance from the wetlands. The owner's original plan for the construction of a new dwelling was to be larger than what is now being proposed. The owners have scaled down the structure size in order to improve the setbacks this parcel allows. Because of the 75' setback the buildable area outside of the wetlands is minimal. Nicole indicates that because of the wetlands surrounding the property the new structure can be moved back 3' making the shorefront set back 50' from the original 47'. The surrounding wetlands do not allow the structure to be placed any further back without severely encroaching on the wetlands themselves. We have slightly improved the wetland set back by 2.7' with this new proposal. There is no wetland impact that will be allowed on

the proposal of the new structure. We have received the State Septic Approvals a Shore Land Permit has been issued in 2010 and it's valid until January 2015 with an option to extend the due date if requested.

Jean Meloney asks if the home is built on a slab or pilings. Joe Dudek responds a block foundation.

Chairman Bernie Volz discusses with the Board that the ordinance 5:11:2 could be submitted as a Special Exception based on the circumstances being presented. In discussion with the Board it was determined to move forward under a Variance because changing to a Special Exception would require the applicant to resubmit and reschedule the hearing.

The Chairman asks if there is anyone in the audience to speak in favor or in opposition to the hearing. No one responds either for or against.

Jean Meloney moves to close the hearing at 7:15.

Jean Meloney asks Joe Dudek about the condition of the structure. Joe Dudek responds the foundation is cracked and heaved. The blocks are placed in the ground about 1.5 ft. The chimney is sinking into the ground; the new foundation will be down about 4ft.

Motion is made by Steve Condojani to accept the application as submitted, Bonnie Burgess seconds.

The Board votes on the 5 criteria of granting the Variance. The Board unanimously agrees on all 5 criteria.

The Board motions to approve the Variance with the following conditions:

1. Appropriate measures and inspections for erosion control are in place to protect the wetlands.
2. The proposed setbacks and footprint as specified in the application dated September 29, 2014 and the plans dated September 22, 2014 are adhered to.
3. Stairs leading to the driveway will be shifted to the North, to keep them further away from the wetlands, and the number of steps will be reduced.

Motion and conditions read, Steve Condojani motions to approve the variance with the set conditions, Jean Meloney seconds all were in favor motion passes.

Hearing: Bert Dane 140 Whittier Highway TML 217-005 Variance 5:3:1-Continued 10/27/14

Zoning Clerk Aimee Manfredi-Sanschagrין requested the Attorney for the Dane's read the application. The original application was submitted on October 6th, the clerk received a revised application on the day of the hearing October 20th, therefore the Clerk did not have ample time to review the application and feel comfortable with the new information

that may be present. The Board agreed and Attorney Stephan Nix representing Herbert and Sally Dane read the new application and presented their case.

Attorney Nix gives the Board some building structure information pertaining to the Dane property. Identified there was a kitchen added in the non-conforming zone back in 2009. The proposal is to construct a 20x24 foot off of the living room. (The size of the living room is a spoken discrepancy by the attorney the application identifies 12x20 and plan identifies the room as 12x24). Attorney Nix continues there was some confusion about how many square feet of the existing structure was within the setback. They thought they could fit under the 20% rule but then realized not all of the house was within the 75' setback. At this point we are submitting this application for variance under 5:3:1 which is the ordinance referenced on the application.

Attorney Nix continues, the 12x20 structure is not that large and it will be added onto the living room area built on a frost wall. The 75' setback protects the lake and the feeling on the lake to keep it natural. In this particular case the nearest abutters are far away and can barely see the property. There are existing trees and shrubs which will remain so you will barely be able to see this property from the water. It is not contrary to the public interest.

The spirit of the ordinance will be observed. The Center Harbor ordinances does not have a lot of purposes listed so I'm relying on State Ordinance. The 75' setback in this case the existing house is already out here and there are no neighbors. The configuration of this land is such that there will probably never be any neighbors.

The substantial justice, if you weigh the rights of the private property owner with the benefit to the Town, there is always is a benefit to the Town. In this case I don't see a benefit to the public by not granting this. The loss to the private property owner in this case is quite substantial in this case. By not granting this they will not be able to add any living space to this house. The floor space in this house is maybe 2000sf which is not very big.

The values of surrounding properties will not be diminished, from a common sense standpoint it will not have an impact. If additions are made to fit within the setbacks then you get to a point where the architecture of the building is actually a detriment.

The hardship in this case well this is where I tend to rely on the tests outlined in the application submitted. The most unique situation with this property is that the house already exists. Also, the property is very large, also it's located on the point so the probability there will be any neighbors is very slim so that's what makes it unique. The next test is that there is no fair and substantial relationship that exists between the general public purpose of the provision and the specific application to the provision to the property. I see this is one of those weighing tests, what is the purpose of the ordinance and what is going to be accomplished by forcing any additions to be 75' back what's gained by that, and is there a fair relationship between forcing someone to do that and allowing this to be built. I've gone over this a couple times and I don't see a real reason to do that. The proposed use is a reasonable one, this is a very modest addition it's going

to architecturally the same. I think that does it. If the Board wants to go through it and has questions I will get back up and go through it.

Mr. Dane addresses the Board, my family has been coming here for a long time. My family built this house in 1967. The abutters that Steve mentions are relatives. The problem is my parents built this house as a summer house and now my wife and I, our children and grandchildren we have run out of space if we want to spend time at the house.

Chairman Bernie Volz asks if anyone else wants to speak for the proposal.

Sally Dane addresses the Board by stating this addition would make their life a little easier as their grandchildren get bigger, the extra space would allow all of the family to be together.

The Chairman asks if there is anyone that would like to speak in opposition. No one was opposed.

Jean Meloney asks if the Dane's explored every option that would keep the addition further out of the setback area. Bert Dane explains the short access of 12' is what is coming off the property, the 20' would run parallel to the house so turning the addition would make it worse. We've looked at other areas of the house and this location makes the most sense. Jean Meloney asks how far into the setback, Attorney Nix replies it's approximately 54' back from the lake. Jean Meloney continues, "I am being devil's advocate, if you turn the addition 90 degrees would you be further back from the setback." Attorney Nix replies "yes you would be, but if you look at the roof line and what you end up with is an architectural wonder because you are now stepping the corner of the building. So if you look at it now, it has a pitched roof that ties in nicely, when you turn it the roof line will not match up."

The Board discussed the 20% rule ordinance 5:11:3 versus the 5:3:1 to get further clarification on square footage of the property. This request does in fact fall under 5:3:1, it does not meet the criteria for the 20% rule, an addition was added to the property in 2009.

Clerk explains Ken Ballance is out of Town but he would be more than willing to participate if the hearing is continued.

Jean Meloney moves to close the hearing at 8:10. All were in favor. Board goes into discussion and decides to continue the meeting once Code Enforcement Officer Ken Ballance is able to attend.

Steve Condojani motion to continue the hearing to October 27th subject to the availability of the Code Enforcement officer, if not available request is to continue on November 3rd seconded by Jean Meloney all were in favor.

APPROVAL OF MINUTES:

Jean Meloney moves to approve the July 14, 2014 minutes as corrected. Bernie Volz seconded the motion. All in favor of approving the minutes.

OTHER DISCUSSION:

Board discussed making a minor change to the bylaws regarding the process in which applications are read. This change will be addressed at a later date.

ADJOURNMENT:

Motion to adjourn the meeting, so moved by Steve Condojani seconded by Bonnie Burgess. Meeting adjourned at 8:30 p.m.

Respectfully submitted,

Aimee Manfredi-Sanschagrin
Clerk