

TOWN OF CENTER HARBOR
ZONING BOARD OF ADJUSTMENT
Meeting Minutes
Monday October 27, 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 Code Enforcement Officer Ken Ballance, Attorney Stephan Nix and Herbert Dane. Absent Board Members were Chris Williams, Karen Peranelli, George Lamprey and John Foley.

Hearing: Bert Dane 140 Whittier Highway TML 217-005 Variance 5:3:1-Continued from 10/20/14

Chairman Bernie Volz starts the meeting by stating this is a continued hearing for Herbert P. Dane and opens the meeting for additional input by Ken Ballance. The Chairman also mentions the voting members for this hearing remain the same from the October 20th meeting. The voting members are Bernie Volz, Jean Meloney, Palmer Smith, Steve Condojani and Bonnie Burgess.

Chairman gives the floor to Ken Ballance for input pertaining to the Dane property.

Ken Ballance starts by stating the application was submitted under a different ordinance but that he now believes that Attorney Nix and Mr. Dane are looking to use a different section of the Town ordinance. Ken Ballance continues by stating he denied the building permit for 3 reasons, Ken asks if the Board has a plan to review during his statement, the Board confirms they do have a plan. Ken states, initially the plan submitted did not have the proper calculations regarding how much of the structure is actually useable and the distances of the setbacks. Historically, the 20% that we have allowed in the past, has been allowed as long as it doesn't move into a secondary non-conforming zone. This piece of property is somewhat unusual because it sits on a point. Ken confirms the verbiage with Herbert Dane, Mr. Dane concurs it is referred to as a point. Ken continues by showing the Board the set back line on the plan which is the 75' line across the building, stating "we would allow this portion of the building historically, to move along that same plane so long as it does not become more non-conforming. In this case, the set back line is here and it is kind of a catch. Not only are we allowing it to be moved along that non-conforming line, but because the 75' line, which is my presumption, is at this point, we are allowing it to move to a secondary area even though it's behind the same line."

Ken continues, "So we are looking at it from a standpoint, in all fairness, the property kind of facilitates this situation because of where it is and how it is. On the one side, and I'm going to make an argument both ways, I denied it simply because I said ok the zoning board can make this decision, meaning that I'm kind of in a quandary." Ken continues, "I historically have never allowed anything to go in two directions non-conforming because that is what I was told from the very beginning when I started doing this job. You can argue the language in this ordinance because it's very confusing, and I want you to know that I have come forward to the Planning Board to have this whole section removed because it is too confusing." Ken continues by discussing the Spirit of the Ordinance and the purpose behind it when it was adopted. "When the setback went from 40' to 75', it was to give individuals who had property in the 40' zone the opportunity to connect a newer building, or a larger structure, in the conforming zone. It was never really meant to go how it has but because of the language it has gone that way.

Ken Ballance continues, "Truly in the spirit of Zoning Board review, this is a case where the property facilitates an action. This is really what I believe the Zoning Board is about, the property deserves a look at this because when the house was built 40' was fine. A situation like this is the reason I've asked the Planning Board to remove this Ordinance."

Chairman adds "and just go for a standard variance." Ken states "yes come for a variance and that's it." Ken continues, "So Mr. Dane may be on the very end of this whole thing and this particular process. This is a really good case for it, and shows a very good reason why we need to remove it. To be quite honest with you, if you read the language and go over it, I have a very difficult time with whether or not, and again why I brought it to you, and you can go, look this is a moot point, it fits within the Ordinance, and give him the 20% and that's it. I'm saying to you because of how the language is, I elected to bring it forward to the Board so that down the road there could be nothing that comes back and say it doesn't specifically state this situation but it implies it." "Historically, we have never allowed a secondary projection into the non-conforming zone." Ken continues, "Lastly, I went over to the property and truly, if he's going to put an addition on his house this is the only place he can do it there is no joking about that. The way the roof lines are the way everything is so that's why it's in your lap. You can say you don't want to deal with it, give him the 20% or we can say well do they really need a variance here. He fits now that he has the calculations in by the way, before there were no calculations on the pre 1967 amount which is very critical. How much space was there prior to 1967, but that's all come up now." Stephan Nix confirms that the surveyor was brought into the process late on this application.

Chairman asks a question regarding the plan. It was noticed that on the plans that were submitted it shows 12x24. Mr. Dane responds "that is not accurate it should be 12x20". Chairman states he just wanted clarification because we have several different sizes for this addition.

Stephan Nix hands out a document he prepared for the Board. In the packet is a plan which Ken Ballance looks at and states this is the information he had requested that was not originally included with the building permit which is the reason for that permit being denied. Stephan Nix states that after the applicant obtained the calculations, they clearly identified the calculations on the plan. Stephan Nix shows the 50' set back the location of the lake and the non-conforming portion of the structure. Stephan Nix continues, "The Danes would like the ZBA, based on the information now being submitted, determine that the Dane's do not need a variance. I think the ordinance is pretty straight forward, with all due respect to Ken, it doesn't say where the 20% can be." Ken Ballance asks Stephan Nix to repeat the statement. Stephan Nix rephrases the statement, "What you are saying is that the 20% is intended to be behind the building." Ken Ballance, "it cannot encroach and become any more non-conforming, the ordinance states that clearly." Stephan Nix concurs and continues, "And we think in this case, it's not encroaching towards the lake as Ken had said, it's not encroaching towards the lake anymore because it's behind the closest area. And it doesn't encroach towards the lake on the northerly end either, if you look at the line and extend it out. The surveyor has pretty much straightened this out."

Chairman asks if anyone has any other questions. Ken Ballance addresses the Board and states there is one thing that needs to be asked and that is "you have the calculations of the interior space as opposed to the footprint? You have to have the lesser of the two, you have to show the lesser of the two." Stephan Nix, "no we have the footprint." Ken Ballance, "it has to be the lesser of the two that is what the ordinance clearly states." Jean Meloney reads the portion of the ordinance in question. Ken Ballance states "you have two options and of those options it has to be the lesser of the two and that is of whatever is in the non-conforming zone." Chairman asks if the 1990 square footage is based on the footprint. Stephan Nix responds "that square footage is

based on the footprint, correct.” Ken Ballance states there is no second floor so if there is no second floor then we will consider the footprint and interior space is the same. Chairman agrees it is pretty close and there is still a little room for margin of error for the 20% vs. the square footage being requested for the addition. Ken Ballance reads from the ordinance 5:11:3 last paragraph, “Where I got hooked up with this going out into the other zone, no additional incursion meaning we are taking away to the front but we are also taking away to the side but we are using the same set back line. This is the reason I wanted it to come to you because this is a very odd situation. We are using the same line, but it’s encroaching in two directions which we normally would not allow but, it’s all because of the 40’ to 75’ and when the house was built it was built behind the 40’. I don’t want to confuse the issue, I just want to make sure we are clear on the language of what is happening. Like I said, the lot itself in my opinion, is creating the dilemma, which I think is a very addressable issue for the Zoning Board. Which if you choose to pass on, I have no aversion to giving Mr. Dane the 20% straight out, but because of how it looked, that is why it’s here to give you the opportunity to make a decision about it.”

The Board closes the public portion of the hearing at 7:21.

Chairman asks the Board does this violate the spirit of the 20%. Palmer Smith does not believe it does because it is 75’ back from the side. Palmer Smith adds “I believe the addition he’s asking for fits in the 20% exception.” Steve Condojani agrees, he does not believe this is a variance that it fits within the spirit of the 20% exception based on the property. He believes the applicant is well within 5:10:1 not a variance. Chairman agrees. Jean Meloney states the need for a variance is not required. The Board discusses the wording of the motion, the motion needs to include the position of the house and the shape of the lot.

Jean Meloney, we have determined that based on information provided, as it pertains to the shape of the property and the position of the house, a variance would not be required. Seconded by Steve Condojani. Board voted unanimously in favor of not requiring a variance.

Ken Ballance, ok so based on the information you have been given you are overturning what I did which means there should be no 30 day hold. The only person who could come back would be me and I won’t be doing that. The Board thanks Ken Ballance for his participation.

APPROVAL OF MINUTES:

Jean Meloney moves to approve the October 20, 2014 minutes. Steve Condojani seconded. All were in favor of approving the minutes.

ADJOURNMENT:

Motion to adjourn the meeting, so moved by Jean Meloney seconded by Bonnie Burgess. Meeting adjourned at 7:46 p.m.

Respectfully submitted,

Aimee Manfredi-Sanschagrín
Clerk