

**TOWN OF CENTER HARBOR**  
**ZONING BOARD OF ADJUSTMENT**  
Meeting Minutes

**Monday, October 9, 2023**  
**7 p.m.**

**In attendance:** Chair Bernard Volz, Members George Lamprey, Karen Ponton and Stephany Marchut Lavallee. Alternate Members Gregory Hime, Timothy Nefores, and Alison Toates. Vice Chair Jean Meloney was absent without notice. Clerk Helen Altavesta was absent with notice.

**Public attendance:** Tiffany and Irene Spaulding, Bruce Bond, and Louise Coretti.

The meeting was called to order at 7:00 p.m.

Chair Bernard Volz asked board members to introduce themselves.

Chair asks for volunteer to take and produce minutes as the Clerk is not present; Chair accepts role with help from Karen Ponton.

Chair Volz elects to wait on the approval of the September 11, 2023 minutes until after the hearings. Chair gives brief introduction as to hearing rules.

**PUBLIC HEARINGS**

- **Continuance:** 2023-0410.A Variance-Tax Map: 104 Lot: 016 Owner: Garrett & Susan Wein. -10 Mayo Shores Lane
- **Continuance:** 2023-0726.A-Special Exception-Tax Map: 104 Lot: 016 Owners: Garrett & Susan Wein- 10 Mayo Shores Lane
  
- **Voting Members for both the continuation of a Variance case: 2023-0410.A- and 2023-0726.A-Special Exception Garrett & Susan Wein-Tax Map 104 Lot 016-10 Mayo Shores Lane:** Bernard Volz, Karen Ponton, Stephany Marchut Lavallee, Greg Hime and Tim Nefores

Chair starts with continued Variance and puts up on screen email received from Wes Hays, representing applicant:

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**From:** whays [northstarnh.com](mailto:whays@northstarnh.com) <[whays@northstarnh.com](mailto:whays@northstarnh.com)>  
**Sent:** Wednesday, September 20, 2023 4:55 PM  
**To:** Planning Zoning <[planningzoning@centerharbornh.gov](mailto:planningzoning@centerharbornh.gov)>  
**Cc:** Susan Wein <[nelbs@comcast.net](mailto:nelbs@comcast.net)>; Garrett Wein <[garrettwein@gmail.com](mailto:garrettwein@gmail.com)>; claire wilkens <[1cmw@gmx.us](mailto:1cmw@gmx.us)>  
**Subject:** Wein - 10 Mayo Shores Rd., Center Harbor

Good afternoon Helen,

I wanted to send a quick communication to request that you withdraw our application for a variance. However, we would like to have a continuance for the Special Exception for 10 Mayo Shores Rd. for the December 2023 ZBA meeting.

If you could please send confirmation of receipt of this email, I would greatly appreciate it.

Thank you,

Wes

*Wes Hays*



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Chair next displays on screen note received by Clerk from Bruce Bond:

#### Missing from all Wein drawings

- Full layout of Wein property (N,S,E &W) showing adjoining properties including Waukewan Road & lake shore.
- Location on Waukewan Road showing water culvert from Earl property under Waukewan Road onto Wein property
- Location showing Waukewan Road and Mayo Shores Lane on Wein property. Location of manually dug ditch connecting these two points.
- Proposed location for garage/apartment
- Locations of all driveways, parking areas and impervious surface walkways
- Location of new septic system servicing cottage and garage/apartment.
- Location of well supplying potable water to cottage and garage bathroom & kitchen.
- Layout of cottage and garage/apartment including kitchens, bedrooms, closets, bathrooms, dining room (area), laundry room, furnace room.

Chair states he's not sure what to make of this list, but it has been provided to the Wein's. Chair adds that some of the drawings provided have "zoomed in" on certain aspects of the house.

Chair adds that he wishes to summarize the current status of Variance application before moving to applicant's request and displays his understanding of 5:3:1 Variance request:

## Status for 5:3:1 Variance Request

1. This variance was for septic as originally proposed in the application as it did not meet the 15-foot setback from any other lot line.  
Application **Background** states "while also allowing a location for a new septic system", and **5. Unnecessary hardship** "therefore not with the ability to support shifting of the required approved septic system location".
2. It is chair's understanding that the septic has been moved to comply with this setback.
3. Therefore, variance is no longer required?

Members of the Board generally nod in agreement that they also believe this variance is no longer needed as proposed septic system has been moved to meet the setback.

Chair then displays status of 5:11:2 Variance request:

## Status of 5:11:2 Variance Request

1. The structure is "on a lot which does not comply with the regulations contained in this ordinance" because per **11:3:3 Water Frontage**, it lacks the required minimum 150' linear feet of frontage for Lake Waukegan.
2. The structure is "nonconforming" as it does not meet the minimum 75' setback from the shore line (5:3:1), 50' setback from centerline of private way intended for public use (5:3:1), and is within the 50' non-designated wetlands buffer (10:4:2:3:1).
3. The applicant is requesting to replace the existing structure in a slightly different location (per original application and "2023-09-07" revised plans).
4. As a variance is being requested from this ordinance, Code Enforcement Officer/Applicant believe that the new structure would **not** be "not more non-conforming than the original structure" (i.e., it is *more* nonconforming).
5. The Board needs to confirm this determination and then determine whether a variance should be granted or denied.

Which also has general agreement from the Board.

Chair then displays the text of the variance:

**5:11:2** A non-conforming structure on a lot which does not comply with the regulations contained in this ordinance may be replaced by a new structure in a different location on the lot provided the ZBA determines that the new structure is not more non-conforming

than the original structure. The ZBA may set conditions and restrictions for the replacement structure such as:

1. Sideline and frontage setbacks
2. Screening of site/structure
3. Limitations on future expansion
4. Limitations on footprint size and total square footage of structure.

And then displays the following:

## Notes about 5:11:2

1. 5:11:2 can either have a VARIANCE application or a SPECIAL EXCEPTION (see Appendix A where all districts list 5:11:2).
  - A. A SPECIAL EXCEPTION is needed if the new structure will be “not more nonconforming” (i.e., same or less nonconforming) because the ZBA is required to determine this (the Compliance Officer cannot).
  - B. A VARIANCE is needed if the new structure will be more nonconforming.
  - C. But ZBA is the only entity that can “confirm” which applies.
2. Board needs to ask why this ordinance exists – what makes a nonconforming structure on a nonconforming lot warrant additional ZBA consideration?

Chair asks why is 5:11:2 in the Ordinances? The Board needs to consider where the structure is on the lot that is not conforming – there might be “air and light” or similar issues where the structure is being proposed to be moved to, or things like that.

Chair Volz makes motion to honor applicant’s request to withdraw the Variance application:

**Motion: The request to withdraw the Wein’s Variance application from section 5:3:1 and 5:11:2 for 10 Mayo Shores Lane (TML 104-106) is accepted and the application is considered withdrawn.**

**Seconded by George Lamprey.**

Discussion:

George really appreciated having Chair walk through variances and noted that there are several things that are non-confirming – shoreline setback, road setback, wetland setback.

Karen asked about what withdrawn means. Chair answers that they will need to refile. Chair does wonder if we need to rehear all or whether we can take previous testimony; we may have to ask applicant whether we can pull in previous testimony or whether we need to start from scratch. We also need to discuss with counsel as to how to handle this.

Stephany asked about Attorney Laura Spector-Morgan's response to email request to "withdraw and continue". Chair answers that this is to withdraw Variance and continue Special Exception.

**All voted in favor of withdrawing variance motion.**

Chair now moves to Special Exception.

Chair again displays on screen email from Wes Hays asking for a continuance to December 11<sup>th</sup> meeting for Special Exception.

Chair Volz makes motion to honor applicant's request to continue Special Exception:

**Motion: The request to continue the Wein's Special Exception application for section 10:7 for 10 Mayo Shores Lane (TML 104-106) to the December 11<sup>th</sup>, 2023 meeting is granted.**

Seconded by George Lamprey.

Chair asks if there is any discussion.

Hearing none, chair asks for votes.

**All voted in favor to continue Special Exception to the December 11<sup>th</sup>, 2023 meeting.**

Chair states that hearing for Special Exception is continued until December 11<sup>th</sup>; it is possible that additional applications may be filed. Standard noticing for new applications will be required.

End of hearings.

Board next moves to approve the minutes of the September 11<sup>th</sup>, 2023 meeting.

**Chair Volz makes motion to approve September 11, 2023 minutes as submitted.**

Stephany Marchut Lavallee has several minor corrections (typos). Tim Nefores also adds one where his name is incorrect. Chair will provide minor corrections to Clerk to update (and then publish the minutes).

**Chair Volz revises motion to approve the September 11<sup>th</sup>, 2023 minutes as presented and corrected by Stephany and Tim.**

**Motion is seconded by Stephany.**

**All voted in favor.**

Chair moves to other business items.

Starting with 2024 Budget request.

**Chair Volz makes motion to request that the ZBA budget for 2024 be increased to \$750 (from \$500).**

**Karen Ponton makes motion to request \$1000 for 2024 Budget.**

**Seconded by Gregory Hime.**

Discussion follows regarding need for such a large increase – legal consultation is definitely in separate budget; training courses may well be as well.

**None voted in favor of motion for \$1000 Budget request.**

**Chair's motion for \$750 seconded by George Lamprey.**

**All voted in favor to request \$750 for 2024 Budget for ZBA.**

Next on the other business agenda is Changes to Planning and Zoning Laws in 2023 (article from NHMA & BEA). Chair notes that he does not believe there is anything directly related to the ZBA. Board agrees.

Chair moves to clarification for article 10:7 bullet 1 in the Zoning Ordinance, which he raised to the Planning Board to clarify who should refer to Conservation Commission for comments/recommendations. Planning Board suggested checking the ZBA attorney, which Chair did. Laura Spector-Morgan does feel that 10:7 bullet 1 is written oddly and suggested Planning Board consider revising to something like:

“1) Upon receipt of an application for Special Exception, the application shall be referred to the Conservation Commission, which shall provide comments and/or recommendations on the application within 30 days.”

Chair did follow up with attorney, but has yet to receive response, with “referred” by whom?

The Board next briefly discussed the “interesting procedures” from “Criteria for Application Acceptance” on Greenland, NH’s website ([https://www.greenland-nh.com/sites/g/files/vyhlf4476/f/uploads/zba\\_guidelines\\_r\\_02.2018\\_1.pdf](https://www.greenland-nh.com/sites/g/files/vyhlf4476/f/uploads/zba_guidelines_r_02.2018_1.pdf)). It was determined that this is a topic worth reviewing with counsel.

Next, the Chair moves on to by laws issue (missing Section III, 7, h). But it turns out that this is not missing as it was merged into f. We may need revision(s) in near future after meeting with counsel.

The Chair next moved to scheduling a meeting with counsel (non-public). The proposed dates and times are:

- Primary Date: Monday December 4, 4 pm.
- Backup Date: Monday November 27, 4 pm.

Board members should send any question / issues to the Chair by Monday November 13<sup>th</sup> so the Chair may collate and provide to counsel prior to the meeting.

The Chair will confirm the dates with counsel and notify the members about the meeting date.

Next, the Chair stated that the ZBA should NOT meet on Town holidays (or when Town Offices are closed). One conflict is typically Columbus Day (2<sup>nd</sup> Monday in October), but there could be others. The Chair and Clerk will work on identifying any conflicts, and work with the Board to resolve by rescheduling or perhaps even skipping a monthly meeting.

Karen Ponton asked whether the Chair has followed up with Selectmen regarding adding text into the Town's documents about what applicants are acknowledging in signing. The Chair has yet to follow up.

Meeting adjourned at 8:15 p.m.

Next schedule meeting scheduled for November 11, 2023 at 7 p.m.

Submitted by Bernard Volz (Chair).