

.TOWN OF CENTER HARBOR  
ZONING BOARD OF ADJUSTMENT  
Municipal Building

Monday, September 26, 2022  
7 p.m.

**In attendance:** Chair Bernie Volz, Members George Lamprey, Karen Ponton and Stephany Marchut-Lavallee. Alternate Members Gregory Hime and Timothy Nefores. Alison Toates and Jean Meloney (Vice Chair) were absent with notice.

**Public attendance;** Applicants David and Lauren Anderson and their Attorney, Ethan Wood and architect, Ward D'Elia, Paul Sullivan, Cheryl Lanzo, Sean Kavanaugh, neighbors of the Andersons.

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

Chair Volz elects to move past item I, the approval of the August 8, 2022 minutes until after the scheduled hearing.

Chair Volz decides to go over the Amended Application for Variance submitted by Attorney Ethan Wood, for 28 Brookside Lane and asked not to rehash what was previously discussed at the June 6 hearing. The voting members will consist of the same persons who listened to the case in June.

**Voting Members for the 28 Brookside Lane Case: Bernie Volz, George Lamprey, Gregory Hime, Tim Nefores and Karen Ponton.**

Chair Volz starts with the Public Hearing for 28 Brookside Lane and asks when the variances were received? Clerk states email was received Thursday, September 22, 2022.

Chair Volz states we had heard the beginning of the case back in June and there were some questions we needed a continuance on and finally we worked out we were able to meet today to hear the rest of the case, but in the interim, there were two other variances required. One was related to a setback from a stream Section 10:4:3.

The other was that the structure with today's setbacks is a non-conforming structure Section 5-11:3 and if an applicant wants to make it even more nonconforming, there is another variance that they need to do that.

The meeting was turned over to Attorney Ethan Wood with Normandin, Cheney & O'Neil, PLLC, representing David and Lauren Anderson of 28 Brookside Lane, Lot 104-006, Case 2022-0613. A.

Attorney Wood, commented "as the chair noted we did amend the application as requested of the ZBA to include two additional requests." One is for the setback from the stream and the changes 10:4 and 5:11-3 for the non-conforming structure.

In regards to the stream it is completely dry right now. It appears to only have water in it only during exceptionally heavy rains or in the spring. The water does not stay in a flowing manner. While we are asking for a variance on it, we are not certain that the variance is needed regarding the stream... Attorney Wood, stated he did not see it mapped out on our town's website.

Chair presented a zoomed in picture of our water resources map that was approved 2014 and put up a map reflecting the stream and pointing out Brookside Lane. It is classified as an intermittent stream and it is not a designated stream but it is a non-designated stream and there is a 50-foot buffer for that.

Attorney Wood, said OK we are certainly willing to submit for all 3, we feel the original application stands on its own. As the chair stated this is an amended application and the original was for a setback from the center line of the road. so, without rehashing the entire application we will hit the high points.

- Location of the right of way is the same as in the 1930's; the stream is Intermittent and does not flow in a regular basis, the proposed addition would not impact the stream, and though it does get within the 50 ft that is required from the new building the closest it gets is 18 feet.
- In regard to the expansion, it is an expansion and what we are asking for is an addition, of 11X24, it is not a huge addition, it will allow his clients to have a bedroom on the first floor and a bathroom which will assist them as they age and it will allow for their grandkids to come and sleep in the house as well.

Attorney Wood states, so the spirit of the first ordinance is observed, and the encroachment of the setbacks does not violate the essential character of this neighborhood. It is on a private road where all of the other users of the road have submitted letters to the board stating they have no issues with the road. In regards to the stream, it is intermittent at best and is on a low point of the land. With regard to the non-conforming use this is a house that was preexisting, it was torn down and rebuilt and the new owners are looking to make the house more useful for their family

At the last meeting the board asked if my client would be agreeable to putting a restriction as to the further expansion of his parcel, regarding the house. The Andersons are more than willing to do so and would be willing to incorporate that into a deed if it transfers or a trust.

- Attorney Wood wanted to confirm that the board did have a chance to talk to the Fire Department.

Chair Volz states he did get email from chief which wasn't useful, it did say that the trucks need space to turn around. He did not say he was okay or not okay. Chair said he tried to reach out to the chief for a more concrete statement and did not get it.

Attorney Wood, stated the addition to the house is not getting the house closer to the road, so it would not be encroaching upon the road.

Q - George Lamprey, Member asked Attorney Wood to articulate the various weight of a deed restriction verses a condition restriction?

A – Attorney Wood, -Any restriction is going to run with the land, so if someone wealthy comes in and buys all the parcels and tears them down, somewhere on the combined properties the deed restriction would remain on this specific parcel of land.

And while your zoning requirements do have equal weight under the law, it requires that the town enforces them, whereas the deed requirement, will allow anyone to enforce it, it's a legal requirement in the deed, so as long as you have standing you can enforce it. That would be the difference.

He further stated any restrictions placed on the deed is to the detriment to Mr. Anderson, because anytime you add restrictions to a deed it will devalue the property.

Q - George Lamprey, Member, the question of enforcement is the question because generally the deed restriction is up to the grantor to see that it gets enforced. As opposed to a condition where the town sees to the enforcement.

A - Attorney Wood, the preference of this board is to make it a condition to get the approval, we are happy to do this, we would rather not restrict the deed, but are willing to do so to get the variance through.

Q - Chair Volz, Abutters are people of standing, but would the town have standing to challenge a deed restriction?

A - Attorney Wood, I think we can word it so the town would have standing to challenge should that be the case.

Q - George Lamprey, Member, why is an expansion of an existing use is needed?

A – Attorney Wood, Is it a reasonable proposal. I feel it is because it permits to add a bedroom and full bath to the first floor. Which as we know as the population ages it is harder to navigate stairs and gives the applicants the ability to live in this house not needing assistance. It also permits their family to live there with them if they needed to move in here full time to take care of them.

Q - George Lamprey, Member, is there a bedroom or a bath on the first floor?

A - Mr. David Anderson, there a small bedroom and a small  $\frac{3}{4}$  bathroom.

Q - Greg Hime, Member, is the present septic system approved to accommodate the additional bedroom? Has an application been filed and approved?

A – Attorney Wood – Not to my knowledge and I believe they would do that once the addition has been approved.

Q - Tim Nefore – has there been any data to show how the stream is during the year. How are we determining the flow of the stream?

A – Attorney Wood, the stream is not on my client's land however video was taken with last night's rain and is available to be viewed, the stream was dry.

Chair Volz, displayed the water resource map which showed the stream placement in relation to the parcel stating it does flag the stream as intermittent. There is no challenge as to how intermittent it is. We will assume it is intermittent.

Q - Tim Nefores, Alternate Member, With the additional drains from the addition where will that water be directed?

A - Attorney Wood, was not sure but would confer with the architect, to answer before the end of the meeting.

Q - Tim Nefores, one question which was brought up at the last hearing was we asked - if there is no other place to add on to this house as to the bedroom or square footage, there is a screened in porch which could be modified with the building that is already existing. The existing screen porch is within the 75-foot setback.

Chair Volz opened the floor to anyone who wanted to speak for or against the application.

Paul Sullivan at 48 Brookside Lane, is in favor and states the addition is on the backside of the house away from lake, it is not by the road. The very intermittent stream which runs beside the house is well below the grade, it's not like the water will be splashing up against the house. It's pretty steep to get down to where the water bed is. This addition juts out, not towards the stream, but away from the house where the water will drain down to the stream, as the house is much higher than the stream. We are all aging, we're all looking for first floor bedrooms.

Cheryl Lanza, 40-42 Brookside Lane in favor, not direct abutter states "this property has been with my family for almost 70 years. The brook half the time does not run at all, mostly it's from the snow in the spring and for now there is not much." The house is about 60 feet higher than the stream. As far as the addition, it's not going to interfere with the road, the fire truck was down here Friday last week and it had no trouble turning around. We all are in favor."

Mr. Anderson, applicant, in regards to the stream, the addition is actually further away from the stream than the existing house. It does not protrude closer to the stream; it is further away.

Sean Kavanaugh, 38 Brookside Lane, stated he did write a letter also confirming he was in favor of the variances. He mentioned some future work to his property where the road could be widened, at his expense to accommodate a turnaround place for the fire truck.

Chair Volz clarified that any written information, that would like to be considered for a meeting, needed to be received by noon the Thursday before the meeting, in order to be included in the hearing. You can however be present at the meeting and read or summarize your letter and it will be included.

Attorney Wood, clarified earlier question from Tim Nefores where the water would go from the addition. After speaking with the architect, there is a gravel drip which is going to catch the water and it will percolate into the ground. And again, it is not a substantial roof.

Chair Volz asked is there anyone who would like to speak in opposition?

No one came forward.

George Lamprey – asked the abutters, how many of you live here year-round? The Anderson's stated this is not their primary residence however they came up throughout the year, most did not live year-round.

George Lamprey- asked if all 3 variances individually through the five criteria or review them as one?

Chair Volz: Directed the question to Attorney Wood if the applicant would want the Variances reviewed as one? As the nonconforming structure request would become useless if the other two don't pass.

Ethan Wood- as noted all three are needed to get this application through, if the board wants to treat as one, they are all linked together so I will leave it up to the board to do the way they deem best.

George Lamprey – for clarity, all are in agreement that this will be reviewed as one application and will be documented for the sake of clarity in the case of a possible appeal we all agree this will be reviewed as one request.

Karen Ponton – in regards to the stream, setback buffers exist for a reason. We are talking about water quality. A buffer is not just a stream bed. It's the area around it, that serves to filter and keep that water clean. Center Harbor is 2/3rd 's of water shed area of Lake Waukewan and provides the drinking water for Meredith; I don't see how we can disregard that buffer.

A motion to deny the application Variance for articles 5:3:1, 5:11:3, and 10:4 of the Zoning Ordinances was made by Chair Bernie Volz. Member, Karen Ponton, seconded the motion. All were in favor.

Zoning Board of Appeals decision after discussion:

- The application Variance for articles 5:3:1, 5:11:3, and 10:4 was denied for the following reasons:
- The existing structure is currently 17.5' from the center line of the traveled way and 11.5' from the stream; the requested addition would be 11.5' from the center line (5:3:1) and 18' from the stream (10:4).
- Allowing a narrower distance to the center of the traveled way creates safety concerns, such as by restricting access for emergency vehicles, handling snow removal/storage, usage by more residents who intend to live there year around, and potential future uses that may require at least the current distance from the centerline for safe passage.
- The addition would make the non-conforming structure more non-conforming (5.11:3), in terms of both the right-of-way and stream setbacks.
- There is existing full residential utility of the property without the need of the requested variance.
- The reasonable use is not being hindered by denying the variance.
- There have already been variances because of the special conditions of the property to allow for residential utility and further residential addition (further non-conformance) would run in violation of 5:11:3.
- Granting the variance would not be in the public interest with the proposed reduction in distance from the building to the centerline of the traveled way.
- Granting the variance could impact public health & safety.
- Impact to property values is likely minor, if any.

MINUTES:

Approval of the August 8, 2022.

Motion: Stephany Marchut-Lavallee motions to approve the minutes. Seconded by Karen Ponton. All were in favor.

ADJOURNMENT

Motion to adjourn by Stephany Marchut-Lavallee. Seconded by Tim Nefores. All were in favor. Meeting adjourned at 9:35 p.m. Next meeting scheduled for October 17, 2022 at 7 p.m.

Submitted by Linda D'Auria