

TOWN OF CENTER HARBOR
ZONING BOARD OF ADJUSTMENT
Zoom Hearing
Monday, July 27, 2020
7 p.m.

Due to COVID-19, this hearing was conducted via Zoom. Participants, which included the public, could join the meeting through video web or by telephone. Slide show presentation on the case was created and conducted by the Chair. Video participants were able to view the slide show live, participants joining by phone were provided a .pdf file a week prior to the case to follow along. Roll call of ZBA Members/Alternate Members performed at the beginning of the meeting; Chair announced the meeting was being recorded.

Chair Bernie Volz called the meeting to order at 7:00 p.m. Present were Members Jean Meloney and Karen Ponton, Alternate members Susan Patz, Stephany Marchut Lavallee, Gregory Hime and Clerk Aimee Manfredi-Sanschagrin. Applicant Attorney Regina Nadeau representing property owners Elizabeth and George Moser.

Voting Members for the minutes: Bernie Volz, Jean Meloney, Karen Ponton, Susan Patz, Stephany Marchut Lavallee and Gregory Hime.

I. MINUTES:

Karen Ponton motioned to accept the minutes from April 13, 2020 as presented. Seconded by Gregory Hime. All were in favor minutes pass.

Voting Members for Hearing: Bernie Volz, Jean Meloney, Karen Ponton and Stephany Marchut Lavallee. At the time of determining the voting members Suzan Patz was not on the call. (Susan Patz joined at 7:08 and will be the 5th voting member). Chair asks the applicant if they would like to proceed with 4 instead of 5 with the one provision if they do proceed with a 4-member board, you cannot use the fact there was a 4 member board as ground for rehearing in the event the decision is not favorable to the property owner. Attorney Regina Nadeau responds on behalf of the applicant they are willing to move forward with a 4-member board and they are thankful the Board was able to pull this together under these circumstances.

Gregory Hime recused himself from participating and voting for this hearing because he is an abutter to the property in question. Gregory states he believes he would be fair and unbiased in a ruling but given the circumstances he is an abutter he wishes to recuse himself from the voting.

II. PUBLIC HEARING – APPLICATION FOR VARIANCE ELIZABETH S. AND GOERGE F. MOSER TRUST MAP 221 LOT 012:

The Board received an application for Variance citing Section 5:3:1 of the Town Ordinance. The property in question is located at 124 Wood Ridge Road. The request is permit a 125-sf encroachment of a carport within 3.7' of the sideline setback where 15' is required under the Town Zoning Ordinance Article 5 Section 3:1.

Chair provides rules of protocol to all of those in attendance, stating if there is dialogue with the Board it is to go through the Chair.

Clerk provides the following information to the Board:

This is an application for a variance for property located at 124 Wood Ridge Road, Map 221 Lot 012. Applicant Attorney Regina Nadeau of Normandin, Cheney & O'Neil representing property owners Elizabeth and George Moser, trustees of the Elizabeth S. Moser and George F. Moser 1996 Trust.

The application was hand delivered to the Clerk on July 8, 2020 and has been assigned case number 2020-0727.

The variance request is to Permit a 125-sf encroachment of a carport within 3.7' of the side line setback where 15' is required under the Town Zoning Ordinance Article 5 Section 3:1.

Public notice was issued on July 9th at the Municipal Building, Post Office and on the home and ZBA pages of the Town Website. Notice was also published in the Laconia Daily Sun on July 17th.

Abutters were notified via certified mail on July 14th, 7 out of the 8 cards have been received back. The Town Office has not received any additional written or verbal statements from any of the abutters. (letters submitted with the application in favor of the proposal received from Brad and Estelle Chase, Mary Ann Reichlen and Jeff Hubbell and Thomas & Diane Kimsey).

Chair states the Variance Application will be entered into the record in its entirety, this includes the letters from the abutters. Susan Patz joined the hearing at 7:08 p.m. Chair confirmed Susan will be the 5th voting member. Chair turns the hearing over to the applicant's agent Attorney Regina Nadeau.

Attorney Nadeau introduces herself as representing the property owners Elizabeth and George Moser. The purpose of the variance request is to allow her clients to encroach 124 sf into a side line set back. The property has 2.58 acres. The purpose of the encroachment is for the car port that is attached to a two-bay garage. (Chair provides a slide show created for the hearing which includes all the documents submitted by the applicants. The slide show will be part of the written record of the Board.)

Attorney Nadeau provides an overview of the property which included a topographical map stating at least 1/3 of the property has steep sloping. The previous owner placed the house where it is due to the steepness of the lot. Because of this the garage had also been placed in a location where it would not be impacted by the sloping. In reviewing the site plan, the house is in a consolidated location with the existing garage and raised septic system. In 1985, the prior owner went to the Center Harbor Zoning Board and obtained a variance for purposes of locating that garage within 5' of the property line. The garage was constructed in conformance with that variance. For whatever reason in 1986 that back line was extended 12' for the car port and because of that angle it encroached up to 3.7' of the side property line as opposed to the 5' setback approval by the Zoning Board.

Attorney Nadeau continues, we don't know why that was done without a permit or if they thought the permit may not be required because of the cost of that addition at the time or if they thought because they had the 5' variance that they were within 5' by following the back line of the garage. The bottom line is, my client who purchased the property in 2005 about 20 years later had no idea this was an issue. They even had additional landscaping added to the backside of the garage which as you can see from the site plan encroaches over the property line. It wasn't until 5 years ago that my clients became aware that a portion of this building for one should have needed a variance and two a building permit. For that reason, we are trying to clean up the approvals which involves the 12' wide by 24' long carport which only a portion of that is in the 15' setback. That is why the variance is only being requested for 124-sf of that carport. We are requesting relief for the situation by requesting the variance. Attorney Nadeau runs through the criteria of the variance. The abutting neighbor on the back side of the garage where this encroachment occurs has supplied a letter to the Board in favor of this variance request. No change to the characteristic of the neighborhood, it's a residential use and substantial justice would be done because this is 1.3' more than what was granted previously under stricter standards. The parking area is very limited, between the house and the garage there is little turning space in the driveway this allows them to pull in and back out to turn in the driveway. We don't believe there is an adverse impact to the abutters most of which have submitted letters in support of the variance. Finally, with regard to criteria 5, in this case we could not put a parking space on the backside due to the topography of the lot and there is no point in putting it close to the road because of how far that is from the house.

Chair asks if there is anyone else that is present that would like to say anything?

Ken Ballance Code Enforcement states he researched the situation. He doesn't know how it was built without a permit, that is was prior to his time, but when he was inspecting Chase and Espe next door he never noticed the carport had been added to the garage. The original design for the house had the garage facing the house to the right and had the garage attached. When they started preparing to put the house in they found obviously the drop off to one side was problematic and a large portion of ledge. Instead of building back and taking the ledge out which can be very costly, they moved the house slightly forward but by doing this they couldn't attach the garage because the heights would be off which is why they placed the garage in the existing location. I understand the reasoning for the carport but I don't know when it was added. My guess is it was 1986, 1987. I don't see any problem if the abutters that it encroaches on don't have a problem with it.

Chair asks if anyone else wants to say anything.

Gregory Hime not speaking as a member of the Board but as an abutter. My wife and I have no problem and feel that in our own minds it would be good to have this variance granted in their favor. There is no change to the neighborhood, it's been there for quite some time it's just one of those things that slipped through. I think it's been explained well and we understand the direct abutter has no objection.

Chair states other abutters have submitted in favor of the variance. Chair asks if there are any other questions? Jean Meloney asks a question about the walkway that encroaches over the boundary line and if Espe-Chase is ok with that? Attorney Nadeau responds, it's interesting because they were the ones that did the landscaping for the property about 5-6 years. We are not sure if anyone really knew where the property line was. I cannot speak for them but I have been told they were going to put a fence along there. They are in support of this variance but as it has been demonstrated they would like to have a clear line of demarcation is based on the survey we now have on file. Ken Ballance, we historically in town where properties are on the edge of the boundary, we have considered without it being a written policy, that if both parties agree they are only stones. If they don't mind it, then we don't address it but if they do, they can remove it. This is paved in one area but I don't believe all the way around I think those are just paver stones. Attorney Nadeau believes Ken's assessment is correct.

Chair asks if there is anyone in attendance that would like to speak in opposition of the application? Hearing none the Chair asks for a motion to accept the application.

Motion to accept the application: Jean Meloney makes a motion to accept the application and plan as presented. Seconded by Karen Ponton. The Board had no conditions to add. All were in favor of approving the variance.

Hearing no more questions, the Board reviews the 5 criteria:

Criteria 1 & 2: Jean Meloney and Stephany Marchut Lavallee feel the request is in line with these two criteria. Chair agrees.

Criteria 3: Stephany Marchut Lavallee states it would correct a problem. Chair agrees it would and also states the benefit to the applicant would be that they could keep the carport and it doesn't seem like there is any harm to the general public in doing that in my opinion. Jean Meloney and Stephany Marchut Lavallee agree.

Criteria 4: Chair, given it's been there for many years I can't see how anybody would object for it to continue to be there. Stephany Marchut Lavallee adds that all the abutters seem to support the variance.

Criteria 5: Chair states we've had some representation to the fact that the location of some of the existing structures and the nature of the sloping of the land is what required this to be placed where it is. Jean Meloney as Ken stated with the ledge and sloping. Chair, yes.

Chair, does the Board feel that all 5 criteria are met? All the Board members voted that they are in agreement that all 5 criteria have been met.

Motion to approve the variance application: Stephany Marchut Lavalée motions to grant the variance to allow the 125-sf encroachment of the carport into the 3.7' of the sideline setback where 15' is required. Seconded by Karen Ponton. The Board had no conditions to add. All were in favor of granting the variance as indicated.

Chair states there is a 30-day appeal period.

Attorney thanks the Board for their consideration and thanks the Chair for the creation of the slide show for her presentation.

III. OTHER:

Chair states there was a small amendment that the Board wanted to make to the ZBA by-laws but cannot recall what it was. The Chair will research and communicate through the Clerk what the change was and the Clerk will circulate to the Board members in preparation for their next meeting.

Ken Ballance asks if he can make a comment as a point of procedure. Chair confirms. Ken asks if in the future, when we run into a situation like we had today where we have a 30-year-old after the fact building permit, could you include in your motion that you also are allowing the building permit to be released along with your variance? Ken continues, it's not like we are asking for a new structure to be built and that is determined by the Board's decision, in this case the Board would be stating that we are aware this is not right but there is a building permit and if the Board denied the request the structure would be torn down. It just gives a chain of history and follow through. Chair, if you could send through Aimee an email on how you want that states we will do that. Ken states yes, I will try to get it cleaned up. The ones that are new it's not important but this has been there for 30+ years so I think it's important that it's documented.

Karen Ponton, is there anything we can do now because we are still in session that could be noted somehow? Chair, I don't think there is any problem with mentioning that in the notice of decision that goes out to the property owner. When Aimee gets the text from Ken or from the recording, we can just add that as part of the letter.

IV. ADJOURNMENT:

No other business for the Board to discuss. Karen meeting adjourned at 7:48 p.m. Seconded by Susan Patz. All were in favor. Respectfully submitted by Aimee Manfredi-Sanschagrin.