

TOWN OF CENTER HARBOR
ZONING BOARD OF ADJUSTMENT

Hearing
Monday, April 9, 2018

Chairman Bernie Volz called the hearing to order at 7:00 p.m. Present were Members Chris Williams, Jean Meloney, Alternate Members Anthony Avrutine, Karen Ponton and Clerk Aimee Manfredi-Sanschagrini. Absent with notice, George Lamprey and Palmer Smith. In the audience Attorney William Philpot, Jr., Joseph Battaini, John Stephens and Mark Stephens of Stephens Landscaping, Brie Stephens, Harry Viens, Bill Ricciardi, Jill Weed, Mehmet Duymazler, Levant Duymazler, Ben Bare, Code Enforcement Officer Ken Ballance and Attorney to the Board Laura Specter.

I. MINUTES

Chris Williams motioned to accept the October 16 2017, minutes. Seconded by Bernie Volz. All were in favor minutes pass.

Voting Members: Bernie Volz, Chris Williams, Jean Meloney, Anthony Avrutine and Karen Ponton.

II. HEARING: VARIANCE 5:3:1 FOR BATTAINI 24 DEW POINT LANE 103-015

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. Chair asks the Clerk how notice was given, Clerk responds hand delivered on March 22nd. Clerk states the applicant is requesting a variance citing Section 5:3:1. Applicant would like to add greater ground coverage than what is allowed in the 75' shoreland set back.

Chair asks if the applicant would like to present their case. Attorney Philpot, Jr. presents the case asking the application be entered in its entirety into the record. The application will be entered in its entirety and is available for public inspection at the Center Harbor Town Office Planning/Zoning Department. Attorney Philpot, Jr., provides an overview to the Board and asks John Stephens of Stephens Landscaping, LLC to add information that pertains to the job. Attorney Philpot, Jr., states Stephen's Landscaping was responsible for the work at the location and the timeline of the work was the beginning of March 2016 and ended June of 2016 stating the reason they know this, is because there was a 4th of July party and the sod was being laid down just prior to the party adding the conditions of the property are better than the previous conditions prior to the work being completed. Attorney Philpot, Jr., asks John Stephens to provide information on the permitting.

John Stephens: John Stephens states his name for the record. John is speaking to water mitigation on the property, infiltration systems around the house and drainage pipes and swales to help percolate the water runoff from the driveway. In addition, to the aesthetic enhancement to the property and the valuable entertainment space for the client, the retaining walls and added vegetation in the scope of work was used to make the slope more usable.

Chairman: We will proceed with anyone wanting to speak for or against this application and then we will come back to questions from the Board.

Chris Williams: I have a question first, do you have plans that show in detail what you did?

John Stephens: They should be submitted in the application showing existing and proposed conditions.

Chris Williams: You don't have a full size plan that provides more information than what is contained on this sheet?

John Stephens: No I did not bring any other paperwork. We changed our software and then only documents I had saved from the old program was the .pdf files you have.

Chairman: You mentioned there was some work on the driveway that was not part of this?

John Stephens: We didn't do anything to the driveway, we just did something to accept the driveway water into a crushed stone swale.

Chris Williams: Can you show us on this plan what was actually done?

John Stephen's goes over the plans with the Board showing the stepping stone walkways, retaining walls and garden areas.

Johns Stephens: The State allows a property owner to have a patio space of accessory structure between 20' and 50' based on their linear frontage so if you have 150' frontage you're allowed 150 sf patio and it has to be behind 20' and inside of the 20' and 50' set back lines. You are allowed more space behind that State level assuming that all of the lot coverage doesn't reach 20 or 30% and if it does that triggers additional requirements such as revegetation plans which water management plans were put in place although the square footage of the changes did not push the overall coverage over 20%. That is the State limitation in that zone.

Chairman: There are new pictures contained in the packet.

Ken Ballance: I provided those pictures, there is no building permit so I did not go on the property those pictures are from the road. Those pictures were taken today and they were just to give you an idea of the depth, the plans do not show the true depth of the land.

Chairman: Thank you. Is there anyone wanting to speak in favor of the appeal?

Joseph Battaini: Joseph Battaini says he would, he hired John to do the landscaping design to enhance the property for his family. I hired John as I did prior to that and had trees cut down. I hire people to take care of this because I don't know the State or local laws to make sure it's right. The intent was to follow every rule and regulation there was just to enhance the property and it was done almost 2 years ago now.

Chairman: Is there anyone that would like to speak in opposition of the appeal?

Ken Ballance: I'm not speaking in favor or against I just want to cite facts. From their own plan, which I have a copy from DES, on proposed conditions for stepping stones they went down to 90 sf that is unimportant. In the Town of Center Harbor we grant you safe access down to your frontage. Regular blue stone patio kitchen area between the 20-50' set back line, existing condition shows that area 175sf they added 225 sf, the irregular blue stone behind the 50' set back 879 sf was added and there was 150 sf according to their existing condition notes etc. The whole thing is not what was done there, the fact is that it really seriously overrides what we allow in that zone. We allow a structure that is very specific from 20-50', we allow 150 sf patio between 50' and 75' which we just put in our ordinance two years ago, prior to that nothing was allowed without ZBA approval. One other fact, the PBN under Section G number 2 reads "I am aware that and accept Shoreland Permit by Notification will not exempt the work I am proposing from other state, local or federal approvals". Signed by the property owner. A building permit would have caught this but there was no application ever filed with the Town and undoubtedly why we are in the situation we are in. Again, I am not speaking for or against I am just stating facts.

Jean Meloney: Ken what is the application process for a building permit, the dollar amount that triggers?

Ken Ballance: \$1500.00 is the trigger point

Mehmet Duymazler: Mehmet states his name for the record. I'm not for or against the proposal I just have a question regarding setbacks. This patio has the same requirements as a structure with respect to the lot line setbacks?

Ken Ballance: Correct, still has a setback limitation to property lines.

Mehmet Duymazler: From the plans it's unclear to what that setback is for the lot line.

Chairman: Where is the lot line setback, do we know where that is?

Mehmet Duymazler: In one of the pictures it shows the dry culvert on the northern side of the property that is the lot line.

Jean Meloney: Would you come forward and point out on these photos of what you are referring to.

Mehmet Duymazler: (Shows the Board members on the photos supplied by Ken Ballance.) This is the culvert and the culvert runs along the property line along a bunch of trees in a straight line to the waterfront.

Ken Ballance: I have a plot plan here and the patio clears the 15' setback without any trouble on each side.

Chairman: Anyone else that would like to speak?

Ben Bare: My name is Ben Bare, I live at 249 Whittier Highway I also own some lakefront property. In my experience this has been the fourth instance that homeowners or landscapers have blatantly violated the shoreline regulations. I knew Bob Lamprey and he was a lifetime resident of Center Harbor and deeply committed to

protecting the lake. When he became involved the lake was a sewer dump, Bob was instrumental in getting the sanitary sewer system installed in Center Harbor as well as many other improvements. Due to his efforts and others, the lake is much cleaner today. Having a clean lake provides the livelihood for many people here, it makes a great place to live. It is sad that homeowners and landscapers disrespect our rules that protect the lake. It's a great resource. In the past, I have seen no significant consequence or action from the Town to sanction violators including landscapers. It's meaningless to have shoreline protection regulations and rules that have no teeth or consequence. Sure the homeowner may pay a fine but for a multimillion dollar homeowner, how much is enough to deter them and many other homeowners from committing the same actions. To them a small monetary penalty is just the cost of doing business. Then there is the landscape companies, they have our trust and the moral obligation to protect the lake there is no consequence for them ever. Center Harbor trusts that the landscapers will ensure the proper permits are in place. I guess in this case, our trust was misplaced with the landscaper. Center Harbor needs to send a strong hard message to the homeowner and the landscaper that violating the shoreline regulations will not be tolerated. In this case the shoreline must be remediated to its original condition and state. In addition, the homeowner must pay a significant fine to send a strong deterrent message to the homeowners both present and future along the lakefront. The landscaper must be prohibited from any town contract for a period of three years and any currently held contract must be terminated. Our lake is the lifeblood of our community, it supports our families and its scenic beauty attracts thousands of tourists every year and it's time to say yes to those folks that we care about you and our lake. Thank you.

Chairman: Any other comments on the opposing side? Hearing none we can allow people to comment.

John Stephens: I would just like to respond to the comments, I deep down inside am a steward of the lake. This was not done as a contentious act by any means. I was a young professional maybe trying to enter the market too soon. I thought I knew everything I needed to know at state level and threw in the levels of town stuff that I was not aware of at the time. If I was aware of it I would have done it because I did my state permitting. I worked hard on it and still do, I was just at a workshop in Wolfeboro recently. My intention was never to put you guys in a hard place, obviously we do business with the town to maintain your property. It was never my intention to put my client in a hard place and certainly it was never my intention to put my reputation in a hard place which I have certainly done. At other towns, and not that it matters at other towns, but when it came to landscaping I would not need a permit. With that said, I fully respect the comments that were brought up, I am not one to put anyone in a hard spot to make these decisions. Again this was not something contentious by any means, I made some mistakes and I've learned from the process. I have brought issues to the state regarding water run off to help mitigate those problems. If I had known about the permit process I obviously would not have created this design for this property. Unfortunately, the work is done and you guys need to make the decision on where it goes, I think it would be an environmental hazard to go back from what it is now. It's been established for a couple of years, plant and ground cover are starting to take off.

Joseph Battaini: I just want to add to what John is saying, what has been done has made it environmentally better now than it was before which was my intent. I love this lake and spend hours enjoying this lake and want to remind everyone that it was March 2016 and I don't know the other 4 cases he's talking about but I know at least one of them was done after mine. It was very early on two years ago and it was all there for everyone to see rather than 2 weeks before I am closing on this house. In fact the assessment shows that, I paid \$2000.00 more this year than I did last year. I just don't know why now it's coming up now, it was out there for everyone to see and no one questioned it at any time.

Chairman: Anything else?

Ben Bare: Ben Bare, I have had some experience with this in other federal agencies and enforcement activity involving safety and health. It's all well in good that after the fact everyone is apologetic and only if I would have known I would have....you have to take into consideration the landscaper, is a longtime resident I believe, of this community. These regulations that we have for the lake are not anything new, I just find it impossible to believe that gee if only I would have known I would have complied with the regulations. I find that quite frankly a little bit demeaning. So for the committee's consideration, I am sure you realize that these regulations are meant to protect the environment and the lake and you need to take into consideration the parties involved and what the future will be if you let something like this go by without action. If you give them a pass on this, then you have no teeth in any regulation you pass. Again, my comment is please consider the parties involved their history here

they are part of the community should they have known, I think so.

Attorney Philpot, Jr.: Just an observation, we are here to make a decision on a variance, we are asking for an exception to the regulation. The process is not to avoid it's to provide special circumstance to an exception. We believe we have done that. There is no showing tonight that there is any negative affect to the lake, if anything there is a positive affect with the drainage etc. There should be no basis, certainly in the fine text of the variance request of setting an example that's for another forum.

Bill Ricciardi: Bill Ricciardi I am an abutter, I would also like to state for the record I am a member of the Planning Board. The problem that I have with this, on a Planning Board side, and I'm not speaking for the Planning Board, but one of the issues we come into and if I'm not mistaking usually when you apply for a variance it is before you do the work. It seems that the variance would have been applied for pre-construction and I'm absolutely not sure but it sounds like what they have done has mitigated the water run off possibly for the better. The problem we have at the Planning Board is when people come to us after the fact, we wind up getting this cascading effect of well Frank did it and then he went and asked for permission. The expression of getting forgiveness is easier than asking permission. In general, as a member of the community and on the Planning Board, these problems come up and when they come up after the fact it becomes hard to have any ordinance at all as Mr. Bare said if you're not going to enforce anything. Again, my concern is doing something and then asking for forgiveness is all I wanted to say.

Chairman: It's always a tough situation for us because yes we are supposed to be hearing these requests beforehand not after the fact.

Ken Ballance: Ken Ballance Code Enforcement, I want to answer some questions. The idea of a building permit is to catch these, had a building permit been submitted I would have denied the permit stating the work would not have fit within the criteria of our ordinance under Section 5:3:1 and sent the applicant to the ZBA for a variance. You would have found out in a month or so whether you could or could not do it. As far as the question by the homeowner, that property does not lend itself to easy visibility to someone who may or may not care. It's definitely hidden from the front and frankly it was just missed and obviously no one complained. I just wanted to make that clear. In regards to Mr. Stephens about other towns, I inspect for other towns and it is true that in Moultonborough you can place stones in the shorefront but the second you place a piece of wood it requires a building permit so it's not like it's not required because it is required in most towns. Center Harbor seems to be more stringent no doubt.

Chairman: With no other questions let's get to questions by the Board.

Chris Williams: I think it would be beneficial to the Board to go onsite and look at what has been done. It's very difficult by looking at these sketches to have an idea of what has gone on there.

Jean Meloney: I would agree with you.

Chairman: I would agree as well, I think it would be helpful to understand what happened and being able to see what was done.

Chris Williams: And to understand what you're saying by the retaining walls helping to slow down the water, to be able explain that on site.

Chairman: Is that something you would permit us to do? (Asking the property owner)

Joseph Battaini: Anytime you want, it's all lit up right now if you want to go down. I mean the sooner the better, time is of the essence for me. I don't know how you define financial hardship but I can't even tell you the financial hardship that it will be for me.

Chairman: Is there anything else we want to discuss before we schedule an onsite visit?

Chris Williams: I think it would be prudent to wait until after we have gone on site for any other discussion.

John Stephens offers to show the Board his video of the property if that would make it easier on the Board the Board declines stating they would like to be onsite to see where the setback lines are.

Board discusses scheduling the site walk and decides on Monday, April 16th at noon time. This is just to walk the site no deliberations will be held. The hearing will reconvene on Thursday, April 19th at 7 p.m.

Chairman provides those in attendance the rules of the site walk. The site walk is open to the public however, there will be no questions or input allowed by the public, only Board members may ask questions and only the applicant or their representative may respond. The site walk is for information gathering by the Board. If anyone outside of the Board has any questions or comments you must hold those until the public hearing which will be held on April 19th at 7 p.m.

At 7:59 p.m. the Chairman continues the hearing to April 16th for site walk and public hearing to April 19th at 7 p.m.

IV. **OTHER**

- Board reviewed the adjustments to the by-laws and approved the document as corrected. Clerk will make the corrections discussed and provide the Board with the final document at their next meeting.
- Board discusses potential candidates for the Board. Board has requested the Board of Selectmen send letters to the residents discussed. Clerk will submit to the Board of Selectmen.
- OEP Conference, Board Members Bernie Volz, Anthony Avrutine and Karen Ponton will be attending the 2018 Planning/Zoning Conference.
- Election of Officers – Board votes Bernie Volz as Chair, Chris Williams Vice Chair and Aimee Manfredi-Sanschagrín Clerk. Board also discusses moving an alternate to the member position, Palmer Smith is alternate 1, and Chairman will touch base with Palmer to see if he would like to be moved to a full member.

ADJOURNMENT

Meeting adjourned at 8:21 p.m.

Respectfully submitted by Aimee Manfredi-Sanschagrín.