

TOWN OF CENTER HARBOR  
ZONING BOARD OF ADJUSTMENT  
Public Meeting  
Monday June 4, 2018  
6:30 p.m.

Chairman Bernie Volz called the meeting to order at 6:36 p.m. Present were members Jean Meloney, George Lamprey, Anthony Avrutine, alternate member Karen Ponton and Clerk Aimee Manfredi-Sanschagrin. In the audience John Stephens of Stephens Landscaping, Bill Ricciardi, Jill Weed, Ben Bare, Charles Hanson and Attorney to the Board Laura Spector-Morgan.

**I. MINUTES**

Karen Ponton motioned to accept the April 19, 2018 minutes as written. Seconded by Bernie Volz. All were in favor minutes pass.

**Voting Members: Bernie Volz, Jean Meloney, George Lamprey, Anthony Avrutine and Karen Ponton.**

**II. MEETING: REQUEST MOTION FOR REHEARING – 24 DEW POINT LANE**

The Board received a request motion for rehearing on the ZBA's April 19, 2018 decision which had denied a variance request for Joseph B. Battaini. For information pertaining to the Battaini case please refer to the ZBA minutes of April 9, April 16 and April 19<sup>th</sup>. Notice of decision is available for inspection at the Town Office Planning/Zoning Department.

(The request motion for rehearing was delivered to the Town Office Zoning Department on May 16, 2018 from Attorney Jonathan S. Springer representing the new property owner Mark Sudbey. Zoning clerk sent the request package to the Zoning Board on May 17<sup>th</sup>. The Board agreed to meet on June 4<sup>th</sup> to review the request.)

Chairman starts the meeting by stating there will be no public input. This is not a hearing, this is a meeting to review the request and for the Board to determine whether or not a rehearing should be granted.

The Board reviews the request discussing the points. The Chairman states that on number 3 (first of 2) of the first page, some of the data he believes is incorrect. Chairman goes over the numbers and between the existing and proposed it's approximately 1104 sf but it seems it's much larger than just an increase of 750 sf. The numbers seem to be off but that's all I wanted to point out regarding that item.

Chairman reads aloud the statements made by the Client/Attorney on page 2 and asks if anyone feels differently about the reasons outlined in their decision to deny under letters (a), (b), (c) and (d). Board members still agreed with those findings.

The Chairman asks that the request motion for rehearing document be entered in its entirety into the record. The Board never received any professional input from a third party on whether or not the site is better now than it was prior to the work as it relates to water runoff and filtration. George Lamprey mentions in this motion he didn't find that any information presented was new information but rather just an expansion of what was already presented at the time. Board agrees there does not appear to be any new information to consider.

Chairman continues, again there has been no professional opinion on water runoff which is one of the main points they are trying to make in this request stating what is there now is better than what was there before. We cannot confirm that.

Statements made to the patio that was there before is grandfathered because it was there before the ordinance change, I don't think there is a grandfathering that was granted under the ordinance. Prior to 2016, it was required to get a variance for anything in that setback so I'm not sure what the grandfathering rules are. Chairman defers to ZBA's Attorney Laura Spector-Morgan.

Attorney Spector-Morgan states that if something is legally constructed prior to a zoning change that then renders it illegal, that construction is grandfathered, it can continue despite the change in the zoning ordinance. However, in order to get that protection, it needs to have been legally constructed which means it obtained a permit and it was in compliance with your zoning ordinance. From my understanding, and not that I am testifying but Aimee can certainly fill you in, neither happened with the original patio. The Chairman states that is the ZBA's understanding as well. Chairman asks is there any grandfathering after a certain amount of time? Attorney Spector-Morgan states no.

Chairman, on the top of page 4 some of the statements made don't have factual proof. Regarding injury to others the only statement I would make is that the injury is that it is unfair for someone to build something and come to us after the fact and the Board approve it. George Lamprey adds in recognition of the balancing act between the property rights and the public goals. Certainly one of the public goals is that there will be an adherence to the zoning ordinance, whether that happened by ignorance of the zoning ordinance or by willful, it still has to be considered whether the public was being undermined by not adhering to the ordinance. Board agrees with George's statement.

Board reviews statements set forth under 4b. Some Board members comment if this was true there should be patios along all the waterfront. Board agrees the assertions in this section do not make sense.

Board reviews number 5. Chairman asks if Attorney Spector-Morgan could speak to these statements. Attorney Spector-Morgan states there are two points in time that you need to look at amendments, the first is when you are proposing. As you may or may not know, once notice of an amendment has been posted, it is effective to prevent any building that would circumvent that zoning change. Then after the fact, when Town Meeting happens and the Town votes to adopt the approved change, the Town Clerk accepts that change. In your Town, the Town Clerk takes your Town Meeting minutes of which she then has to certify, so those points are not a valid challenge to your process. Chairman states even if it was a valid challenge, we would have to go back to the old ordinance which didn't permit anything at all in that setback so it's really a mute issue. Attorney and Members agreed.

Section 7 also refers to process of adoption and there is a lot of work done before hand by the Planning Board to get these changes in order. (Clerk can provide dates of the minutes in which public meetings and hearings were held relating to all zoning changes being proposed for 2016 Town Meeting. Per RSA the PB must hold public meetings and public hearings on zoning changes by certain dates and those dates are strictly adhered to.)

Board had no further discussion.

#### **Motion:**

**I, Bernie Volz, motion to deny the request submitted to the Board to rehear the case. The request presents no facts that the Board has overlooked, nor does it present any errors of law. Moreover, the motion makes two important and related misstatements. Prior to 2016, no structures were permitted within 75 feet of the shoreland. Therefore 1) the original patio, for which no permits were obtained prior to construction, was not grandfathered; it was illegal; and 2) requiring a variance from the 2016 ordinance is more generous (less restrictive) than requiring a variance from the pre-2016 ordinance. Seconded by Anthony Avrutine. All were in favor of the motion.**

#### **IV. OTHER**

Clerk updates the Board on the 3 new alternate members Susan Patz, Stephany Marchut-LaVallee and Gregory Hime.

#### **ADJOURNMENT**

Chairman adjourned that meeting at 7:09 p.m. seconded by Karen Ponton all were in favor. Respectfully submitted by Aimee Manfredi-Sanschagrin.