

TOWN OF CENTER HARBOR
ZONING BOARD OF ADJUSTMENT

Hearing
Monday June 11, 2018
7:00 p.m.

Chair Pro-Tem Jean Meloney called the meeting to order at 7:01 p.m. Present were members George Lamprey, alternate members Karen Ponton, Susan Patz, Gregory Hime and Clerk Aimee Manfredi-Sanschagrín. In the audience Ken Ballance Code Enforcement Officer, Bruce Bond, Mike Pearson, Mark and Lisa Olsheskie and Mitch Pielech.

I. **MINUTES**

Karen Ponton motioned to accept the June 4, 2018 minutes as corrected. Seconded by George Lamprey. All were in favor minutes pass.

Voting Members: Jean Meloney, George Lamprey, Karen Ponton, Susan Patz and Gregory Hime.

II. **HEARING – BRUCE BOND 104-014 VARIANCE 5:9:2 ADU**

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 applicant if he would like to enter the application in its entirety into the record Bruce Bond states yes. Application entered into the record, applicant is asked to present his case.

Bruce states he purchased the cottage in 1979. He has been living there full time since in 2004, the cottage is essentially seasonal. The new garage by the road was built with the intention of being his winter home during his retirement. Upon submitting his construction application is when he was made aware that he could not make the room above his garage into living space based on the Town Ordinances. Bruce's understanding was that he could not have two kitchens and offered to remove the kitchen from the seasonal cottage. Bruce states he was not aware of the restrictions and therefore, his permit was denied and he was required to seek a variance to move forward with his plans.

Ken Ballance, I am not speaking for or against but I want to make some clarifications. The original permit was for a garage period, it was never for a secondary dwelling and if that was his intention it was never stated as such. As far as the rules changing, they have actually gotten better from what they were prior to 2017. The issue in the negative is the portion of the ordinance that clearly states there must be a door between the primary and secondary dwelling units. The other side of that, the way these lots were created many years ago and with the road going through, it doesn't lend itself to allow the structures to be attached. Ken has a map of the lot which he provides to the Board for review. The pathway or road really limits his ability to put a building behind his cottage. This is how the parcels were developed back then, you would not see lot configuration like this today.

Ken continues, you can have a room above a garage and the kitchen issue is true but that has always been the way. A kitchen, place to sleep and a bathroom triggers the classification of a dwelling unit. We used to only allow 600 sf attached. The Town Ordinance now allows 900 sf and still attached.

Chair asks Mr. Bond what the reason is that he is seeking above what the ordinance allows for square footage. Mr. Bonds responds I need a place to live in during the winter. Chair, we allow 900 sf and you are seeking 1120 sf so why are you looking for more than what is allowed? Ken Ballance responds it's because the garage was built years ago and that is the space available which again, if the intent was an ADU, at that time it would have clearly exceeded what was allowed which was 600 sf.

Gregory Hime, on the permit that was denied. Is what you are requesting all being done within the footprint of the original building? Mr. Bond states it's the area highlighted in yellow. Gregory Hime responds, that would mean you are expanding on the footprint. Mr. Bond answers yes. Gregory, would you look to comply with the square footage allowed? Mr. Bond said he was not aware of the limitations but that his design is to make it as

transparent as possible to his abutters. Gregory, but as presented it exceeds what the Town allows by approximately 10 %. Mr. Bond replies, yes.

George Lamprey, the existing cottage has how many bathrooms. Mr. Bond responds 2. George, and the new space has how many? Mr. Bond responds 1 ¾. George states let's call it two. So does the existing system allow for this increase? Ken Ballance, the state does not consider bathrooms its bedrooms they go by. Chair, so this would need to be a 4 bedroom septic. Board reviews the septic plan. Ken explains that anything 20 years or newer is considered to be over designed so only if he goes into failure, would he have to come forward with a 4 bedroom design.

Chair, should you sell this property and someone winterizes the cottage and make this situation worse. Mr. Bond, they would have to winterize it with the approval of the Town. Gregory Hime asks about the effort to winterize the cottage. Mr. Bond I would have to put a foundation and lift the whole structure. It's cheaper to build a winter home above the garage. The heating, electricity and gas costs are getting to be too much. I would love to stay there year round but I just can't.

George Lamprey, what is the distance between the cottage and the garage. Mr. Bond approximately 125-130' and the garage is elevated from the cottage about 40-50' higher. George Lamprey, one of the major issues we are facing is the distance between the structures, it's been agreed about by the town that these dwelling units be attached so I think the difference being so great between the two structures is a significant concern from the Boards angle. Mr. Bond, the garage was put in that location because of the granite.

Gregory Hime, the one comment I want to make is in review of these applications, the topic of public interest it is more than just the abutters. This ordinance has been voted on and approved by the citizens of Center Harbor. So it's not only the abutters but the interest of all in Town. Mr. Bond asks these proposals have been put before the Town. Gregory Hime responds, yes these modifications are done through meetings and voting happens at Town Meeting. Mr. Bond, how would this request adversely affect the Town? Gregory Hime, because it is contrary to the ordinance as written. George Lamprey, there is a balancing act between the private property rights and the ordinance voted in by the Town. It's not black and white, not only is it not attached but it's also over the size allowed for the accessory dwelling unit. Those are the two issues that are issues for the Board unless someone is aware of another one. Chair agrees.

Karen Ponton, your seasonal cottage is three bedroom and is close to the water correct? Mr. Bond, yes correct. Karen continues, and then the garage is near the road and that is where you want to have your year round accessory apartment correct? Mr. Bond, yes.

George Lamprey, and the Board also has for consideration to be thinking about, I believe the train etc. there that is why the garage is the distance from the cottage. With a road in between I understand why the garage is set back. Mr. Bond states he would be happy to take the Board to the property and states if he had the ability to attach the garage to the cottage he would have, I was limited to what I could do by the land. The garage did not require a variance, it was in compliance with our ordinance and only required a building permit from the town.

Mr. Bond asks if the 1120 sf includes the room or does it also include the deck? The Board responds they believe it's only the living area.

Karen Ponton asks Ken Ballance how he defined gross floor area, Ken responds wall to wall. Karen Ponton, so in this situation it does not include the deck? Ken Ballance, it was supposed to but it doesn't, so if Mr. Bond can come in with 900 sf on the primary building no porches or decks then by our ordinance he would meet that portion of it.

George Lamprey, let's clarify what the actual size is, according to the plan it's 40 x 30 without the deck. Jean Meloney agrees, based on the measurements on the plan the gross living space comes up to 1504 sf not 1120 or 900 which is what our ordinance allows. The applicant is further over what is allowed than originally thought.

Ken Ballance states that if the Board allows the variance, Mr. Bond has to create a separate egress from that upstairs dwelling area that does not go through the garage. Jean Meloney, this proposal does not work. Mr. Bond, what doesn't work about it? Jean Meloney responds it is way over what is allowed it's more than 1120 sf it's 1500 which does not include the deck. Gregory Hime states, in order to comply with the ordinance on this portion of the request you can only add 180 sf to the existing garage footprint.

Susan Patz, asked if there are any issues with the current septic. Ken goes over the current system and states there will be no ill effect on the system by adding the one bedroom. Ken states it would require a tank. Gregory Hime, the system plan we have here is what is existing so you would need to update that. Ken adds a tank and chamber with a separate pump will be required which will automatically require a redesign.

George Lamprey, I need clarification about 20 minutes ago I asked if the current system needed to be upgraded but was told in the last 20 years there was no requirement for a change and so now the statement is different? Ken Ballance, correct. There does not need to be a change if there is no elevation changes, I did not have the plan in front of me I went and got it and there is an elevation change that will require a redesign. Ken continues, that has no bearing on whether you approve it or not, that would be dealt with if approved on the building permit.

Board asks if the clerk received any correspondence pertaining to this case, Clerk responds no.

Board goes into discussion. Chair reads through the criteria.

George Lamprey, I have a concern that the structure will not be attached and quite a distance away. I understand there are issues with the site. I also understand that on the ballot for Town Meeting it was not an option for detached but in our ordinance it's only been allowed if attached or within and there has been no change there. My feeling is that it is running contrary to the ordinance. Jean Meloney, my concern I understand the limitations the property offers based on granite and the road understanding you had to put the garage where you did, my larger concern is the size. That you are exceeding the 900 sf allowed by approximately 400 sf.

Gregory Hime, my issue is that ordinance states it shall be attached. Understanding what you have to deal with, it's still contrary to what the Town wants. Jean Meloney, yes that is why we view criteria 1 and 2 together.

Chair, criteria 3. Substantial justice is done.

Karen Ponton, a factor for me to consider is the configuration of the land. I don't think the garage structure could have been placed closer to the cottage. Gregory Hime, I understand your concerns but in this case I am not sure all the options were explored. As stated here by Mr. Bond, he was ignorant of the ordinance, he had intent to have a dwelling unit by his statement, and correct me if I'm wrong but his intent was to make that into a detached dwelling unit and stated he was not aware of the ordinances when he determined the location for the garage. Mr. Bond, your referring the two kitchen ordinance. Gregory Hime, no. When you originally built that garage was there ever any intent to modify the structure and make it a dwelling unit? Mr. Bond, Ken says no but I believe yes at least in my head and my heart. Gregory Hime, you also stated you were not aware of the ordinance relative to whether it needed to be attached or detached. Mr. Bond, well I only became aware of that about a month. Gregory Hime, Jean Meloney and Karen Ponton ask Mr. Bond if he was aware of the ordinance could he have put the garage closer to the house. Mr. Bond and his contractor state he could not have, there is a road and an elevation. Mr. Bond states the only option he would have had, had he known about the ordinance, would have been to sell the property because I cannot live in the summer cottage in the winter.

The Board reviews criteria 4, no one on the Board feels this would be an impact.

Criteria 5. Chair, I agree with Karen in this sense it's a unique piece of property and if we were to allow it, I would propose it does not exceed 900 sf. Discussion with builder about options to help the property owner. Ken Ballance, for the record I just want to state I have the original building permit for the garage. The permit states this is for a garage only, on the permit where it asks if any additional bedrooms would be added Mr. Bond checked no and on this copy he did write in living space and as you can see I had him strike through and initial it because I told him at that time it was not allowed. Just trying to get the facts out.

Chair closes the hearing at 7:56. George Lamprey asks if anyone would be interested in a site visit. Board members state they have enough information and understanding they need to make a decision without a site visit.

Motion: Chair Jean Meloney motions to grant the variance with the following condition, the gross living area shall not exceed 900 sf. Seconded by Karen Ponton. Motion passes by a majority vote 3 vs. 2. Jean Meloney, Karen Ponton and Susan Patz were in favor of granting the variance, George Lamprey and Gregory Hime were opposed.

Mr. Bond is told a notice of decision will be issued within 5 business days and that there is a 30 day appeal process.

III. HEARING – MARK A. OLSHESKIE REVOCABLE TRUST 104-006 VARIANCE 5:9:2 ADU

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 applicant if he would like to enter the application in its entirety into the record Mark Olsheskie states he would like the application entered in its entirety into the record. Application entered into the record, applicant is asked to present his case.

Applicants introduce themselves to the Board and thank the Board for representing the Town. Mark states he learned a lot by the previous case.

Mark states when we purchased the property in January 2005, we enjoyed the camp for 5 years and then we decided to make it a year round home in 2009. We added the garage in 2012. In adding the garage we were anticipating the need for that fourth bedroom, the main house had 3 bedrooms but during the 2009 construction we added a 4 bedroom septic. The way Brookside lane cuts in there are 6-7 properties that use it to get to their lots. We spoke with Doug Hill our closing attorney about locating the garage closer to our residence but there were a couple down sides to that. One of which was to adjust everyone's deed that use this ROW to reflect the change if we moved the road to behind the location for the garage and that seemed like a lot to ask of a lot of people that we hadn't even met yet so that lead us to adding the garage across the road. Lisa adds, there is a road on one side and a brook on another side so there was a very small pocket where we could build. When we built the garage we took the same pitch and architectural details for the garage. The space is 526 sf and it will be designed as a studio type living space. There is egress out the back off the deck. This space is currently being used as storage there are only 2 walls which are to be used for a bathroom enclosure. We don't have a plan yet because I wanted to make sure we would be approved for this before I went any further. When we looked at adding the garage and the space we had we could not attach it to the primary structure. Lisa states clearly it's not attached but it was the closest we could get it.

Gregory Hime, when you had this new residence built, at that time did you plan at some point to have a garage? Mr. Olsheskie responds yes, it was part of the original building plan. We had the foundation poured at the same time but the structure was not built until fall of 2012. Gregory Hime, you talked about the present use so in the plans of the design of that garage what has always been the intent. Mr. Olsheskie, to have that available as a dwelling unit. Gregory Hime, having gone through everything from the beginning, were you aware of the ordinance and did you take those into consideration. Mrs. Olsheskie, I think we knew we would have to go down the road of requesting a variance because of the garage. Mr. Olsheskie, we were boxed in. In order to get the garage attached to the main structure that would have meant we would have had to blow out the side of the hill and reconfigure the location of the road that would impact every deed that uses that road to access their property. It would have caused a major disruption to the land.

Susan Patz, you rebuilt the cottage? Mr. Olsheskie, yes we did.

Mitch Pielech, neighbor/abutter to the applicants states he is in support of the Olsheskie's request. What Lisa and Mark have done to that property is beyond compare, their love of the lake and their own property we are definitely in support of what they are trying to do.

George Lamprey, am I correct the only thing at issue is that it's not attached? Ken Ballance, that is correct. Chair, the kitchen issue? Ken Ballance, the reality is they can put a bathroom in there and they can have a general room but once they add a kitchen making the 3 components it then changes it into a dwelling unit. They will have to do the same thing, a design change for the septic. Their building permit was submitted for the same thing a garage and storage only. We had a setback issue with the house but they did everything as they were instructed to do, and I can verify that Mark and I had many discussions about changing the road. It's all about the 3 components and the town can stop you with just a microwave it doesn't have to be a full kitchen. It's good that you are trying to get this done the right way.

Karen Ponton, how far is the front of the garage from the back of the house? Ken Ballance, approximately 40' because of the rd. Susan Patz, what is the size of the lot. Ken responds 1 ¾ acres and the majority of the rd comes down there property.

Susan Patz, the one thing I see here is you rebuilt the house and you could have built it smaller and attached the garage. Ken responds no, they would not have had a house. Susan responds the house is 1500 sf and Ken states that is on two levels. Susan asks if they built it with two levels they could have had a garage underneath. Again Ken responds no the lot would not allow it, you would have to go into the non-conforming zone to get to the house because the house is at the road level so you would have to go down to the shorefront and turn around and there would be no driveway allowed in that setback.

Chair, was it a one floor cottage? Mr. Olsheskie, no it was two floors with 4 bedrooms.

Board starts their discussion of the 5 criteria.

Chair reads criteria 1 and 2. George Lamprey, I have my same issue with it not being attached, I am aware of many of the site conditions that made this difficult, I still have an issue with an attached. Gregory Hime, I have the same concerns but in their case they were aware in going forward from the beginning that they would require a variance to do this. Mr. Olsheskie, when we looked at what the possibilities were we were already before the board 3 other times so we were in a rubix cube in how to work all of these pieces of the puzzle. Relative to the public interest there are already some that exist in some way that are grandfathered in. Karen Ponton asks if anyone mentioned this may be met with some opposition by the Town if they tried to add this ADU to their garage. Mr. Olsheskie said I don't recall that and asks Ken if he was aware of any concerns. Ken responds, I don't ever recall you saying you were planning to add living space above the garage.

Chair, would you consider taking out the kitchen? Mr. Olsheskie, not really especially in the winter. Ken Ballance, taking out the kitchen means there is no reason to be here. Chair says yes that's my point. Mr. Olsheskie, but the future is still unseen, I may have my sister's children wanting to live in Center Harbor and this would provide a place for them.

Chair moving on to criteria 3, 4 and 5. Board discusses criteria 5. Karen Ponton, I think of the unique circumstances of this property with a road going through so I'm not sure there was any other option for them to have an attached garage. Susan Patz, with the exception that it was a cottage when they bought it. The lot was not designed to have a larger home with an attached garage. Mr. Olsheskie, we spent years living in that cottage we wanted to live here full time and what was there would not allow us to be able to do that so we had it configured in such a way that would work for us. Gregory Hime, many places in our Town have challenges on the lot, here was something that was constructed looking at the future use as non-conforming and requiring a variance from the beginning planning states so it is not attached which was known from the beginning and having that plan and your end goal required a variance I'm having a difficult time with. George Lamprey, my personal opinion is that you have hopes and desires of what they wished to do, you hope it progresses that direction, it doesn't always work out but your hopes are that it does.

Karen Ponton, I can appreciate the debate over this distance and I can see where this is a unique lot and I don't think it's contrary to the ordinance to grant the variance in this particular situation. If there was not the

opportunity to have variances then we shouldn't have variances. This situation warrants us thinking about making an exception. Gregory Hime, I think it's a very good point but there is still another option and that's not having one of the three components to accomplish not all the needs but there is another avenue. Karen Ponton, I hear you there are ways around it I just don't want to advocate doing things in a roundabout way. Susan Patz, there was a reason why the ordinances were written this way and is there enough of a reason in this case to allow it. Ken Ballance, if I can add, if it wasn't for the path they could build behind the 75' free and clear of side line setbacks they could build 7000 sf of home, the variance is to give relief because of a situation on the lot.

Motion: Chair Karen Ponton motions to grant the variance as proposed. Seconded by Jean Meloney. The Board had further discussion over the other possibilities to add the garage vote was taken. Vote 2 in favor to 3 against. Jean Meloney and Karen Ponton were in favor of granting the variance, George Lamprey, Gregory Hime and Susan Patz were opposed. George Lamprey asks for having voting on the prevailing side he asks for a reconsideration because I do think that road on this lot creates difficulty. I'm struggling with this. The last case had a road running through it and that case prevailed. Susan Patz, what I'm struggling with is when you are able to build something from scratch you have more options for the structure so that is why I see this as different from the last case, they kept the original cottage this was a clean slate so that makes a difference for me. George Lamprey, I do think the lot situation here is severe hence I ask for the reconsideration. Chair, I put this back up to vote on the same motion. All in favor Jean Meloney, George Lamprey and Karen Ponton. Opposed Gregory Hime and Susan Patz. Variance is granted by a majority vote of the board 3 to 2.

IV. OTHER

Clerk distributes updated ZBA contact list.

ADJOURNMENT

Chairman adjourned that meeting at 9:10 p.m. seconded by Karen Ponton all were in favor.
Respectfully submitted by Aimee Manfredi-Sanschagrin.