

**TOWN OF CENTER HARBOR
ZONING BOARD OF ADJUSTMENT
Meeting Minutes**

**Monday, November 13, 2023
7 p.m.**

In attendance: Chair Bernard Volz, Members George Lamprey, Karen Ponton. Alternate Members Gregory Hime, Timothy Nefores, Alison Toates, Thomas Reddy and Clerk Helen Altavesta. Vice Chair Jean Meloney and Member Stephany Marchut Lavallee absent with notice.

Public attendance: Sean Kavanagh applicant

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

Chair Bernie Volz asked board members to introduce themselves.

Chair Volz elects to wait on the approval of the October 9, 2023 minutes until after the hearings:

PUBLIC HEARINGS

- **2023-0925.A Variance-Tax Map: 104 Lot: 011 Owner: Kavanagh Family Trust -38 Brookside Lane**
- **2023-1026-Variance Tax Map: 104 Lot: 011 Owners: Kavanagh Family Trust -38 Brookside Lane**
- **Voting Members for both of the applications for Variance case: 2023-0925.A and 2023-1026 z-Kavanagh Family Trust-Tax Map 104 Lot 011-38 Brookside Lane: Bernard Volz, George Lamprey, Karen Ponton, Gregory Hime and Timothy Nefores**

Helen Altavesta (the clerk) announced how she received the application by hand delivering and gave notice to abutters by certified mail, Newspaper Ad, and posted public notice.

The first variance:

2023-0925.A Variance- Tax Map: 104 Lot: 011 Owner: Kavanagh Family Trust, 38 Brookside Lane

A Variance is requested from Zoning Ordinances, Article 5:3:1, Structure Setbacks, to permit construction of a garage that is within the setback from the road and within the setback from the property line.

38 Brookside Lane Project
Donna Vaillancourt and Sean Kavanagh
Variance Hearing November 13, 2023

OUR OBJECTIVE

To build a modest, energy efficient home where we can age in place.
Donna and I respect the ordinances that preserve the lakefront and seek to create something that will enhance the property from an aesthetic and ecological point of view. While in a few minor ways we don't meet the letter of the regulations, we've worked hard to meet the spirit of the regulations. We have been guided by the NHDES who granted us a shoreline permit, and by information provided by the town building inspector and the Conservation Commission.

BUILDING DETAILS

Proposed residence will include a mudroom which connects to a garage.
Overall living space increases by 120 sq ft. (6%)
Garage will be an additional 567 sq ft

BUILDING IMPROVES THE LAND IN THE FOLLOWING WAYS.

- Increases distance from the road and adds over 1,000 sq ft of pervious surface
- Improves road safety by increasing visibility and road width
- Minimal tree removal will guard against shoreline erosion and is more than required.
- Building aesthetics blends with natural environment maintains tree-lined shore
- Planned runoff mitigation will improve dirt road safety and stormwater runoff into lake
- Building will still be around 75 ft from the shore (farther than neighbor's homes)

OTHER COMMENTS

All abutting neighbors approve of the project
One floor living essential due to health concerns
We never plan on renting
Our goal is not to build a McMansion, unlike others on the lake.
We believe this will be a positive addition to the lake and to the Center Harbor housing stock and to the town's tax base.

Thank you for considering our request.

5:3:1 Structure Setbacks in the Town Zoning Ordinance

No building, mobile home, house trailer, outdoor living areas over eighty (80) square feet of footprint or part or portion thereof shall be constructed or placed less than fifty (50) feet from the centerline of the improved surface used for public travel, or private way intended for public use. In the case of roads with established rights of way greater than fifty (50) feet in width, minimum setbacks for buildings, mobile homes, house trailers or parts or portions thereof shall be determined according to the following formula: from the centerline of the improved surface, one-half the width of the right of way plus twenty-five (25) feet. **No building, mobile home, house trailer or part or portion thereof shall be constructed or place less than fifteen (15) feet from any other lot line or seventy-five (75) feet from the shore line of a lake or pond.**

Certain structures shall be permitted by Special Exception within the shorefront setback. These include gazebos, and screen houses not to exceed one hundred fifty (150) square feet of footprint and ten (10) feet in height. Storage structures (i.e., sheds) shall not exceed eighty (80) square feet of footprint and eight (8) feet in height. No structure of these types shall be allowed within twenty (20) feet of the shoreline.

A single patio shall be allowed per lot, within 50' to 75' of the shoreline that meets the following criteria:

- Does not exceed 150 square feet in footprint
- Has no above grade cover
- Pathways to the structure shall not exceed 6' in width
- Pathways to the structure must be made of pervious materials and shall follow the natural grade of the surrounding terrain
- Shall be built to blend into the natural surroundings as much as possible

Outdoor living areas greater than eighty (80) square feet of footprint but not larger than one hundred fifty (150) square feet of footprint are allowed within the shorefront setback, and less than fifteen (15) feet from the shoreline, provided they are attached to a permitted dock. These structures may have railings and seating but shall not be roofed. All such structures outlined in this section shall be visually compatible with their surroundings. HISS/Site Specific Soil Survey mapping shall be required. Structures shall not be constructed on 6 series soils, but may be allowed on drier 5 series soils depending upon soil characteristics, site conditions, and proposed structures. Soil types shall be as defined by HISS/Site Specific Soil Survey standards determined by a Certified Soil Scientist. If soils are determined to be 7 series, the underlying soil type must be identified before further consideration will be given.

The second variance:

Chair asked Sean Kavanagh before he starting going over his application does he want to considered the two applications as one project. Have one motion on both applications.

Sean Kavanagh said he wanted to have one motion and consider it as one project.

Sean Kavanagh went through his application and explained what his intent was and showed the existing and proposed plan. He also explained that the neighbor gave their approval of the encroachment of the 15 ft property line setback. The letter is below.

September 18, 2023

Cheryl and Richard Lanza
40/42 Brookside Lane
Center Harbor, NH 03226

Attention Center Harbor Zoning Board of Adjustment

Concerning the proposed building project at 38 Brookside Lane Map & Lot: 104-011-000

Our property, Map & Lot: Map & Lot: 104-010 abuts this property to the east. The proposed garage encroaches in the 15 ft buffer zone at the property line. We have no objection to this proposed building and grant permission for the construction as described to us and in the plans that have been submitted to the town and which we have reviewed.

Additionally, we support this project as it will be a positive improvement because the dwelling is modest, the design is in keeping with the local environment, it will improve both the quality and the safety of the road that we share, and it will mitigate the stormwater runoff that periodically damages the road and creates runoff into the lake.

We hope you will consider the application for a variance favorably and we express our unqualified support for this project.

Regards,

Cheryl Lanza Richard Lanza

Timonhy Nefores-Is the Existing house a crawl space for the basement? Is the new home going to have a walk out basement? Is the basement standard height? If so, did you include the basement in your square footage calculation?

Sean Kavanagh- No, I didn't include that in my new square footage, I didn't realize I needed to. It will be a full size walk out basement.

Discussion on the added square footage of the basement and comments on putting it on a slab.

Sean Kavanagh- The house is on hillside so it wouldn't make sense to put it on a slab it would be cut into the hillside.

The concerns were that that the plan doubles the square footage on a nonconforming lot. It was explained to Mr. Kavanagh that it is usable square footage not the footprint.

George Lamprey wanted the correct square footage number so when there was a motion, they would be approving the right square footage of the home.

Chair Volz- With that being said we should go on the assumption that the square footage is almost double if we include the basement.

Gregory Hime-It would be 3074 square footage with basement not counting the garage.

Sean Kavanagh shows the photos from the lake showing how it is set back from the water. He says he will be keeping the color either green or red. He doesn't want it to stick out when viewed from the lake would like in to blend into the surroundings. I haven't picked anything yet until I know what I'm allow to build.

Discussion on the right-away. Sean Kavanagh is going to straighten the road with his site work and it will be an improvement from what it is now.

George Lamprey- Aesthetically I think there is a significant difference between a main level house a basement compared to the same square footage above grade. Is there an elevation on how high the house will be?

Chair Volz- Yes, the drawings have elevation.

Sean Kavanagh- The proposed house's peak is not much higher than the existing house. Discussed the placement of the house.

Tim Nefores- Is there going to be a lot of excavating or change to the topo of the land from the House to the lake.

Sean Kavanagh-No

Discussion on placement of the house.

Sean Kavanagh- I move the few feet away from the water but then it brings me closer to the road. Whatever the town would want.

Helen Altavesta the clerk announced how she received the application by hand delivering and gave notice to abutters by certified mail, Newspaper Ad, and posted public notice.

2023-1026 Variance- Tax Map: 104 Lot: 011 Owner: Kavanagh Family Trust, 38 Brookside Lane

A Variance is requested from Zoning Ordinances, Article 5:11:2 and 5:11:3, Non-Conforming Structures, to permit the removal of a non-conforming structure and replace with a new non-conforming structure that will increase living area by 14% (1320 sq ft to 1537 sq ft) and constructing an attached garage of 576 sq ft.

5:11 Non-Conforming Structures in the Town Zoning Ordinances:

5:11:2 A non-conforming structure on a lot which does not comply with the regulations contained in this ordinance may be replaced by a new structure in a different location on the lot provided the ZBA determines that the new structure is not more non-conforming than the original structure. The ZBA may set conditions and restrictions for the replacement structure such as:

1. Sideline and frontage setbacks
2. Screening of site/structure
3. Limitations on future expansion
4. Limitations on footprint size and total square footage of structure.

5:11:3 No additions or changes or reconstruction shall be undertaken which increases the total square footage of the non-conforming structure.

Discussion on the next variance. Sean Kavanagh went through his application

Sean Kavanagh read the addendum remarks. The garage would be where he now parks their cars but a little more back from the road. It gives more room for parking (off road parking) and also it affectedly widens the road. We are keeping the property away from the lake. We want to build our home where we can age in place. If we had a garage, it would help us when we get older during the winter. I will not be removing any trees

Chair Volz- asked if anyone wanted a site visit. The board decided that it was not necessary.

Chair Volz explains the property is non-conforming: the setback from the road, setback from the lot line (but we did get a letter from the Abutter for approval). We should also add to this. The decks on the existing home are within the 75 ft shoreline buffer and the proposed decks are also within this buffer.

Summarizing of the setback:

1. The setback from the road-But this is improving, not fully conforming but improving.
2. The setback from the property line, the existing shed will be removed and the garage will replace the shed and it is around 5 ft from the property line. But the Abutter is allowing this.
3. The issue from the lake, is that the existing house is not within the 75 ft but the proposed house is a few feet closer that the existing house. But we suggested moving this closer to the road.

George Lamprey feels that what Sean has brought in has tried to work with the ordinance. He has brought the structure away from the road and he has a note from his abutter and the house just nips a small portion of the shoreline setback.

The Chair considers the deck a wash from the existing to the proposed.

Greg Hime- Mentions his concern about the garage and the water drainage.

Sean Kavanagh- The way the land drains the water seems to go down the road and on to the other side of the property away from the garage. I plan on putting in a culvert.

Tim Nefores- Have you considered any other options on the garage because of the extra square footage (for basement). I understand that you didn't know about it.

Sean Kavanagh- I looked at other options for the garage but this was the best area.

Tim Nefores- The full basement adds all this square footage. Is this going to be living space?

Sean Kavanagh- Yes in the future for my grandchildren.

Chair Volz- The difference between a full basement and a non-full basement in this situation is pretty minor. He already has the cinderblock wall there and is acting as a gate and the difference in height is only a few feet. Is it a manufactured home?

Sean Kavanaugh- There is a trailer in there. There is a 1969 trailer palace that was dragged and dropped there and built additions around.

Karen Ponton- When were you planning on building?

Sean Kavanaugh- About 18 months ago - Next fall.

Karen Ponton- It looks like you have heard some of our concerns. Is it possible to write these down and make some adjustment to the drawing as you have the time?

Sean Kavanaugh- I didn't realize it was problem because I'm not going up 3 levels. I don't think I'm pushing my limits on this design. I want to be able to have grandchildren come over and use the basement.

Karen Ponton- Do we have enough information to have a motion tonight.

Chair Volz- The motion in front of us would be to allow the 1537square ft feet of living space and approximate 1537square feet of the basement and plus the garage. Also moving the structure back to stay out of the 75 ft buffer and removal of the front part of the building as planned. The only difference in the numbers would be to change the basement square feet.

More discussion on square footage and basement. Sean said he wanted to keep his two-car garage. Sean Kavanaugh is willing to move the house back.

Chair Volz asked if we wanted to go with this proposal. We either approve it or deny it.

Karen Ponton- Asked for the increased amount of non-conforming structure.

Discussion on this structure and if it is more non-conforming that the original structure.
Discussion on the mudroom regarding very spacious area with three doors could you limit the size.

Karen Ponton- Motion for the continuance. To go back and make adjustment to the plan.

Sean Kavanaugh- I don't want to make new plans that would be very costly. If I new what you were asking me to change, I have heard a few minor adjustments. I don't feel like I'm stepping outside of the integrity of the ordinance.

Karen Ponton- No one seconded my motion; we should go over all of the criteria for the variances.

The Chair reads the criteria's:

Statutory Requirements (RSA 674:33, I(b))	Explanation (*)
1. Granting the variance must not be contrary to the public interest.	The proposed use must not conflict with the explicit or implicit purpose of the ordinance, and must not alter the essential character of the neighborhood, threaten public health, safety, or welfare, or otherwise injure "public rights."
2. The proposed use is not contrary to the spirit of the ordinance.	
	As it is in the public's interest to uphold the spirit of the ordinance, these two criteria are related.

Statutory Requirements (RSA 674:33, I(b))	Explanation
3. Substantial justice is done.	The benefit to the applicant should not be outweighed by harm to the general public.
4. The values of surrounding properties are not diminished	Expert testimony on this question is not conclusive, but cannot be ignored. The board may also consider other evidence of the effect on property values, including personal knowledge of the members themselves.
Statutory Requirements (RSA 674:33, I(b))	Explanation
5. Literal enforcement of the ordinance would result in unnecessary hardship. Unnecessary hardship can be shown in either of two ways: First is to show that because of special condition of the property that distinguish it from other properties in the area: (a) There is no fair and substantial relationship between the general public purposes of the ordinance provision and the specific application of that provision to the property; and (b) The proposed use is a reasonable one. Alternatively, unnecessary hardship exists if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.	<p>The applicant must establish that the property is burdened by the zoning restriction in a manner that is distinct from other land in the area. (a) Determine the purpose of the zoning restriction in question. The applicant must establish that, because of the special conditions of the property, the restriction, as applied to the property, does not serve that purpose in a "fair and substantial" way. (b) The applicant must establish that the special conditions of the property cause the proposed use to be reasonable. The use must not alter the essential character of the neighborhood.</p> <p>Alternatively, the applicant can satisfy the unnecessary hardship requirement by establishing that, because of the special conditions of the property, there is no reasonable use that can be made of the property that would be permitted under the ordinance. If there is any reasonable use (including an existing use) that is permitted under the ordinance, this alternative is not available.</p>

The Chair reviewed all the criteria above for the variances. Discussion on the criteria and some of the members feeling the garage was not being in the public's interest. George Lamprey and Bernie Volz agree with not making Sean go back and draw up new plans. The road will be improved by this plan so there will be no harm to the general public. It will help the value of surrounding properties – they will not be diminished. There is really nowhere else he could put the house on this property. The house is very run down and it really needs to be replaced. It is very common for a two-car garage.

Timothy Nefores- Is it still open to making a motion to continue? I need more time to digest what Sean Kavanaugh has put in front of me. I think the board has made some suggestion and nothing has been resolved.

Sean Kavanaugh- I feel what I presented is reasonable. I'm willing to move the house back from the water.

Motion for the continuance of the two variance applications until the next meeting on December 11.

Timothy Nefores makes a motion to continue until the next meeting until December 11, 2023.
Second by Karen Ponton. All were in favor.

Sean Kavanagh- I have two questions

1. Do I need to attend the December meeting.

Chair Volz- You don't have to but its highly recommended.

2. How can I be thinking what needs to be done before the December meeting.

Karen Ponton- Thinking about moving the house outside of the 75 buffers.

Timothy Nefores- My concerns are:

1. Considering the garage in its entirety, putting it in another location, not at all or making it smaller.

2. The added square footage.

George Lamprey- Definition of the Basement and fixing the discrepancies on the paperwork.

Greg Hime- Will the deck with covering need to be added to the structure square footage? Is this correct?

Discussion on how it is not clear what is included in the "total square footage" by the ordinance and need to talk to Bill Doucette regarding the definition.

MINUTES:

Approval of the October 9th, 2023 meeting minutes

Motion: Karen Ponton motions to approve the minutes as presented.

Seconded by Greg Hime. All were in favor.

Other business:

The Schedule for 2024 Zoning Board Hearings: Helen Altavesta provided a calendar with three problem dates. Discussion followed as to where we could have the meetings and/or change dates. It was suggested holding the March meeting (because of Town Meeting conflict) at the Old Townhouse. For the two holidays (October and November), we cannot meet on a holiday and will need to change the dates if meetings needed - revisit in April.

Meeting adjourned at 9:55 p.m.

Next Non-Public Meeting: December 4, 2023 @ 4 PM (board only, meeting with counsel)

Next Public meeting scheduled for December 11 at 7 p.m.

Submitted by Helen Altavesta.