

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

**Monday, January 8, 2024**

**7 p.m.**

**In attendance:** Chair Bernard Volz, Members George Lamprey, Karen Ponton, Stephany Marchut Lavallee, Alternates Alison Toates Members Gregory Hime, Timothy Nefores, and Clerk Helen Altavesta. Alternate Member Thomas Reddy absent with notice and Vice Chair Jean Meloney absent without notice.

**Public attendance:** David Driscoll of David Driscoll Designs, Tyler Driscoll and Code Enforcement Officer (CEO) Bill Doucette.

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 December 11, 2023 minutes until after the hearings.

Chair Volz- We have two hearing tonight on the same property. The special exception was continued for the need of a variance for 5:11.3. We will skip ahead for the variance because it is new and circle back to the special exception afterwards.

**PUBLIC HEARINGS**

- 2023-11-21-C Special Exception – (Continued)\_Tax Map: 102 Lot: 042 Owners: Tyler Driscoll and Alice Field - 40 Kelsea Ave.
- 2023-12-21-Variance – Tax Map: 102 Lot: 042 Owners: Tyler Driscoll and Alice Field - 40 Kelsea Ave.

The voting members will be Bernie Volz (Chairman), George Lamprey, Karen Ponton, Stephany Marchut Lavallee and Gregory Hime.

**2023-12-21 Variance- Tax Map: 102 Lot: 042 Owners: Tyler Driscoll and Alice Field- 40 Kelsea Ave**

A Variance is requested from Zoning Ordinance, Article 5:11:3, to allow the construction of an addition and alternations of a non-conforming structure that results in an increase of the structure’s total square footage.

The Chair handed it over to the applicant David Driscoll. Driscoll displayed his plans and walked through the five variance criteria in the application:

1. ***Granting the variance would not be contrary to the public interest because:*** To be contrary would mean that the variance would conflict with the overall mission of the ordinance, the resulting project would stand out and in some way harm the neighborhood or perhaps negatively affect public safety in some way. None of those affects will result from granting the variance. In this case there would be no further encroachment into any setback. Travelers along the road or sidewalk could not be affected which is the primary purpose of the road setback. The flavor of the neighborhood itself due to the size, form and detailing of the structure will not be negatively impacted but in actuality enhanced by saving and adding to the historic structure in a thoughtful manner in harmony with early Center Harbor development.
2. ***If the variance were granted, the spirit of the ordinance would be observed because:*** There are two structures, historic in nature, already in place which are non-conforming on the property. If granted, project as designed is reasonably sized and doesn't over develop. Spirit of the ordinance is met by, (a) not encroaching further into any setback, (b) not altering or conflicting with the neighborhoods built environment, (c) thoughtful design is in consideration with historic structure, and enlarging the living space reasonably to satisfy the overall need for small or moderately sized affordable structures. All this will occur tastefully within the limits of existing encroachment and utilizing space already having been granted a variance.
3. ***Granting the Variance would do substantial justice because:*** The general public stands to gain nothing if variance is denied and in fact would benefit if the variance is granted as indicated above. If denied, applicant would lose the opportunity to enlarge the living space minimally (see plans) without negative impact to the public. If variance is denied, we see no benefit to the town but do see the applicants reasonable use of property being restricted. After all as a practical matter, in the subject area on the lot, such area has been granted a variance and is already in use. The variance should be granted and not be denied where no public benefit would result therefrom and it would unduly restrict the applicants reasonable use of the property.
4. ***If the variance were granted, the values of the surrounding properties would not be diminished because:*** Properties adjacent to and around structures that have been improved typically increase in value. This site is in a prominent visible location and subject structure, although small in stature, is familiar to locals given its historic massing and detail. The structure as designed will enhance the property and blend well within the community at large stabilizing or increasing values.
5. Unnecessary Hardship
  - A. ***Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:***

***No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:*** The general public purposes of the provision is to ensure public safety, limit and ensure development is reasonably located on properties without any deleterious affect. In this case the expansion occurs on the property in a location already having been granted a variance, stays within the limit of existing encroachments and is no closer to the road. In fact there is no change to section of the house which is closest to the road. In addition, the other houses on the street are similarly located in proximity to the road. The space between the two structures is the only space to expand the house within encroachment limits (see drawings).

and: ***The proposed use is a reasonable one because:*** There is no change in use. Residential use is permitted which shall remain.

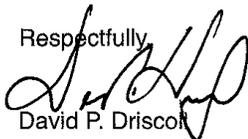
***B. Explain how, if the criteria in subparagraph (A) are not established, and unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.***

The special conditions of this property are its size in conjunction with the placement of the house and accessory structure and its historic significance in town. Property is simply too small to comply, the space for expansion was granted a variance and the neighborhood houses are similarly placed. The character of the neighborhood will be enhanced not negatively impacted and the overall structure reasonably sized. Literal enforcement of the ordinance would not allow for expansion of the historic structure, would countermand the variance granted, would leave in place a negative space between two structures and unreasonably limit structures size in terms of occupancy thereby undue hardship is created. Literal enforcement of the ordinance in terms of reasonable use of the property and properly massing the house with the existing historic structure is less within the spirit of the ordinance than that which would result from granting the variance.

For the above stated reasons in the applicants opinion, Center Harbor ZBA should grant variance from Section 5 Article 5:11:3.

Thank You in advance for an open minded review.

Respectfully,



David P. Driscoll

Discussion on how the applicant is doing a good job preserving the historical structure of this house for the town. The house is not on the national registry but this area of the town is. It would have been a lot easier to tear down the house. This house is one of several structures in this area that is part of the town's historical inventory.

Chair Volz- Is there any discussion before we vote on the motion. We will briefly go over the 5 Variance criteria. The application summed up these criteria very well for the application.

1. Granting the variance must not be contrary to the public interest. **The board agrees.**
2. The proposed use is not contrary to the spirit of the ordinance. **The board agrees**
3. Granting the variance would do substantial justice. **The board agrees.**
4. The proposed use would not diminish surrounding property values. **The board feels it would not diminish the surrounding properties If anything it would be more positive.**
5. Denial of the variance would result in unnecessary hardship to the owner. Hardship, as the term applies to zoning, results if a restriction, when applied to a particular property, becomes arbitrary, confiscatory, or unduly oppressive because of conditions of the property that distinguish it from other properties under similar zoning restrictions. RSA 674:33, I(b)(5) provides the criteria for establishing unnecessary hardship:

(A) For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:

- (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and
- (ii) The proposed use is a reasonable one.

(B) If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only 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

Chair- The unnecessary hardship was pointed out well in the write up of the application and the (A) section is sufficient there.

Chair asked if anyone had any questions.

Greg Hime asked for clarification of this section about how this property distinguishes itself from the surrounding properties in the area.

#### **Motion to Grant the requested variance as requested from 5:11:3.**

Motion by George Lamprey. Seconded by Karen Ponton. Motion passed by a majority vote 4 vs. 1. Chair Volz, George Lamprey, Karen Ponton and Stephany Marchut Lavallee were in favor of granting the variance. Greg Hime was opposed.

**2023-11-21-C Special Exception- Tax Map: 102 Lot: 042 Owners: Tyler Driscoll and Alice Field- 40 Kelsea Ave. (Continued from 12/11/2023)**

A Special Exception is requested from Zoning Ordinance, Article 5:11:2, to fill in an area currently used as exterior living space between the house and garage with no increased encroachment.

Application is withdrawn by applicant after discussion between Board, applicant and CEO, Bill Doucette as it is not needed (structure is not being moved to new location).

**MINUTES:**

**Motion to Approve the December 11, 2023 meeting minutes.**

Motion by Karen Ponton. Motion to approve the minutes as presented. Seconded by Gregory Hime. All were in favor.

**OTHER BUSINESS:**

- Applications for Special Exception/Variance for Town Shooting Range is believed to be withdrawn. Public Hearing scheduled for Wednesday, January 10<sup>th</sup>, 2024 at 6:00 PM. Chair requested that materials from ZBA meeting be included in Public Hearing.
- Zoning members terms expiring in April 2024:  
Chair asked those members to consider continuing for another term.
- Zoning Board of Adjustment By Laws proposed change - adding waiver clause:  
**Motion to approve the changes to the Zoning By Laws as proposed.**  
Motion by Karen Ponton. Seconded by Tim Nefores.  
All in favor.
- Chair informed the board that we will use the Barn on College Road for the March (3/11/2024) meeting if needed.
- Chair mentions that Public Hearing of Planning Board for Zoning Ordinance Changes is to be held January 16<sup>th</sup> at 6:00 PM, with proposed changes available on the Planning Board website. Changes do NOT include definition of Total Square Footage used in 5:11:3.

Alison Toates brought up making a definition for square footage that the Zoning Board could use and send to the Planning Board for review for next year. Discussion back and forth regarding wording on square footage. The Board did not make a final decision on square footage.

**Motion to adjourn.**

Adjourned at 8:45. Next Public meeting scheduled for February 12<sup>th</sup>, 2024 at 7 p.m.

Submitted by Helen Altavesta.