

1 **TOWN OF SUNAPEE**

2 **PLANNING BOARD**

3 **SEPTEMBER 13, 2018**

4 **PRESENT:** Peter White, Chair; Richard Osborne; Joseph Butler; Donna Davis Larrow; Randy Clark;  
5 Michael Jewczyn, Alternate; Jeffrey Claus, Alternate, Suzanne Gottling, Ex-Officio Member; Michael  
6 Marquise, Planner

7 **ABSENT:** Joseph Furlong

8 **See attached sign in sheet**

9 Chairman White called the meeting to order at 7:00 pm.

10 Chairman White appointed Mr. Jewczyn to sit in for Mr. Furlong for the meeting.

11 **CONTINUED: PARCEL ID: 0104-0023-0000: SITE PLAN REVIEW: ARTISAN GALLERY (ART GALLERY,**  
12 **CUSTOM FURNITURE GALLERY, ARTISAN MADE PRODUCTS & ANTIQUES); 37 PROSPECT HILL RD, NEW**  
13 **DIRECTION IRA, FBO ROGER CRICHTON SMITH**

14 Mr. Marquise said that he spoke with Rick Mastin and Cory Flint and at this time they are moving on  
15 from this project; there has been no additional information presented to the Zoning Board and it was  
16 denied in June. This application has not been accepted as complete and the Board can consider it  
17 withdrawn.

18 **PARCEL ID: 0231-0042-0000 & PARCEL ID: 0231-0043-0000: LOT LINE ADJUSTMENT TO RECONFIGURE**  
19 **LOT BOUNDARIES. NO CHANGES IN ACREAGE. 67 PINE RIDGE RD, CHERYL CAVANAUGH.**

20 Pierre Bedard continued presenting the merits of the case on behalf of the applicant. Mr. Bedard gave  
21 the Board updated copies of the plan which included the corrected Zoning District, corrected the  
22 setback distances; and the corrected area previously marked "poorly drained soils" and now changed to  
23 me marked "drainage way". Mr. Marquise said that they are still waiting for the State Subsurface  
24 Permit.

25 Mr. Bedard said that there was also a question about the driveway and the builder and the owner met  
26 with the Road Agent who approved the driveway going straight into the house but not at the sharp  
27 curve of the road. Chairman White said that there were some concerns about the location of the  
28 driveway and the builder said that the Road Agent approved the location and the owners filed a  
29 driveway application but it has not been approved.

30 Mr. Butler asked if there is a setback for the leach field and it was explained that the State has a setback  
31 of 10 ft and they will meet that setback.

32 Chairman White said that the farther away from the curb the better it is for the sight line. Mr. Bedard  
33 said that is why they had another option shown on the plan but the Highway Director said that it was  
34 acceptable to go straight in towards the house. Chairman White asked and Mr. Bedard said that he does  
35 not know if there was a discussion with any of the abutters regarding the location of the driveway.

36 Jay Harvey, 94 Pine Ridge Rd, said that his property is directly across the street from the subject  
37 property and the driveway will be diagonally across from theirs. They were hoping not to have the  
38 driveway directly across from them and he asked one of the surveyors who showed him where it was  
39 going to go if it was possible to move it 15 to 20 ft. He understands that if they moved it to the other  
40 proposed location it would cost a lot more money. The farther away from the corner and their  
41 driveway, the less likely they will have cars back into each other or the possibility of someone getting  
42 hit. Chairman White asked and Mr. Harvey confirmed that there has not been a conversation with the  
43 property owners regarding this matter. Chairman White recommended that if the application gets  
44 approved they have a conversation regarding moving the driveway as it should not be a big deal if it is  
45 done in the right direction.

46 Mr. Clark asked why the property was not developed like this with the original subdivision and what is  
47 prompting this proposal. Mr. Bedard said that he thinks that the original lot that did not have a  
48 structure on it was heavily forested and didn't get a lot of sun, which is one of the reasons the owners  
49 want to make the change.

50 Mr. Claus asked if the existing septic system has a setback and Mr. Bedard said that the State requires  
51 10 ft from the property line and 75 ft from any wells. Mr. Claus said that it does not look as though  
52 there is 10 ft per the plan and he wonders if the Board can approve something that goes against a State  
53 regulation. The Board looked at the plan and measured the distance and confirmed that there is 10 ft  
54 according to the scale.

55 Chairman White asked if there were any additional comments or questions. Mr. Bedard said that his  
56 only other comment is that when they went to set the corners some of their survey controls in the  
57 street had been vandalized.

58 Chairman White asked and there were no additional questions or concerns so he closed the public input  
59 part of the meeting.

60 Mrs. Larrow made a motion to approve the lot line adjustment for Parcel ID: 0231-0042-0000 and  
61 Parcel ID: 0231-0043-0000; conditioned upon receipt of the driveway permit and the State Subsurface  
62 permit. Vice Chair Osborne seconded the motion. The motion passed unanimously

63 **PARCEL ID: 0114-0001-0000: SUBDIVISION / LOT LINE ADJUSTMENT: SUBDIVIDE INTO TWO (2) LOTS;**  
64 **LOT 1 = 1.54 ACRES AND LOT 2 = 2.88 ACRES; SUNNY LANE; JAMES & ELIZABETH WOODLEY.**

65 Mr. Marquise said that the application was filed in advance, fees were paid, notices were posted, and  
66 abutters were notified. The application falls under Section 6.04 of the Subdivision Regulations and  
67 everything is on the plan per the checklist though this is a minor subdivision and eligible for waivers; in  
68 this case, the waivers are the utility lines and the storm water drainage.

69 Mr. Clark made a motion to accept the application as complete. Mr. Butler seconded the motion. The  
70 motion passed unanimously.

71 Clayton Platt presented the merits of the case on behalf of the applicants. Mr. Platt explained that this  
72 is a subdivision of a 4.3 acre that has frontage on Sunny Lane to the north and Cary Farm Rd (Old Route

73 11) to the east. They have received State Subdivision approval for the two sites. They also have verbal  
74 approval from the Highway Director for the driveways that are shown on the plan.

75 Mr. Platt explained that the bigger lot has a wetlands area that will be located on the southwest corner  
76 and there is a pond on the abutting property owned by Timber Rock Trust. There is plenty of room  
77 above that area to meet the Zoning and septic requirements.

78 Chairman White asked Mr. Marquise if he has any concerns. Mr. Marquise said that originally there  
79 were some concerns about the driveways, however, Mr. Hazelton emailed that he is satisfied with the  
80 distances. The other issue that came up was if the lots were suitable for development, which usually  
81 means one acre of buildability; based on the size of lot 2, even with the wetland, there is over two acres  
82 of buildable area. It also appears as though all the Zoning requirements as far as frontage and the  
83 length are met. Mr. Marquise continued that he does not have any concerns with the proposal.

84 Mr. Butler asked and Mr. Platt confirmed that both the driveways will enter from Sunny Lane. Mr. Platt  
85 continued that the Town considers that portion of Cary Farm Rd to be a Class VI road and would require  
86 some major upgrades.

87 Edwin Preston, 51 Cary Farm Rd, said that the pond to the south is on his property. He questions if the  
88 larger lot is suitable for building as there is the wet area and a lot of ledge and asked if any test pits have  
89 been dug; he is worried about contamination of his pond. Mr. Platt said that there was a test pit dug on  
90 Lot 2 towards the boundary of Lot 1. It was 55 inches deep and they did not hit ledge. There is ledge  
91 towards Cary Farm Rd, which seems to drop off. They also did another test pit, which was 60 inches  
92 deep. Chairman White asked and Mr. Platt confirmed that the test pits were suitable for the septic  
93 systems and that the 4,000 sq ft area is set back from the wetland. Mr. Preston said that he just does  
94 not want his water contaminated.

95 Mr. Preston asked about the utilities because the utility line from Cary Farm Rd is not an accessible line  
96 and he had to pay to run his lines. Mr. Woodley, the owner of the property, confirmed that the utilities  
97 lines will come from Sunny Lane.

98 Chairman White asked and there were no additional questions or comments.

99 Mrs. Larrow made a motion to approve Parcel ID: 0114-0001-0000: subdivision / lot line adjustment for  
100 Sunny Lane; James and Elizabeth Woodley. Vice Chair Osborne seconded the motion. The motion  
101 passed unanimously.

## 102 **OTHER BUSINESS**

### 103 **CONSULTATION – LIVERY INTERIOR RENOVATIONS**

104 Chairman White explained that a consultation is a non-binding discussion where ideas are talked about  
105 and considered; the can Board ask questions but there is no implied approval of anything.

106 Mike Durfor and Aaron Simpson spoke on behalf of the Sunapee Heritage Alliance regarding the Harbor  
107 House Livery.

108 Mr. Durfor said that the building is challenging due to the shape of the building as it is very long.  
109 Because of that there is a restriction on the number of people who they can have in the building. They  
110 are trying to satisfy the concern that Fire Chief Ruggles has for a second access. This proposal includes a  
111 stairway in the area that the conceptual drawings have the stairway placed and the space that it will  
112 take up is currently used as storage space. Currently, the stable area is not accessible unless they use  
113 the horse ramp, which is difficult; this would also give them another access to the stable area. They  
114 would also like to open up the wall and plexiglass the horse ramp area so people can see it. The stairs  
115 will give them the ability to have more people in the building.

116 Mr. Durfor said that the stairs will not require any construction outside of the building. The exit will  
117 come out at the bottom of the building and 30 ft to 40 ft from the bridge. It can also be used for access  
118 from River Rd.

119 Mr. Durfor said that they reversed the barn doors so that they now swing out instead of in. Also, they  
120 will be replacing the single door so that it swings out as well.

121 Chairman White asked if this is a Planning Board issue. Mr. Marquise explained that the applicants filed  
122 for a Certificate of Zoning Compliance. He discussed it with Ms. Gage and they also discussed having the  
123 applicants complete a Statement of Property Usage but the main concern was that the use will be  
124 increased significantly with the number of people who can be in the building. The Site Plan approval  
125 was originally for a Farmer's Market and they have continued to operate from that approval. As there  
126 has not been a new Site Plan, Mr. Marquise wanted to check with the Board to see if they wanted to do  
127 one because they will be able to have more people. Mr. Clark said that the Board and the applicants  
128 had a discussion this past year as to what would trigger a Site Plan Review. Mr. Marquise said that there  
129 was a discussion about the events and that additional events would not trigger a Site Plan Review.  
130 However, they were not talking about having more people in the building. Chairman White asked and  
131 Mr. Marquise said that between 100 and 125 people will now be allowed in the building. Mr. Durfor  
132 explained that it depends on if they have tables and chairs or something else set up as to the number of  
133 people they can have. They came to the Board in November to see if they could have more events in  
134 the winter, however, they did not have many because it got cold. There was further discussion  
135 regarding this matter.

136 Mr. Butler asked and Mr. Simpson said that currently there is not a set of stairs in the building. Mr.  
137 Butler asked and Mr. Durfor explained that the stairs will be on the other side of the room from the  
138 horse ramp. Mr. Simpson said that there is a set of stairs that go upstairs.

139 Chairman White asked how concerned the Board is regarding capacity. Vice Chair Osborne said that  
140 even though the capacity is increasing, the accessibility to parking is also increasing because of the  
141 access to River Rd.

142 Mr. Durfor said that they will not be increasing the events for the year and there would be four or five  
143 events that would have more people than they currently do. There was further discussion regarding this  
144 matter.

145 Mr. Clark asked if there is any danger in doing a Site Plan Review in order to get the numbers increased.  
146 Mr. Durfor said that for a Site Plan Review the Board wants to know the use and they do not know what

147 the use is going to be as they are still feeling their way along. There was further explanation regarding  
148 some of the events that they have held in the building in the past year and other events that they might  
149 have that would have more people. Mr. Butler asked and Mr. Simpson said that the events are typically  
150 supervised by people on the Board for the Sunapee Heritage Alliance.

151 Chairman White asked and Mr. Simpson explained that they do not want to do a Site Plan Review yet  
152 because they will need to return to the Board again as it will change. Mr. Simpson said that they need  
153 to raise money because the building needs more work to make it functional such as a foundation. There  
154 was further discussion regarding the needs of the building and about the long term plans for the  
155 building. There was also a discussion about the funds that have been pledged towards the building.

156 There was a discussion about the soundness of the structure and the safety of allowing more people in  
157 the building. Mr. Durfor explained that they have had engineers look at the building for the charette  
158 and it is structurally sound and will survive jacking up the building for a new foundation. Mr. Butler  
159 asked and Mr. Durfor said that the building is safe, though the charette did not discuss how many  
160 people could be in the building. Additionally, if they did fire sprinklers they could increase the number  
161 of people in the building without the need for the second egress. Mr. Butler said that he understands  
162 that they are only having a consultation, however, his concern is if the Planning Board keeps allowing  
163 more pieces and then something could happen. Chairman White said that he's trying to keep it broad  
164 the Board has to determine if this is creeping. The Board has to decide if increasing the number of  
165 people in the building warrants a Site Plan Review.

166 Mr. Claus said that it sounds like the current use has been as an assembly hall or a sort of performance  
167 house / performing arts theater and that is the direction that it seems like they want to go and asked if  
168 there is a back up plan if this use doesn't work. Mr. Durfor gave an explanation regarding the  
169 conceptals that have been done for the building, including an acoustic café in the former thrift shop  
170 area, which he feels would trigger a change of use.

171 Mr. Durfor said that they are also concerned about safety and there is no question in his mind that the  
172 building is safe for the increased number of people. They did buy extra fire extinguishers and have  
173 made some minor repairs. Vice Chair Osborne said that they used to park vehicles and horses in the  
174 building, the floor is solid. Mr. Durfor said that the historian from the State of NH was impressed with  
175 how the building was constructed; except for the one corner of the building, it is in really good shape.

176 There was a brief discussion regarding the horse ramp in the building.

177 Chairman White said that there isn't anything that they are doing in the building that is not allowed and  
178 most of the uses would be allowed. He is confused as to how a Site Plan Review would be limiting them  
179 in terms of where they are going with the use of the building. Mr. Durfor said that one of the concerns  
180 would be parking; however, the biggest concern is that if the use doesn't work then they have to return  
181 to the Board for a new Site Plan. Chairman White said that if it is an allowed use they do not need to  
182 keep returning to the Board unless they go to a completely different use. Mr. Simpson said that if they  
183 have to do a lot of infrastructure changes to meet the Site Plan requirements then they might not be  
184 able to do them; for example, they only have one bathroom. The Board explained that they do not look  
185 at the number of bathrooms; building codes are not under the purview of the Planning Board. They look

186 at the number of people, parking, landscaping, and lighting. They do not look at the suitability of the  
187 structure, the egress requirements, etc.

188 Mr. Durfor asked if they do a Site Plan Review that includes long term plans, such as a café, if the area  
189 that they propose to be used as a café can be used as something else in the meantime. The Board  
190 confirmed that it can be continued to be used as it has been used. Chairman White said that there will  
191 only ever be so many people allowed in the building; he is more concerned with the number of people  
192 in terms of traffic control, pedestrian traffic, etc.

193 Mr. Butler said that a phased master plan for the property would be helpful including adding the  
194 stairways, doing the opening of the ramp, etc. There was further discussion regarding having a  
195 conceptual of the plans in phases and about the different plans that have been discussed for the  
196 building as well as about permit for assemblies.

197 Mrs. Larrow asked and Mr. Marquise confirmed that the current Site Plan is for a Farmer's Market. Mr.  
198 Marquise said that there has always been a limit of 75 people because of the circumstances of the  
199 building. Mrs. Larrow said they are not talking about the use, they are talking about the number of  
200 people. Mr. Marquise said that it is an increase of use rather than a change of use. There was a  
201 discussion as to what use a Farmer's Market falls into as well as about the Sunapee Heritage Alliance's  
202 proposed uses of the building and how it can support itself and be successful.

203 Mr. Jewczyn asked and Mr. Durfor said that they want to put a maximum of 125 people in the current  
204 space. Mr. Simpson said that it would not be the maximum number of people if all four floors are able  
205 to be used. Mr. Clark asked if the Board has ever dealt with this type of change. Mr. Marquise said that  
206 this is an unusual request as they are not expanding the use of the building but are expanding the ability  
207 of the number of people to use the building, which is a more intense use. Mr. Durfor said that they have  
208 an arrangement with LSPA to use their parking when they have an event and the LSPA can use their  
209 parking lot when they have events. Mr. Claus said that he has worked with big companies in cities and  
210 parking contracts have been required in order to get projects approved. Chairman White said those  
211 types of things are usually explored during Site Plan Review. Mr. Clark said that during a Site Plan  
212 Review abutters get to voice their opinions regarding proposed projects. Mr. Marquise said that the  
213 Department Heads also get a chance to review the projects.

214 There was a discussion about the number of people that went through the building for the  
215 Sestercentennial Event.

216 Mr. Jewczyn asked if there is a maximum number of cars that are allowed to be in the Harbor area. Mr.  
217 Marquise said that there have been a lot of parking studies done in the town. Mr. Butler said that it  
218 would be nice to get the other agencies in Town involved in case something were to happen.

219 Mr. Marquise said that he thinks that there needs to be a vote from the Board as to whether or not they  
220 want to have a Site Plan Review, even though this is just a consultation.

221 Mr. Claus said that he has heard nothing but positive things about this facility and what it brings to the  
222 Town. He thinks most people want them to succeed and understand that they are in the learning phase  
223 and money is limited but going through Site Plan approval would bring it to a certain level. His concern  
224 would be to not hinder them but allow some grace to allow them to continue operating. He would hate

225 to see them go to Site Plan and not be able to do what they want to do. Mr. Clark said that he feels as  
226 though they have already been to the Board and did not have to do a Site Plan though the conversation  
227 was similar. He does not want to hinder them but he does not know if they should get a pass on the  
228 rules. Mr. Durfor said that the conversation was triggered because it was thought that they were going  
229 over the number of events that they could have and the Board allowed them to use it as much as they  
230 could. If the Site Plan Review process gives clarity while allowing them to use the building as they have  
231 been used, it they will need to discuss this with their Board; however, it might make them become more  
232 unified in their plan. He does think that there is a reasonable amount of parking in the Harbor as there  
233 are around 310 spaces. Mr. Durfor continued that he does not think that the Alliance will not refuse to  
234 come back to Site Plan Review if that is what the Board would like them to do.

235 Mr. Jewczyn asked if they will need to give notice to the Town at large as this will effect the Harbor. Mr.  
236 Marquise said that notice goes to abutters and if the Town of Sunapee is an abutter they will get  
237 notified. The Department Heads will also be appraised of this and will need to sign off. It will also be in  
238 the newspaper and will be posted.

239 Mrs. Gottling said that there has been a situation of another business exceeding the number of cars or  
240 people in the Site Plan and asked if they have been required to come back before the Board but declined  
241 to say which business. Chairman White said that he does not know about that type of situation but if  
242 someone hasn't been complying with their Site Plan they would have to come back before the Board as  
243 it is an enforcement issue.

244 Mr. Durfor asked if the Board wants them to come for a Site Plan Review to show the stairway and  
245 having 125 in the building. Chairman White said that he thinks that the Board would like to know their  
246 overall plan but there should be some specifics as to the different uses; they need a Site Plan to be a  
247 little more updated than what they currently have. Mr. Durfor agreed that they would come back  
248 before the Board for a Site Plan Review. Mr. Simpson said that he only hopes that they do not get hung  
249 up on parking issues.

250 Mr. Durfor asked and Mr. Marquise said that they should plan on having the Site Plan Review at the  
251 November meeting. Mr. Simpson said that he has seen things on the Board's agenda numerous months.  
252 Chairman White explained that is usually because the applicant did not come to the meeting or because  
253 the drawings and information were not correct.

#### 254 **OTHER BUSINESS – 2019 ZONING AMENDMENT DISCUSSION WITH ZONING BOARD**

255 Members of the Zoning Board were present to discuss with the Planning Board proposed Zoning  
256 Amendments. Mr. Schneider recommended having a joint meeting next year instead of having a regular  
257 Planning Board or Zoning Board meeting and then discussing Zoning Amendments after cases have been  
258 heard.

259 Mr. Schneider explained that the proposed changes are in order of the Ordinance, not in order of  
260 importance.

261 1. 3.40(k) – Define “living space”

262 Mr. Schneider explained that the ZBA had a case this year where someone wanted to enclose a screened  
263 porch area into a heated area and the Board questioned if it is living space; therefore, they would like to  
264 define living space. Mr. Marquise said that it might be appropriate under 3.50 (i)(2) as well as it talks  
265 about "living area". Chairman White asked and Mr. Schneider explained that the Board determined it  
266 was undefined and the applicant should get the benefit of the doubt. There was further discussion  
267 about this matter and about the dictionary's definition of a living space.

268 Mr. Marquise said that he thinks that going back to when the Ordinance was written that they did not  
269 want things like decks to be considered living space.

#### 270 2. 3.40(n) - Define "land disturbance" and "land clearing"

271 Mr. Schneider said that they had a case where someone said that the Zoning Administrator should have  
272 required an erosion control plan for a logging operation because of this section. Additionally, the  
273 Ordinance is not grammatically correct and should say "...exceeding 1000 square feet of land  
274 disturbance that occurs on slopes..." Mr. Schneider said that both the terms "land disturbance" and  
275 "land clearing" are used and the ZBA would like to define both those terms so that they are clear as to  
276 what they are and what the differences are. Mr. Jewczyn said that it has to do with intent as clearing  
277 the land is for a specific intent while disturbing it could be incidental to something else. Mr. Marquise  
278 said that land disturbance is a much more intense activity than land clearing. Land clearing is just  
279 cutting the trees, land disturbance is when the trees are cut and stumped, the land is grubbed and / or  
280 graded, etc. The definitions could probably be handled through the State's definitions. Mr. Schneider  
281 asked and Mr. Marquise said that he thinks logging would be land clearing as long as they do not stump  
282 or the land is disturbed. Mr. Clark asked and Mr. Marquise confirmed that putting a road in would be a  
283 land disturbance. Mr. Larrow asked and Mr. Marquise said that he assumes that the State has a  
284 definition for each term and he'd be happy to pull them out and get them into the Ordinance. There  
285 was further discussion regarding this matter.

#### 286 3. 3.50(f) - Define "primary structure"

287 Mr. Schneider said that the ZBA would like a definition of a primary structure. Mr. Marquise said that he  
288 thinks that this is defined in 3.50 (i)(2) and could also be added to this Section because the intent was  
289 that they were houses, garages, or commercial buildings.

#### 290 4. 3.50 (i)(5) "any roof changes are within the height requirements of this Ordinance" – The applicable 291 height requirements should be specifically referenced.

292 Mr. Schneider said that there are numerous references to height in the Ordinance and the ZBA would  
293 like to reference the specific requirement that relates to this Section. Mr. Marquise said that this should  
294 be decided on a case by case basis by the ZBA. Mr. Simpson asked what the intent of this Section of the  
295 Ordinance was for when it was drafted. Mr. Marquise said that instead of just saying that the height can  
296 not be any higher than 40 ft, there is also a height to a windowsill, etc. The expectation is that all of the  
297 height requirements are met. They could reference every Section that is for height in the Ordinance.  
298 Mr. Schneider said that it would be helpful. Chairman White said that each reference to height applies  
299 to different circumstances. Mr. Marquise said that the problem with adding references to height to this  
300 Section is that any time anything is added in the Ordinance this Section will have to be changed as well.



301 The ZBA should be looking at all of the height requirements every time. There was further discussion  
302 regarding this matter as well as about a case that was heard this past year that had to do with height  
303 changes. There was also further discussion regarding referencing the height requirements in the  
304 Ordinance to make it easier for applicants or to develop a “help sheet” for the applicants for the Zoning  
305 Ordinances.

306 Section 6.13, newly created in 2018, provides that “A Non-Conforming structure may be expanded  
307 without a Variance or Special Exception provided that the expansion is in an area that fully complies  
308 with the dimensional control requirements of this Ordinance.” This is a permission granted by right;  
309 action by the ZBA is not needed if the requirement is met.

310 Mr. Schneider said that he thinks that the goal of this Section was to have the Zoning Administrator only  
311 have to ask two questions. One is if non-conforming being increased and if the answer is no then no  
312 action is needed. If the answer is yes, then the second question is if the proposal meets a requirement  
313 of a Special Exception under Article 3.50 and if it does not then a Variance is required. Mr. Marquise  
314 confirmed that the way this Article is written allows the Zoning Administrator to not be hamstrung that  
315 the structure is non-conforming.

316 5. Section 3.50(f) under Article 3.50 Special Exceptions, states that “If a pre-existing primary structure is  
317 non-conforming due to inadequate front setback, the ZBA may allow additions to the structure  
318 providing such changes do not further decrease the front setback.” Additions that expand only into  
319 conforming areas are permitted by right under Section 6.13, and a special exception is not necessary. It  
320 is not clear whether it is the intent of this section is to allow the ZBA to grant a special exception if the  
321 area of non-conformity is increased, as long as the minimum front setback is not further decreased, and  
322 no other non-conformity is increased. If so, this intent should be specifically stated in the ordinance; if  
323 not, it is permitted by right under Section 6.13, and Section 3.50(f) would be moot and therefore should  
324 be eliminated.

325 Mr. Schneider said that the ZBA does not know what this Section means because additions to the  
326 structures in conforming areas are now allowed per Section 6.13. Mr. Marquise said that the intent was  
327 not to look at any rear additions. If the structure is in the front setback they can expand laterally as long  
328 as they do not get any closer to the road or increase any other non-conformity. Mr. Schneider  
329 suggested rewording the Section so that it better reflects its intention. There was further discussion  
330 about this matter.

331 Mr. Platt asked what happens if there is a Department Head who does not want a Special Exception to  
332 be granted for a property. Mr. Marquise said that the word “may” is part of this Section meaning that  
333 “the ZBA may allow...” Mr. Platt said that Special Exceptions are permitted by right. Mr. Schneider said  
334 that the only role of the ZBA for a Special Exception is to see whether the proposal meets the  
335 requirements. Mr. Marquise said that if the Highway Director says that the building will be in the  
336 Town’s right of way and he is against a proposed expansion, legally, that should be enough of a reason  
337 to deny it. Mr. Simpson said that he disagrees because, by law, if all of the requirements of a Special  
338 Exception are met then the Board must grant it. Mr. Marquise said that they can’t approve building in a  
339 right of way.

340 Mr. Marquise said that the front setback is for space from a road. The intent of this Section is because if  
341 there is already a façade in the setback, there was no reason to not be able to continue the façade  
342 laterally. Mr. Schneider asked why the word “laterally” is not used in the Section if that is the intent.

343 Mr. Platt said that he would also add wording that the expansion is allowed by a Special Exception if it is  
344 10 ft from a right of way. Mr. Claus said that his fear is that there are no limitations on the allowance  
345 and suggested doing something so that a structure cannot be greatly increased within the setback.  
346 There was further discussion regarding the matter and adding restrictions and additional wording. Mr.  
347 Marquise said that he will put together some ideas for this Section.

348 6. Section 3.50(i) under Article 3.50 Special Exceptions, states that “The ZBA may allow a pre-existing  
349 non-conforming structure to be enlarged, replaced and/or the roofline altered provided that: (1) such  
350 enlargement will not increase the horizontal dimensions of the structure unless such horizontal increase  
351 would normally be permitted by the ordinance” . Because such horizontal expansion into a conforming  
352 area is now permitted by right under Section 6.13, 3.50(i)(1) as a condition of special exception is  
353 redundant and confusing, as a special exception is not required. Section 3.50(i) should be revised to be  
354 applicable only for vertical expansion of nonconforming structures.

355 Mr. Schneider said that it is the ZBA’s opinion that Section 3.50 (i)(1) should be struck from the  
356 Ordinance as it is allowed under Section 6.13 and is no longer applicable. Mr. Marquise said that this  
357 change could be construed so that someone might think that they can make a structure a little bigger  
358 and higher. He recommended adding the wording “this applies to vertical expansions only” to the  
359 Section. There was further discussion regarding this matter and how to ensure that the wording is  
360 correct and it was determined to have the Section say: “The ZBA may allow a pre-existing non-  
361 conforming structure to be expanded and / or replaced vertically provided that”.

362 Mr. Claus asked and Mr. Marquise explained that each Section of Article 3.50 exists on their own.

363 7. Section 6.12 – Insert the words “or smaller” in the first sentence, so that it reads “A Pre-existing, non-  
364 conforming structure existing at the time of the passage of this ordinance may be replaced by the same  
365 or smaller envelope ...”

366 Mr. Schneider said that someone brought to the ZBA’s attention that it would not make sense to require  
367 any action of the ZBA if they were to replace a structure in a smaller envelope. Mr. Marquise said that  
368 this would further define this Section.

369 8. Capitalize, Italicize, or underline, all terms in the body of the Ordinance that are defined in Article XI.

370 Mr. Schneider said that the ZBA would like to have all the terms of the body of the Ordinance that are  
371 defined to be capitalized, italicized, or underlined. Mr. Simpson asked and Mr. Marquise said that he  
372 will check with the Town’s attorney to see if the Ordinance has to be amended to do this; it may be able  
373 to be done administratively.

374 Article VIII, Section 8.21

375 Mr. Marquise said that there will be a proposed change under Section 8.21 because the Zoning  
376 Administrator would like clarification as to what requires Certificate of Zoning Compliances. Mr.

377 Schneider said that the ZBA considers that this is under the purview of the Board of Selectmen, not the  
378 ZBA.

379 Mr. Marquise explained that the proposed Zoning Amendments will be discussed at the next Planning  
380 Board meeting. There will be a public hearing held in November or December and then a second public  
381 hearing held if there are changes after the first. The Zoning Amendments then go on to the ballot for  
382 the Town to vote.

383 Mr. Simpson said that it would be great for someone from the Planning Board to explain the Zoning  
384 Amendments at the Deliberative Session. Chairman White asked if the Mr. Simpson, as Moderator,  
385 would allow for discussion on the Zoning Amendments. Mr. Simpson said that if someone is there to  
386 speak on them he will allow discussion and he thinks that it would be helpful for the voters. There was  
387 further discussion regarding this matter.

388 Mr. Claus asked what "estimated value of construction" means for a Certificate of Zoning Compliance  
389 (CZC) and if he does an addition and it is \$500,000 but the tax value is only \$100,000, what happens to  
390 the value of his home. Chairman White explained that the assessor looks at the addition and then  
391 assess the value; it is not based on the cost of the construction per the CZC. Mr. Marquise said that  
392 there is a threshold for when a permit is necessary, which is why that is part of the application. Mr.  
393 Marquise said that he thinks that CZCs for interior renovations that do not involve new kitchens,  
394 bathrooms, or bedrooms, will no longer be required.

#### 395 **MISCELLANEOUS**

396 Mr. Marquise said that for the Route 11 project there is some funding that is potentially available that  
397 the Town submitted an application for last week. He thinks that it is a strong application and the  
398 questions that were asked are in line with what they would like to accomplish. There were 45  
399 applications but possibly up to 14 or 15 will be selected. Mr. Clark said that they may have lost some  
400 points by not having the charettes. Mr. Marquise said that they can submit again next year if necessary.  
401 Mr. Marquise said that the elementary school is talking about a possible addition and access road that  
402 would come out on to Route 11 and this will be before the Board at the next meeting. This could also tie  
403 in to the Route 11 as well as what is being proposed at Veterans Field by the Recreation Department and  
404 these projects could strengthen the Route 11 project.

#### 405 **MINUTES**

406 Changes to the Planning Board minutes from July 12, 2018: There were no changes.

407 Mrs. Larrow made a motion to accept the minutes as printed. Mrs. Gottling seconded the motion. The  
408 motion passed with seven in favor and one abstention.

409 Changes to the Planning Board minutes from August 9, 2018: Change 127 to read "...height allowance.  
410 They acknowledged that they are below the height allowance." Change Line 196 to read "...were no  
411 additional questions or comments..." Change Line 303 to read "Ms. Harvey said that she thinks it would  
412 be..." Change Lines 390 to 391 to read "...there will not be a place to store..."

413 Mr. Clark made a motion to accept the minutes for August as corrected. Mrs. Gottling seconded the  
414 motion. The motion passed unanimously.

415 **MISCELLANEOUS**

416 There was a discussion regarding if the Town has Permit of Assemblies and that Fire Chief Ruggles  
417 determines the capacity with the fire codes.

418 Mr. Clark made a motion to adjourn the meeting at 9:36 pm. Mrs. Gottling seconded the motion. The  
419 motion passed unanimously.

420 Respectfully submitted,

421 Melissa Pollari

422 Planning Board

423 \_\_\_\_\_

424 Peter White, Chairman

425 \_\_\_\_\_

426 Donna Davis Larrow

427 \_\_\_\_\_

428 Joseph Furlong

429 \_\_\_\_\_

430 Michael Jewczyn, Alternate

431 \_\_\_\_\_

432 Suzanne Gottling, ex-officio member

433

\_\_\_\_\_

Richard Osborne, Vice Chair

\_\_\_\_\_

Joseph Butler

\_\_\_\_\_

Randy Clark

\_\_\_\_\_

Jeffrey Claus, Alternate