

1 **TOWN OF SUNAPEE**

2 **ZONING BOARD**

3 **APRIL 4, 2019**

4 **PRESENT:** Daniel Schneider, Chair; Aaron Simpson, Vice Chair; James Lyons, Jr.; Clayton Platt; George
5 Neuwirt; Nicole Gage, Zoning Administrator

6 **ABSENT:** William Larrow, Alternate; Jeffrey Claus, Alternate

7 **ALSO PRESENT:** See Sign-in Sheet

8 Chairman Schneider called the meeting to order at 7:00 pm.

9 **ELECTION OF OFFICERS**

10 Mr. Simpson made a motion to nominate the current Chair as Chairman. Mr. Lyons seconded the
11 motion. Mr. Neuwirt asked and Ms. Gage explained that she got a legal opinion from NHMA regarding
12 voting by secret ballot and was told that nothing can be done by secret ballot. The motion passed with
13 three in favor and two abstentions.

14 Mr. Simpson made a motion to approve Jim Lyons as Vice Chair. Mr. Neuwirt made a motion to appoint
15 Aaron Simpson as Vice Chair. Mr. Lyons declined the nomination. Mr. Lyons seconded Mr. Neuwirt's
16 motion. The motion passed with four in favor and one abstention.

17 **APPOINT ALTERNATE – WILLIAM LARROW**

18 Vice Chair Simpson made a motion to appoint Bill Larrow as an Alternate. Mr. Lyons seconded the
19 motion. The motion passed unanimously.

20 **CONTINUANCE: CASE #ZBA19-02: PARCEL ID: 0106-0005-0000: SEEKING A VARIANCE PER ARTICLE IV,
21 SECTION 4.10 TO PERMIT DOG SITTING BUSINESS. 1002 MAIN ST, GEORGES MILLS; GEORGE & SUSAN
22 NEUWIRT.**

23 Mr. Neuwirt recused himself from the case.

24 Chairman Schneider said that he was not at the last meeting, however, he has read the minutes and
25 watched the meeting and considers himself up to speed. There are only four members present and Mr.
26 and Mrs. Neuwirt can choose to continue the case or have it heard but three positive votes are required
27 for an application to be approved. Mr. Neuwirt said that Ms. Gage has a letter on file asking the Board
28 to hear the case on April 18th when there is a full Board. Mr. Lyons said that he will not be able to
29 attend the April 18th meeting. Chairman White said that they are expecting Mr. Larrow and Mr. Claus to
30 be at the meeting.

31 Mr. Platt made a motion to release the email that the Board received from the Town's attorney because
32 he does not see a reason it should be confidential for this particular case. Mr. Neuwirt asked and Ms.

33 Gage said that he does not have a copy of the email as it is relevant to his case. Vice Chair Simpson
34 seconded the motion. Mr. Platt said that he does not see anything in the email that pertains directly to
35 the case as opposed to general Zoning Board policy. He also thinks that that there seems to be a policy
36 in the Town's administration to automatically make things that come from the Town's attorney
37 confidential despite the circumstances. Chairman Schneider said that he does not see a reason that the
38 applicant does not get a copy of the correspondence. Mr. Platt said that it is also his understanding that
39 if the email remains confidential the Board will need to go into non-public session to discuss it, which
40 would be extraordinarily burdensome. Vice Chair Simpson agreed that he does not see any problems
41 with making the email public. Mr. Platt amended the motion to include that Ms. Gage will give a copy of
42 the email to the applicant. Mr. Lyons said that he would like to make it clear that this motion is for this
43 document only and if there are further communications for this case or other cases then those are
44 independent. The Board agreed. The motion passed unanimously.

45 Vice Chair Simpson made a motion to continue the case to April 18th. Mr. Platt seconded the motion.
46 Mr. Lyons asked Susan Kent if she would be able to attend the hearing on April 18th. Ms. Kent said that
47 it is not a problem to reschedule the hearing. The motion passed unanimously.

48 Chairman Schneider said that he will ask Vice Chair Simpson to act as Chair for the Neuwirt's case.

49 **CASE #19-03: PARCEL ID: 0115-0009-0000: SEEKING A VARIANCE PER ARTICLE VI, SECTION 6.12 TO**
50 **PERMIT EXPANDING THE "ENVELOPE" OF A NON-CONFORMING STRUCTURE INSIDE THE 50 FT**
51 **SETBACK AND EXPANDING THE STRUCTURE INTO THE FRONT ROAD SETBACK WHEN IT WOULD BE**
52 **NON-CONFORMING AND RAISING THE RIDGE 10 INCHES. 22 BURMA RD, LYNNE ARNOLD & FRED**
53 **BEALIEU.**

54 **CASE #19-04: PARCEL ID: 0115-0009-0000: SEEKING A VARIANCE PER ARTICLE III, SECTION 3.10 TO**
55 **PERMIT TEARING DOWN AN EXISTING CAMP AND BUILDING A NEW RETIREMENT HOME. THE**
56 **PROPOSAL INCLUDES A GARAGE ATTACHED TO THE HOUSE AND ENCROACHES IN THE FRONT ROAD**
57 **SETBACK. SEEKING 25 FT OF RELIEF. 22 BURMA RD, LYNN ARNOLD & FRED BEALIEU.**

58 **CASE #19-05: PARCEL ID: 0115-0009-0000: SEEKING A VARIANCE PER ARTICLE VI, SECTION 6.13 TO**
59 **PERMIT A NEW GARAGE TO BE ATTACHED TO HOUSE WITHIN THE 50 FT SETBACK BY 6 SQ FT. 22**
60 **BURMA RD, LYNN ARNOLD & FRED BEALIEU.**

61 Mr. Platt recused himself from the case and Mr. Neuwirt recused himself from the case.

62 Mr. Neuwirt presented the case on behalf of the applicants.

63 Chairman Schneider said that he does not believe that the Board can grant a Variance on the first
64 application as it is for Article VI, Section 6.12 and he thinks that the Board can only grant dimensional
65 Variances and use Variances; dimensional Variances are covered under Article III of the Ordinance and
66 use Variances are covered under Article IV. Therefore, any dimensional Variances need to be heard
67 under Article III and he thinks that the request for the Variance should be restated.

68 Vice Chair Simpson said that he somewhat agrees with Chairman Schneider but wonders if the citation
69 in the application to the wrong Section but reference to the setback change allows the Board to consider
70 the Variance under the other Section's provisions without a notice. Ms. Gage said that she read the RSA
71 regarding the requirements for a public hearing notice and there is a reference that it is possible to refer
72 to the section of the Ordinance and that it needs to have a description; to her, this is enough to continue
73 hearing the cases without having to re-notice anything, however, it is the Board's decision. Chairman
74 Schneider said that he thinks that when a motion is made it should reference the specific section for
75 which the Variance is requested.

76 Mr. Neuwirt asked and Vice Chair Simpson explained that a Variance was requested for Section 3.10, for
77 a 25 ft relief from the front setback. He was not sure if one of the requests was to build within the
78 Shoreland District because one of the other requests was for 6 sq ft.

79 Ms. Gage said that Section 3.40(c) is the Ordinance regarding the minimum setback from water bodies
80 being 50 ft. Chairman Schneider said that the requests are not clear for Cases 19-03 or 19-05. Mr.
81 Neuwirt said that he is requesting to build within the 50 ft setback from the lake. Chairman Schneider
82 said that should be Section 3.40(c).

83 Vice Chair Simpson asked and Ms. Gage explained that RSA 676:7 references Public Hearing notices and
84 there is another RSA that refers to Public Hearing notices as well.

85 Chairman Schneider asked and Mr. Neuwirt confirmed that Ms. Gage has a letter requesting these cases
86 be continued in order to have a full Board on April 18th. Chairman Schneider said that it is unlikely they
87 will have a full Board because Mr. Lyons has said that he cannot attend the April 18th meeting and they
88 only have two alternates so they will only have four members, however, they can request to continue
89 the case to May when they will have a full Board. Mr. Neuwirt said that his request to continue the
90 hearings to the 18th was because he thought they were going to have a full Board. Ms. Gage gave the
91 Board a copy of a chart she created with the Board members' availability in April and May. Mr. Neuwirt
92 said that April 18th has five members with Mr. Platt. Vice Chair Simpson said that May 2nd is when the
93 Board will have five members to sit for these cases. There was further discussion regarding this matter.

94 Chairman Schneider said that if the cases are continued, it will give the applicant enough time to amend
95 the Variance applications to whatever Section in Article III the Variances needs to be for. Ms. Gage said
96 that the applicants have paid for three cases and the cases have been noticed in the newspaper and
97 sent to abutters. Chairman Schneider said that the fees are an administrative matter and it is Ms.
98 Gage's decision whether or not she has them pay again; if what is being requested does not change, it
99 should not affect abutters.

100 Mr. Neuwirt asked and Chairman Schneider said that the application for relief from the Shoreland
101 setback is incorrect and should be for Article III, Section 3.40(c). Vice Chair Simpson said that the
102 applicant is asking for relief from the section of the Ordinance that would mean that the applicants do
103 not need to apply for a Variance. Chairman Schneider said that Article VI gives permissions. Vice Chair
104 Simpson said that the applicant would not need to come before the Board if the structure fits into the

105 same envelope. Mr. Neuwirt asked and Chairman Schneider said that the Article for the first Variance
106 request should not be Section 6.12, it should be Section 3.40(c).

107 Vice Chair Simpson said that the proposal also goes into the front setback and is raising the ridgeline 10
108 inches. Chairman Schneider said that those would require multiple Variances as the front setback is in
109 Section 3.10. Ms. Gage said that Mr. Neuwirt has applied for a Variance for Section 3.10. Chairman
110 Schneider said that more than three Variances may be necessary.

111 Mr. Neuwirt asked about the first Variance application which is for Article VI, Section 6.12 as he does not
112 know what the Board would like the application to be for. Chairman Schneider said that the first
113 Variance should have been requested under Section 3.40(c).

114 Vice Chair Simpson asked Mr. Neuwirt if he understands that the Board believes that Article 6.12 is an
115 exemption from coming before the Board. Mr. Neuwirt said that he thinks that Section 6.12 is a
116 statement. Vice Chair Simpson said that it is a statement regarding that he would not need to come
117 before the Board if he were not changing the envelope.

118 Mr. Lyons asked and Mr. Neuwirt said that they are changing the envelope by moving the ridgeline of
119 the house up 10 inches. Vice Chair Simpson said that it looks like they are asking for three things with
120 the first Variance application including the 50 ft setback from the waterbody and the relief for the front
121 setback, which is addressed in the second Variance application. Mr. Neuwirt said that the first
122 application is about the ridge height; the second application is about the front setback; the third
123 application is about the 6 sq ft inside the 50 ft setback.

124 Ms. Gage said that the first Variance application is a request to expand the envelope. The Zoning Board,
125 however, is saying that a Variance cannot be requested from the envelope provision, Section 6.12.
126 Chairman Schneider said that the applicant must specify what setback the envelope is being expanded
127 into. Ms. Gage said that the house is being torn down and they are building a new house within the 50
128 ft setback and the Board is saying that they cannot get a Variance by just saying that they want to
129 expand the envelope. Ms. Gage asked and Chairman Schneider confirmed that because part of the
130 garage and part of the house will be within the 50 ft setback, both of those requests should be for
131 Section 3.40(c). Mr. Neuwirt said that the structure is being torn down and rebuilt exactly the same size,
132 just 10 inches taller. Vice Chair Simpson asked and Mr. Neuwirt said that both the house and the garage
133 will be within the 50 ft Shoreland District. Chairman Schneider said that Mr. Neuwirt just said that the
134 house will be 10 inches higher and he thinks that Ms. Gage should look at if the height change requires a
135 Special Exception under Section 3.50(i). Mr. Platt said that the proposal does not qualify for a Special
136 Exception because the distance from the ground to the peak of the current roof is too high. Mr. Neuwirt
137 said that from the lowest adjacent grade to the peak of the existing structure is 24 ft 4 in and 24 ft is
138 what is allowed.

139 Ms. Gage said that the definitions for expansion and envelope refer to the dimensions of a structure and
140 the existing envelope. Ms. Gage asked if they cannot get a Variance to expand the envelope if they are
141 not just asking to build a new house within the 50 ft setback and within the front setback as those are
142 the only things that are non-conforming. Mr. Platt said that the Town has never treated things like this

143 in the past, there has always been a footprint that can be worked with as a basis. Mr. Lyons said that
144 the footprint is two dimensions and the envelope is three dimensions. Mr. Platt said that the Town has
145 always used the envelope as a basis for what someone owns and what they can do within it. Chairman
146 Schneider said that the Ordinance says that you can use the envelope as long as you are not increasing
147 non-conformity. The envelope for a Shorefront property can be expanded away from the Shoreland, as
148 long the expansion is not in the 50 ft setback or the front setback. Mr. Platt said that he is pushing back
149 at the idea that this is a whole new structure and forgetting that there is an existing envelope. Chairman
150 Schneider said that the Board is not trying to deny that they can stay within the same envelope,
151 however, if there is construction outside the envelope then what Article VI says is that the structure can
152 be replaced as long as non-conformity is not increased. If non-conformity is increased then a Variance is
153 required then the Variance must be for some part of Article III. He is saying that if the Board makes a
154 motion on the Variances they need to reference the applicable part of the Ordinance that the relief is
155 being requested for. Ms. Gage asked if there is no relief needed for the structure to be replaced in the
156 same envelope but 10 inches higher. Chairman Schneider confirmed that a Variance will be needed for
157 that as well. Ms. Gage asked what Section of the Ordinance the Variance will need to be requested from
158 and Chairman Schneider said height. Ms. Gage said that there is no height restructure for what is being
159 proposed. Mr. Platt said that any expansion of a structure within the 50 ft Shoreland District needs a
160 Variance under Section 3.40(c). Mr. Neuwirt asked if they would be asking for two reliefs from the same
161 Ordinance. Vice Chair Simpson asked about the height restriction that is being discussed. Mr. Platt said
162 that you cannot expand a structure up and cannot change the roof height. Vice Chair Simpson asked
163 and Mr. Platt confirmed that the structure is pre-existing and being torn down and replaced with a new
164 structure. Vice Chair Simpson asked if a new house is being built, where in the Ordinance there is a
165 height restriction. Chairman Schneider said that you cannot build a new house within the Shoreland
166 buffer without a Variance. Vice Chair Simpson asked and Mr. Platt and Ms. Gage said that if a new
167 house was being built they would need a Variance for the 50 ft setback and the front setback. Chairman
168 Schneider said that a Variance would be requested under Section 3.40(c) for the horizontal and vertical
169 dimension.

170 Chairman Schneider read Article VI, Section 6.12 which says “a Pre-Existing, Non-Conforming Structure
171 existing at the time of the passage of this Ordinance (March 18, 1987) may be replaced in the same or
172 smaller envelope by a new structure having the same purpose and use provided that the non-
173 conformity to this Ordinance is not increased thereby. The reconstruction of any other non-conforming
174 structure requires a variance or special exception of the Zoning Board of Adjustment. The replacement
175 of a non-conforming structure with a structure that increases the non-conformity to this Ordinance,
176 either vertically or horizontally, shall only be permitted by variance or, if permitted hereby, by Special
177 Exception.” Chairman Schneider continued that he thinks that Mr. Platt is correct unless the proposal
178 qualified for a Special Exception under Section 3.50(i).

179 Chairman Schneider said that he suggests that, because there has been a request for a continuance, the
180 applications can be cleaned up before the hearing. Mr. Neuwirt said that he needs to know what
181 sections of the Ordinance he is requesting relief from. Chairman Schneider said that Section 3.40(c) for
182 the Shoreland setback and for the front setback it would be Section 3.10. Mr. Neuwirt asked if he would

183 need two applications for Section 3.40(c). Mr. Platt said that they could be argued different as there are
184 two separate issues and a Variance could be approved for one thing and not the other. Ms. Gage asked
185 and Mr. Neuwirt said that he needs one for the height change within the 50 ft setback, the one for the
186 garage for being built within the 50 ft setback, and the one for the garage being built within the front
187 setback. Chairman Schneider asked and it was confirmed that there is no other part of the house being
188 expanded within a setback.

189 There was a discussion regarding the Zoning Ordinance and the amendments that have recently been
190 made. There was a discussion regarding height, the definition of maximum structure height, and the
191 problems associated with height.

192 Mr. Neuwirt asked if he does not need a Variance because the measurement is directly from the peak of
193 the roof, straight down, because if that is the case then they are at 22 ft. Mr. Platt said that would be a
194 request for a Special Exception under Section 3.50(i) and he somewhat agrees with this but if a Variance
195 is granted then they do not need to get the Special Exception. They have been to the Zoning
196 Administrator and talked to her about the case and this is what was applied for. Ms. Gage said that she
197 was not heavily involved in these applications. She thought that Mr. Neuwirt and the applicants decided
198 that they did not qualify for a Special Exception for the height. If it fits in 3.50(i) then she will assist the
199 applicants in turning this into a Special Exception, however, a Variance for the front setback will still be
200 required.

201 Mr. Neuwirt asked if there are now two different definitions of height. Vice Chair Simpson explained
202 that one is maximum height and the other is height. Mr. Neuwirt asked and Chairman Schneider said
203 that they do not have more than one definition of height in the Ordinance, the only definition is for
204 maximum structure height which says: "the vertical distance measured from the lowest ground
205 elevation around the structure to the highest level of the roof (excluding cupolas, weathervanes, etc...)"

206 Vice Chair Simpson said that he agrees that requesting a Variance for Sections 6.12 and 6.13 is
207 inappropriate, however, he cannot tell Mr. Neuwirt what he should apply for or what argument he
208 should present. He also does not know if the Board gives Mr. Neuwirt an answer that it is the definitive
209 answer. Mr. Neuwirt asked how he is supposed to present a case with everything so ambiguous.
210 Chairman Schneider said that anything that is an expansion within the 50 ft setback should request a
211 Variance under Section 3.40(c). Vice Chair Simpson said that he also thinks that Mr. Neuwirt may want
212 to apply for a Variance under Section 3.10 for the maximum structure height being over 25 ft. Mr. Platt
213 said that it is not a rear setback, it is a Shoreland setback. Vice Chair Simpson said that there may not be
214 a maximum height in the Shoreland setback. Mr. Platt said that the maximum is 40 ft, which is the
215 normal height restriction. Mr. Neuwirt said that they do meet that restriction. Vice Chair Simpson said
216 that the Ordinance does not appear to regulate height in the Shoreland setback unless the Board is
217 overlooking something. Mr. Neuwirt said that he would like to come before the Board and present an
218 argument where everyone is on the same page. Ms. Gage said that she thinks that she has enough
219 feedback from the Board to scrutinize the Special Exception and to look at the Shoreland setback and
220 front setback to determine if anything is needed for the height, which she does not see so far. They are
221 asking to build something non-conforming and need to ask for a Variance for the section of the

222 Ordinance that the new structure will not conform to; the Special Exception could apply for the height
223 as it is a pre-existing non-conforming structure that will be undergoing vertical expansion or be replaced
224 with a higher structure. Ms. Gage continued that Mr. Neuwirt is replacing the structure with a higher
225 structure, which will also expand off the back. Vice Chair Simpson said that Mr. Neuwirt is not
226 expanding a pre-existing structure, he is replacing the structure with a new structure. Chairman
227 Schneider said that the Ordinance allows for a structure to be expanded or replaced. The requirements
228 are: the existing structure must be a house, garage, or commercial building; the existing structure must
229 be less than 24 ft in height, which he believes that height is straight up and down; the vertical expansion
230 will be no more than 10 ft higher than the pre-existing structure, any roof changes are within the height
231 requirements set forth in the Ordinance, which he believes is the normal structure height restriction of
232 40 ft; in the judgement of the ZBA, no abutter will be adversely affected by the enlargement; all state
233 and local permits are acquired to insure compliance with Article VII of the Ordinance; all state and local
234 permits are acquired to insure compliance with Article VII of the Ordinance; and such enlargement or
235 replacement, in the judgment of the ZBA, is consistent with the intent of the Ordinance. The cases are
236 not being heard at this meeting, however, Mr. Neuwirt may want to look to see if the proposal meets
237 these requirements.

238 Vice Chair Simpson asked if it is fair to say that within the Shoreland District, Section 3.20 does not apply
239 to height as there is no district overlay comment. Chairman Schneider said that any increase in vertical
240 height within a non-conforming area requires a Variance unless a Special Exception can be applied. He
241 believes that the applicable Special Exception, if this proposal qualifies for it, would be 3.50(i).

242 Mr. Platt said that the applicants applied for a Variance, if the judgement is that they may qualify for a
243 Special Exception then he thinks that the Board has the power and authority to grant a Variance as it
244 almost does meet the Special Exception requirements because the change to the roof height is only 10
245 inches. Chairman Schneider said that the Board cannot grant something that has not been applied for.
246 Mr. Platt said that a Variance has been applied for. Chairman Schneider said that they cannot grant the
247 Variance based on the Special Exception and the applicant must decide what should be applied for.

248 Ms. Gage said that it is important to get some clear wording for the Special Exception under Section
249 3.50(i) that says “the ZBA may allow a pre-existing non-conforming structure to undergo vertical
250 expansion” because if a structure is torn down it is no longer a pre-existing structure. A pre-existing
251 non-conforming structure is defined as one that was in existence prior to 1987. It seems like the intent
252 in 2018 was to create the envelope where someone could replace what they have. The request is to
253 have a higher structure, it cannot be a pre-existing non-conforming structure as he is not expanding a
254 pre-existing structure. Chairman Schneider said that if there is a building that is not being expanded
255 horizontally within the non-conforming area then the height can be increased, even if the structure is
256 being torn down and replaced. Nothing that is within the conforming area matters, nor does
257 replacement of exactly what was there before. In this case, it looks like the expansion is somewhat
258 within the 50 ft setback, which requires a Variance; the safest course is to request something for the
259 height as well.

260 Mr. Neuwirt said that his interpretation of Section 3.50(i) is that the proposal does not qualify for that
261 criteria because the building is more than 24 ft in height, so he does not see how a Special Exception
262 applies. Vice Chair Simpson said that he thinks that Chairman Schneider is saying that Section 3.50(i)
263 does not reference maximum height. Mr. Neuwirt said that if they can reference the vertical distance
264 straight down from the peak then applying for the Special Exception makes sense to him. Vice Chair
265 Simpson said that is what Chairman Schneider is saying. Chairman Schneider said that this is only
266 applicable if the height is being expanded in the area where the current building is located. Mr. Neuwirt
267 asked and Chairman Schneider confirmed that a Variance would cover all the bases for the Shoreland
268 setback under Section 3.40(c). The front setback would be covered under Section 3.10.

269 Vice Chair Simpson asked and Mr. Neuwirt confirmed that he is still requesting a continuance of the
270 cases until April 18th.

271 Vice Chair Simpson made a motion to continue the cases. Mr. Lyons seconded the motion. Chairman
272 Schneider said that in the past the Board has not voted to continue the case if the applicant has wanted
273 to due to not having a full Board. Vice Chair Simpson said that the public hearing RSA says that "if the
274 Board of Adjustment finds that it cannot conclude the public hearing within the time available, it may
275 vote to continue the hearing to a specified time and place with no additional notice required;" the Board
276 has to vote to continue. Mr. Lyons said that his preference would be to continue the hearings until May
277 2nd. Vice Chair Simpson said that there will only be four Board members on April 18th instead of five.
278 Mr. Neuwirt said that it is acceptable to continue the cases to May 2nd. Vice Chair Simpson amended his
279 motion to include that the case be continued until May 2nd. Mr. Lyons seconded the motion. The
280 motion passed unanimously.

281 **MINUTES**

282 There was a discussion regarding that the Board voted at the last meeting to continue making
283 corrections on the minutes that they sign. There was also a discussion regarding changing minutes and
284 posting approved minutes on the website.

285 Changes to the minutes from March 7, 2019: Change Line 107 to read "... from Alan and Joan Spahr..."
286 Change Line 115 to read "...is inaccurate as the neighborhood..."

287 Mr. Lyons made a motion to approve the minutes as amended. Mr. Platt seconded the motion. The
288 motion passed with one abstention.

289 **MISCELLANEOUS – VARIANCE APPLICATION**

290 Ms. Gage said that she did get some feedback from the staff regarding the proposed Variance
291 application.

292 Ms. Gage said that the first suggestion is on page one, she has been advised that they should not
293 advertise the cost of the abutters because the post office may change it. Vice Chair Simpson asked if
294 there is a price sheet for fees. Ms. Gage said that they do have a fee schedule but it might not be
295 reasonable to attach it to the application as it is three pages long and has every possible application fee,

296 including Planning fees. Vice Chair Simpson said that the postage fee could be at least referenced and
297 asked what the fee is based on. Ms. Gage said that the Town is somewhat overcharging as the Town is
298 only required to mail abutters notices as the RSA defines which is by certified mail and return receipt is
299 not required. This would be a few dollars less and would prevent people getting it to have to sign for it
300 or go to the post office. Vice Chair Simpson said that he thinks that certified mail still requires someone
301 to go to the post office to pick it up. Mr. Neuwirt said that having the prices on the application is nice
302 because he thinks that the applicant should feel as comfortable as possible with the process. Vice Chair
303 Simpson said that he sends things certified mail and also regular mail. Mr. Platt said that he thinks that
304 they should just follow what the law says.

305 Ms. Gage said that the second suggestion was to delete the lines for "landowner", "Parcel ID", and
306 "property address" on the second page as they are also on the first page.

307 There was a discussion regarding the words in the "facts in support of granting the variance" section of
308 the application that are bold and the Board said that they do not think anything in this section needs to
309 be bold.

310 Ms. Gage said that the third suggestion was to delete the paragraph on the fourth page that tell how to
311 contact her as it is already on the first page.

312 Vice Chair Simpson asked why on page 4 there is a referral to the "purpose of zoning". Ms. Gage said
313 that she added this because she feels it is useful and often points people to this section of the
314 Ordinance. Vice Chair Simpson said that he thinks that it misses some important things such as "district
315 purpose and description". He thinks that it is more important to have people explain why something is
316 an appropriate use in a district. Chairman Schneider said that he thinks that having the referral to the
317 "purpose of zoning" is important because there are people who do question why there are zoning rules.
318 There was further discussion regarding this matter.

319 Mr. Neuwirt said that he does not think that the "helpful guidelines for completing the application
320 variance" section of the application on page 5 is very user friendly. The explanation for "the values of
321 surrounding properties are not diminished" could be better clarified. Another issue is that under
322 number 5, it says that "(b) the proposed use is a reasonable one" but no one knows what that means.
323 Mr. Platt said that the Supreme Court comes up with these criteria. Vice Chair Simpson said that the
324 left-hand side of the column are from the Statute. Mr. Neuwirt said that the purpose of Ms. Gage going
325 through this process is to help applicants to have a better understanding to be able to do this fluidly.
326 There was further discussion regarding this matter and how the new form can create more clarity and if
327 it helps applicants.

328 There was a discussion about hardship. Ms. Gage said that she does not advise people too much on
329 hardship or how the Board is going to vote. She tells people that it is a 50/50 chance and if something is
330 really important and they need relief then they should apply for a Variance. The Board said that they do
331 not think that she should tell people it is a 50/50 chance. Chairman Schneider said that hardship is
332 murky and he has never heard a case where the argument could not be made one way or another.

333 Mr. Neuwirt said that the explanations for the Statutory Requirements 1-3 are clear, however, 4 and 5
334 need work. Mr. Platt said that he does not think that Ms. Gage should have to rewrite these
335 explanations. Mr. Neuwirt said that he thinks that it is the Board's job is to try to make a procedure that
336 they are expecting applicants to follow. Mr. Platt said that the Board's job is to judge Zoning cases. Vice
337 Chair Simpson said that he thinks that Appendix B is not perfect but he thinks that it is helpful and he
338 does not see a reason for it not to be attached. He agrees with Mr. Platt that it is not the Board's job to
339 rewrite it but if other resources are found they can be attached in the future. Chairman Schneider said
340 that the Town has to be careful to not make their own interpretation of the law. Vice Chair Simpson
341 said that he thinks that the Board is entitled to do that. Chairman Schneider agreed but said that the
342 Town cannot. Vice Chair Simpson asked and Ms. Gage said that there is a disclaimer on both Appendix A
343 and Appendix B.

344 Ms. Gage said that working with the Board she sees what an incredible challenge that they have. The
345 thing she keeps hearing, however, is that Variances are available to afford constitutional protection and
346 that the Board is a local judicial Board and they can look at criteria like hardship and use their
347 interpretation. Chairman Schneider said that he thinks that all the Board can do is call them like they
348 see them. Ms. Gage agreed and said that it is not cut and dry and is why the Board has a majority vote.
349 There was further discussion regarding this matter.

350 Vice Chair Simpson asked and Ms. Gage said that Appendix B is from the State's Board of Adjustment
351 Handbook, page B-2.

352 **MISCELLANEOUS**

353 Chairman Schneider said that he would like to start working on Zoning Amendments soon.

354 Mr. Platt made a motion to adjourn the meeting at 8:36 pm. Mr. Neuwirt seconded the motion. The
355 motion passed unanimously.

356 Respectfully submitted,

357 Melissa Pollari

358

359

360

361

362

363

364

365

366 Zoning Board of Adjustment

367

368 Daniel Schneider, Chair

Aaron Simpson, Vice Chair

369

370 James Lyons, Jr.

Clayton Platt

371

372 George Neuwirt

William Larrow, Alternate

373

374 Jeffery Claus, Alternate