

1 **TOWN OF SUNAPEE**

2 **ZONING BOARD**

3 **APRIL 19, 2018**

4 **PRESENT:** Daniel Schneider, Chair; William Larrow; James Lyons, Jr.; George Neuwirt; Clayton Platt,
5 Alternate; Nicole Gage, Zoning Administrator

6 **ABSENT:** Aaron Simpson

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

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

9 Mr. Lyons made a motion to have Alternate Member Clayton Platt be a voting member for the meeting.
10 Mr. Larrow seconded the motion. The motion passed unanimously.

11 **ELECTION OF OFFICERS**

12 Mr. Larrow made a motion that Daniel Schneider retain the Chairman position. Mr. Lyons seconded the
13 motion. The motion passed with three in favor and two abstentions.

14 Mr. Larrow made a motion to nominate Aaron Simpson as Vice Chair. Mr. Lyons seconded the motion.
15 The motion passed unanimously.

16 **CASE #ZBA18-03: PARCEL ID: 0121-0015-0000: SPECIAL EXCEPTION PER ARTICLE III, SECTION 3.50 (I)**
17 **TO EXPAND / ENLARGE A NON-CONFORMING STRUCTURE. 29 WEST SHORE RD, JOHN & NANCY**
18 **BERGER.**

19 John Berger and Bruce Sanborn, Mr. Berger's contractor, presented the merits of the case. Mr. Berger
20 gave the Board copies of a plan from 1983, which shows the house as it was proposed to be built. Mr.
21 Berger explained that they want to put a foundation under an existing three season porch. The porch
22 already has a foundation on two sides and the other two sides sit on piers. This would allow the porch
23 to become a full season porch and enclose the area underneath the porch to turn it into a cold storage
24 area. Mr. Berger continued that there is no change to the footprint or the height. There are no trees
25 that are being removed and there is a minimum amount of excavation and disturbance.

26 Mr. Berger said that about 3 ft of the foundation on the lake side is within the 50 ft waterfront setback;
27 the remaining portion is outside the setback. Chairman Schneider asked and Mr. Berger confirmed that
28 the plan shows the location of the porch. Chairman Schneider asked and Mr. Berger showed him on the
29 plan the 50 ft waterfront setback. Mr. Berger was asked said that he did the markups on the drawing.
30 Chairman Schneider asked and Mr. Platt said that the drawing is not done the way that it would be done
31 by a surveyor. Mr. Platt said that they cannot be certain that the house was built exactly as shown on
32 the plan and the standards for locating the shoreland in 1983 were a lot different than they are now.

33 Additionally, the plan shows the deck 44 ft from the shoreland. There was further discussion regarding
34 this matter as Mr. Platt believes that most of the foundation is in the setback.

35 Chairman Schneider asked and Mr. Berger explained that the piers move in the winter and have cracked
36 the jam above them. Mr. Sanborn said that there are some large cracks in the drywall and the roof over
37 the porch is being compromised. There was further discussion regarding the deck and the screen porch
38 as Mr. Sanborn explained that the deck is not being touched, though they may need to remove the stairs
39 and then put them back on.

40 Mr. Neuwirt asked and Mr. Sanborn explained that the screened in porch has half walls and screen and
41 plastic inserts. Mr. Platt asked if this area constitutes living space under the Town's Ordinance. Mr.
42 Platt said that 3.40 (k) says "If a pre-existing structure contains enclosed living space, which projects
43 over a non-conforming open area, the open area may be enclosed provided an application for a
44 Certificate of Zoning Compliance has been approved." If the screen porch is considered living space
45 then it would not need a Special Exception and if it is not considered living space then it would not
46 qualify for a Special Exception. The Board discussed the lack of a definition of "living area" and if they
47 consider the porch living area.

48 Mr. Neuwirt asked and Mr. Berger explained that the screened porch will be turned into a four season
49 porch. Chairman Schneider asked and Mr. Berger said that it is not currently heated. Mr. Sanborn said
50 that they want to replace the piers with a foundation and under the porch will be cold storage. Mr.
51 Larrow asked and Mr. Berger confirmed that there is an existing structure within the setback that they
52 want to put a foundation under and turn into living space. There was further discussion regarding the
53 project.

54 Mr. Platt said that Mr. Berger could put windows and heat into the area without Zoning Board approval
55 and then ask to put a foundation under it. There was further discussion regarding this issue.

56 Chairman Schneider asked and there was no one in the audience with any questions or concerns.
57 Chairman Schneider asked and Mr. Berger said that he does not have any additional comments.

58 Ms. Gage said that she did not consider it enclosed living space but understands the Board's
59 interpretation. Mr. Larrow said that he does not consider the porch living space. Chairman Schneider
60 said that it is enclosed with a roof, walls, and windows and he considers it to be living space. Mr.
61 Neuwirt said that it is not clear and he thinks it can be considered to be living space.

62 Chairman Schneider closed the meeting to public comment.

63 Mr. Larrow said that he is not sure why this is not being considered for the Special Exception other than
64 the explanation that allows them to go on with the construction. He feels as though the Board needs to
65 address if the construction corresponds to the drawings. Mr. Neuwirt said that Mr. Berger is disturbing
66 land within the setback but has a Shoreland Permit for it. Mr. Platt said that the Board is only able to
67 grant a Special Exception if it is living area but if it is living area he does not think the Special Exception is
68 needed.

69 Mr. Platt made a motion to decline to grant a Special Exception because the scope of the project is
70 allowed under the provisions of 3.40 (k) of the Zoning Ordinance. Mr. Neuwirt seconded the motion.
71 The motion passed with four in favor and one abstention.

72 **CASE #ZBA18-04: PARCEL ID: 0147-0019-0000: SPECIAL EXCEPTION PER ARTICLE III – DIMENSIONAL**
73 **CONTROLS, SECTION 3.50 (F) AND (I) TO EXPAND / ENLARGE A NON-CONFORMING STRUCTURE AND**
74 **CHANGE THE ROOFLINE. 563 ROUTE 103, NAF SUNAPEE, LLC (NANCY & GERALD FICO).**

75 Gerald Fico presented the merits of the case.

76 There was a brief discussion regarding the history of the building.

77 Ms. Gage said that the Planning Board is scheduled to hear the Site Plan Review on this property in May.

78 Mr. Fico said that there the building has a flat roof and is leaking. The price of doing another rubber
79 roof is around the same as putting a peaked roof on the building, which would then not have snow
80 sitting on it. They are not increasing the footprint and are going up a to a maximum height of 16 ft off
81 the ground. Mr. Platt asked and Mr. Fico explained that they will be adding 6 ft to the height of the
82 building, which is currently 10 ft. Mr. Larrow asked and Mr. Fico confirmed that he measured from in
83 front of the building to the top of the peak. There was further discussion regarding the roof.

84 Chairman Schneider asked about the expansion / enlargement of the building. Mr. Fico explained that
85 there used to be a deck on the back of the building that was removed and he would like to fill in that
86 area. He believes that the area is 10 ft by 20 ft the application is for 8 ft by 19.5 ft. Mr. Fico explained
87 that the area will be used as more storage for antiques.

88 Mr. Lyons asked and Mr. Fico explained where the addition to the building will be located in relation to
89 the current propane tanks. Mr. Lyons said that the land is very steep and asked if fill will be added. Mr.
90 Fico said that they will not be adding fill and the propane tanks just got moved. There was further
91 discussion regarding this matter.

92 Mr. Platt asked and Mr. Fico said that he measured from the centerline to the back wall and it is 77 ft.
93 Mr. Platt asked and Mr. Fico said that the deck was removed many years ago. Mr. Neuwirt asked if the
94 enclosure is out of the 75 ft setback why it has to be included. Chairman Schneider said that it is
95 because it is a change to a pre-existing non-conforming structure. Article III, Section 3.50 (f) says "If a
96 pre-existing primary structure is non-conforming due to an inadequate front setback, the ZBA may allow
97 additions to the structure providing such changes do not further decrease the front setback."

98 Mr. Larrow asked and Mr. Fico explained that they are just utilizing the little space; one of the walls is 8
99 ft long and they are going from that wall to the other wall. There was further discussion regarding the
100 room construction.

101 Chairman Schneider asked and there were no questions or comments from the audience nor were there
102 any additional questions from the Board.

103 There was a discussion regarding the height of the roof and measuring the height from the lowest
104 adjacent grade.

105 Mr. Lyons made a motion to permit the roofline to be changed as per the submitted sketch for the total
106 height to be no more than 16 ft. Mr. Larrow seconded the motion. The motion passed unanimously.

107 Mr. Platt said that it would have been nice to have Mr. Fico measure 25 ft from the right of way to know
108 if a Special Exception was even required. Chairman Schneider said that if any of the structure is within
109 the 75 ft setback then it is a non-conforming structure so the Special Exception would be required
110 anyway. There was further discussion regarding this matter as the Zoning change approved this year
111 has simplified the process of expanding a non-conforming structure into a conforming area.

112 Mr. Platt made a motion to approve the Special Exception under Article III, Section 3.50 (f) to allow the
113 enclosure of the 8 ft by 19.5 ft area behind the building. Mr. Lyons seconded the motion. The motion
114 passed unanimously.

115 **MISCELLANEOUS**

116 Mr. Platt said that he thinks that the Board puts too much stake into what a neighbor feels about a case.
117 There is a feeling in the community that if a neighbor does not support a project then the Zoning Board
118 will deny the application so applicants do things that are unrelated to their proposal in order for their
119 neighbor to agree. There was a discussion regarding this matter as the Board feels as though they
120 should listen objectively and allow abutters to speak but not allow them to sway them on how they
121 vote.

122 **MINUTES**

123 Changes to the minutes from April 5, 2018: Change Line 43 to read "...does sounds as there is some..."
124 Change Lines 55-56 to read "...type of issues. She would like..." Change Line 86 to read "... said that he
125 has had two..." Change Lines 91 – 92 to read "The Equitable Waiver was approved by a vote of three in
126 favor, none opposed. "

127 Mr. Larrow made a motion to approve the minutes as amended. Mr. Neuwirt seconded the motion.
128 The motion passed with three in favor and two abstentions.

129 **MISCELLANEOUS**

130 There was another discussion regarding abutter's opinions as Equitable Waivers, Variances, etc. go with
131 the property forever.

132 There was a discussion regarding requiring surveys, both before and after construction. There was a
133 discussion regarding roof heights.

134 Mr. Neuwirt said that he is trying to determine what happened with the Certificates of Zoning
135 Compliances and the removal of the criteria for the Zoning Administrator to verify foundation and
136 structure locations as that is part of the job. Ms. Gage said that she does not have any written

137 guidelines or criteria from the BOS that requires her to verify the locations of structures. Chairman
138 Schneider said that there are no criteria in the Ordinance or the Rules of Procedure because the
139 enforcement of the Ordinance is determined by the BOS not the Zoning Board. There was further
140 discussion regarding this matter. There was also a discussion regarding the application stage where an
141 applicant shows the location of a proposed structure on a plan and if the CZC has to be issued based on
142 information presented. Mr. Neuwirt said that he contacted the Town's attorney who told him that
143 inquiries must go through the Zoning Chair. Chairman Schneider said that he thinks that this is a BOS
144 issue and he does not think that the Zoning Board should insert themselves in the process. There was
145 further discussion regarding this issue.

146 Mr. Neuwirt made a motion that the Board ask Ms. Gage to request legal council to weigh in on the
147 issue as to whether or not the Town is legally responsible to conduct field verification / foundation
148 location verification of structures as part of the administration of the Zoning Ordinance. Mr. Larrow
149 seconded the motion. Mr. Platt said that he thinks that it is out of the Zoning Board's purview and
150 Chairman Schneider agreed. The motion failed with two in favor, two opposed, and one abstention.
151 There was further discussion regarding this matter.

152 Mr. Platt made a motion to adjourn the meeting at 8:31 pm. Mr. Lyons seconded the motion. The
153 motion passed unanimously.

154 Respectfully submitted,

155 Melissa Pollari

156

157

158 Zoning Board of Adjustment

159 _____

160 Daniel Schneider

_____ Aaron Simpson

161 _____

162 Jim Lyons

_____ William Larrow

163 _____

164 George Neuwirt