

1 **TOWN OF SUNAPEE**

2 **ZONING BOARD**

3 **JUNE 7, 2018**

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

6 **ABSENT:** William Larrow; Clayton Platt, Alternate

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

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

9 **MINUTES**

10 Changes to the minutes from May 3, 2018: Change Line 42 to read "...and abutter to the property to the
11 left of the subject property from the road side." Change Line 51 to read "...he would have 30 days..."
12 Change Line 90 to read "...a few sheds that are in the setback."

13 Mr. Lyons made a motion to approve the minutes as amended. Mr. Neuwirt seconded the motion. The
14 motion passed unanimously.

15 **CASE #ZBA18-05: PARCEL ID: 0136-0007-0000: 179 BURKEHAVEN HILL RD "BURKEHAVEN LODGE";**
16 **RAPS REVOC TRUST, RICHARD E RAPS JR, TRUSTEE; RESIDENTIAL ZONE: SPECIAL EXCEPTION FOR**
17 **HOME BUSINESS IN THE RESIDENTIAL DISTRICT PER ARTICLE IV, SECTION 4.10 TO SELL ANTIQUE**
18 **FURNITURE AND DÉCOR IN A 403 SQ FT AREA, SUMMER SEASON ONLY.**

19 Richard Raps presented the merits of his case.

20 Mr. Raps explained that he would like to have a small shop on the property of the Burkehaven Lodge,
21 which he owns. There is a barn on the property that he'd like to use for the shop to sell antique
22 furniture and antique décor items.

23 There was a discussion regarding the hours and days of operation as well as where the merchandise will
24 be located in / on the property.

25 Chairman Schneider asked if there were any abutters with questions or comments.

26 Doug Sartwell of 172 Burkehaven Hill Rd gave a description of the location as he feels that Burkehaven
27 Hill Rd has become an access road to Lake Ave and from 7:00 – 9:00 they have many construction
28 vehicles that pass their houses. Mr. Sartwell continued that Mr. Raps runs a small hotel across the
29 street from his property and people who might protest the request might not do it because of the
30 Ordinance. Mr. Sartwell continued to discuss his thoughts regarding the Variance request, which he is in
31 favor of.

32 Anthony Lenhart, an attorney from New London, explained that he is representing Gregory Parzych, who
33 owns 173 and 175 Burkehaven Hill Rd. Attorney Lenhart said that Mr. Lenhart's main concern is that
34 there is a right of way that serves three properties right at the hairpin turn. The applicant is asking for a
35 Special Exception for the building next to the right of way. Attorney Lenhart said that he does not
36 believe that this business meets the definition of a Home Business in the Ordinance. He thinks that this
37 is a separately taxed lot and he does not believe that the residence is on this property. The Ordinance
38 says that home businesses shall be subordinate and incidental to the primary residence use of the
39 property and he does not believe this property is used residentially. Attorney Lenhart continued to
40 discuss the reasons that he believes that this Special Exception should be denied, including that the road
41 does have heavy traffic and there is a right of way.

42 Chairman Schneider asked and Attorney Lenhart said that Mr. Parzych's concern is that the right of way
43 will get blocked as there are tenants at 175 Burkehaven Hill Rd. There was a discussion regarding the
44 status of the rental property. Attorney Lenhart said that the right of way is deeded and extends from
45 the driveway for the three lots. There is limited parking and it could bottleneck and / or block the right
46 of way.

47 Chairman Schneider asked and Ms. Gage confirmed that if the Zoning Board grants the Special Exception
48 the proposed home business will go to the Planning Board for Site Plan Review.

49 Mr. Neuwirt asked why the right of way does not appear on the Tax Map. Mr. Simpson noted that it is
50 an easement over the property. Attorney Lenhart said that he is concerned about adequate and safe
51 highway access to the proposed site as the access is right off the sharp turn. The entrance to the
52 building is directly on the right of way, though there is no width given for the right of way on the deeds.

53 Mr. Neuwirt asked and Attorney Lenhart confirmed that the primary concerns of Mr. Parzych are that
54 the access to his properties will be blocked and that there will be congestion.

55 Mr. Sartwell said that Mr. Parzych is at his properties approximately 20 days per year and Mr. Raps and
56 himself live at their properties 365 days per year, which should have some bearing as they are
57 permanent residents, not vacation residents.

58 Ms. Gage said that in the Residential Zone, Bed & Breakfasts, Tourist Homes, Inns, Lodging and Boarding
59 are permitted by right. Chairman Schneider said that he thinks that Mr. Raps' business meets the
60 definition of a hotel in the Ordinance.

61 Vice Chair Simpson asked and Mr. Raps said that he lives at 179 Burkehaven Hill Rd and is planning on
62 selling his house.

63 Vice Chair Simpson asked how this is not an accessory use of the hotel. Ms. Gage said that Mr. Raps
64 wanted to apply for a home business, which is permitted by a Special Exception. Vice Chair Simpson said
65 that he has been in many inns and they sell antiques and knickknacks. Ms. Gage said that there is a
66 definition of an Accessory Use "a use on the same lot that is customarily associated with, and incidental
67 and subordinate to, the principal use of the lot." Mr. Raps said that when they first purchased the

68 property 16 years ago they put in a small gift store and was told by the Town of Sunapee that it was not
69 an accessory use to the hotel. There was further discussion regarding the gift store that Mr. Raps
70 opened when he first purchased the property.

71 Chairman Schneider asked and Mr. Raps confirmed that the lot where the antiques will be sold is a
72 different lot than Mr. Raps home is on but he considers it all one piece though he is placing the house on
73 the market. There was further discussion regarding the residence property and the hotel property.

74 Vice Chair Simpson said that he would be more inclined to approve an accessory use for the hotel rather
75 than a home business. He does not think that the application indicates that Mr. Raps is applying for a
76 home business. Chairman Schneider said that he does not think that it can be a home business as it is
77 not a home. Ms. Gage explained on Mr. Raps' application where he is asking for a home business.

78 Chairman Schneider asked if there are any additional questions or concerns before the meeting is closed
79 to the public.

80 Attorney Lenhart said that if the Board is leaning towards approving this application as an accessory use
81 it has not been noticed as such.

82 Chairman Schneider closed the meeting to public input.

83 Vice Chair Simpson said that if the shop is an accessory use he does not believe that Mr. Raps needs to
84 come before the Board as it is permitted by right.

85 Chairman Schneider said that when the Board goes through the process of determining whether or not
86 to grant an approval he looks at who the approval can hurt. He does not think that selling antiques from
87 this building will necessarily hurt the abutting properties. He likes to go to antique stores and there is
88 generally not more than a car or two at a time at the stores; it is not the type of business that has high
89 traffic. If approved, a Site Plan Review is required and the Planning Board will ensue that there is
90 adequate parking and signage. He agrees that this will not create a lot of traffic in the neighborhood.
91 Chairman Schneider continued that he also looks at if an approval will hurt the town for not being a
92 proper application of the Ordinance and is setting a bad precedent. He looks at the definition of a home
93 business and there are no inhabitants of the home in this case so it does not qualify as a home business.
94 It is incumbent on the Town and Board to ensure that they help businesses, though not in a way that
95 violates the rules. He does not think that a home business applies in this case; though it does not mean
96 that an application cannot be made later for a use variance or an accessory use.

97 There was a discussion regarding accessory uses and hotels and if hotels are retail establishments.

98 Vice Chair Simpson said that he agrees with Chairman Schneider. However, he thinks that a gift store
99 could be an accessory use to the property. There was further discussion regarding this matter as Vice
100 Chair Simpson does not think that this would be a separate business.

101 Chairman Schneider opened the hearing to public comment.

102 Mr. Neuwirt asked Mr. Raps if the proposed business will be a separate business from the hotel. Mr.
103 Raps said that it will be the same business, just accounted for differently. Attorney Lenhart said that
104 there is a difference between a hotel and a lodge as lodging is defined in the Ordinance (see Bed &
105 Breakfast, Tourist Homes, Inns, Lodging & Boarding) as “an owner occupied single family dwelling” and
106 that is not what this is.

107 Chairman Schneider said that he’d be more inclined to accept this as an accessory use if it were inside
108 the hotel itself.

109 Mr. Neuwirt said that the property is subdivided and the paperwork presented for the application is
110 confusing. There was a discussion regarding the property’s subdivision.

111 There was a discussion regarding how a use is determined to be an accessory use and Ms. Gage said that
112 she believes she would have to make a determination as to if it is an accessory use and then it would
113 have to go to Site Plan Review.

114 Chairman Schneider closed the hearing to public comments.

115 Chairman Schneider apologized to Mr. Raps for not informing him that they do not have a full Board and
116 they should not have proceeded with the hearing unless Mr. Raps agreed. Chairman Schneider
117 explained that Mr. Raps can choose to continue the hearing until there is a full Board as he will need
118 three positive votes to pass and they only have four out of the five members. Mr. Raps agreed to
119 proceed with the hearing.

120 Mr. Neuwirt said that the Ordinance is fairly specific about the use of a home business and the criteria is
121 that Mr. Raps must reside there and asked where this business falls if Mr. Raps is not residing there.
122 Vice Chair Simpson said that he does not think that an accessory use has to be for a residence. There
123 was further discussion regarding accessory uses.

124 Mr. Raps said that he would like to continue the hearing until there is a full Board present.

125 Vice Chair Simpson made a motion to continue the hearing until there is a full Board. Mr. Neuwirt
126 seconded the motion. The motion passed unanimously. The hearing will be continued until June 21,
127 2018.

128 **CASE #ZBA18-09: PARCEL ID: 0104-0023-0000; 37 PROSPECT HILL RD; NEW DIRECTION IRA INC FBO**
129 **ROGER CRICHTON SMITH, IRA / CORY FLINT AND RICK MASTIN; RESIDENTIAL DISTRICT; VARIANCE**
130 **FROM ARTICLE IV, SECTION 4.10 TO ALLOW RETAIL / MUSEUM & GALLERY IN THE RESIDENTIAL**
131 **DISTRICT TO USE THE BUILDING AND PROPERTY FOR ART GALLERY, CUSTOM FURNITURE, ARTISAN**
132 **MADE PRODUCTS, AND ANTIQUES.**

133 Chairman Schneider explained that the Board does not have a full Board as there are only four members
134 present and three positive votes are required in order for the Variance to be approved. The applicants
135 can choose to postpone the hearing or can choose to proceed. The applicants chose to proceed with
136 the hearing.

137 Cory Flint and Rick Mastin presented the merits of the case. Vice Chair Simpson asked and Mr. Flint
138 confirmed that they do have a Purchase and Sales Agreement for the property. They also have a letter
139 from the owner permitting them to speak on his behalf regarding this application.

140 Mr. Flint explained that he purchased Prospect Hill Antiques about two years ago and has worked there
141 for 19 years. When the subject property first became available five years ago he was not in a position to
142 purchase it and understands that it is not being looked at as a residence by prospective buyers so it
143 lends itself nicely to what they would like to do and will hopefully open up some avenues for them to
144 sell higher end art. When he purchased Prospect Hill Antiques they put in a small art gallery where the
145 conditions of heat and moisture are controlled but they would like to use this building for this use.

146 Vice Chair Simpson asked and Mr. Flint explained that the majority of the property is in the Residential
147 District, though part of the property is in the Village Residential District.

148 Mr. Flint said that they have had a few different plans drawn up. When the property was used as a
149 church, the parking lot did get full during the services and for weddings. Ms. Gage gave the Board
150 copies of the plans for their review and Mr. Flint explained that he was told that parking and traffic on
151 the road might be something that the Board considers for the Variance but the traffic on the road
152 currently picks up seasonally due to his business.

153 Mr. Flint said that the proposed business would be a place where they could show art in a controlled
154 environment as well as some higher end furniture. They have also discussed having a the barn as more
155 of a seasonal / by appointment business and this property would be used as an annex to the business to
156 have a more convenient location and a better venue for the art.

157 Chairman Schneider asked and Mr. Flint said that the exterior of the building will not be changed other
158 than paint and for safety purposes. There was further discussion regarding this matter.

159 Gene Hayes, the owner of 27 Prospect Hill Rd, said that he supports Mr. Flint and Mr. Mastin's proposal
160 with the property as it is difficult to do anything else. However, he is concerned about the parking and
161 having his lot being used for parking. Mr. Hayes continued that Mr. Dunbar lives behind the property
162 and his driveway is attached to the parking area and not delineated in any way and he is concerned
163 about having access to his home. He supports the proposal but thinks the parking needs to be
164 addressed. Chairman Schneider explained that the parking would need to be addressed at the Planning
165 Board Site Plan Review.

166 Bernie Dunbar of 41 Prospect Hill Rd said that his property is behind the subject property and he
167 opposes the Variance. His property is quiet and has a right of way across the subject property. When it
168 was used as a church, the congregation only met once per week for an hour or two and the cars parked
169 in the road when necessary. If the building becomes commercial, there is a potential for the right of
170 way to be blocked. If an ambulance needs to get through to his property and the right of way is blocked
171 the few seconds that it could take to clear the right of way could have a big impact on the injured or ill
172 person.

173 Mr. Dunbar said that the biggest reason for his objection is the potential decrease in his property value;
174 it is a quiet residential area and he thinks that it needs to remain as such as a small business sets a
175 precedence for the neighborhood.

176 Chairman Schneider asked and Mr. Dunbar explained that he accesses his property via a right of way
177 over this property. Mr. Neuwirt asked and Mr. Dunbar confirmed that the parking area around this
178 property is paved and the same pavement is used to access his property.

179 Chairman Schneider asked and Mr. Flint said that the hours of operation will be 10:00 to 5:00.

180 Patricia Gionet of 45 Prospect Hill Rd said that she has lived in Sunapee for 49 years and she agrees with
181 Mr. Dunbar about the neighborhood being quiet and residential. There is more traffic that comes down
182 the road than there used to be. Also, in the past, people used to turn around in her driveway when they
183 drove past the church. She has concerns with parking and prefers the area to remain residential.

184 Chairman Schneider asked and Mr. Flint said that the property is currently vacant. The current owner
185 has leased it a few times to musicians and has leased it to another group but he is not sure what it was
186 used for. Vice Chair Simpson asked and Mr. Flint confirmed that the property is the former Methodist
187 Church. Mr. Hayes said that the property has essentially been empty for about three and a half years.
188 Ms. Gionet said that there was a group from New London Barn Playhouse that was using the building
189 and gave further explanation about the group and how other people have parked on her lawn when
190 visiting the property.

191 Chairman Schneider asked if the property is not purchased if the Variance is denied, what the best use
192 of the property would be. Mr. Dunbar said that he thinks it would be good as a residence. Mr. Hayes
193 said that it is a difficult property to do a lot with because of the size of the lot and with the price that is
194 on the building. For someone to convert it to a residence would be difficult; there is no kitchen, no
195 bedrooms, and only a sink and toilet. Mr. Neuwirt asked and Mr. Flint said that the building is 3,780 sq
196 ft, including the basement. There was further discussion regarding converting the building to a
197 residence.

198 Ms. Gionet asked if this is allowed to become commercial if another property could be converted to a
199 commercial use. Mr. Neuwirt explained that every case is looked at individually.

200 Chairman Schneider said that the building is beautiful and he thinks that it would be a benefit to the
201 neighborhood and the Town for it to be preserved to maintain the historical detail.

202 Mr. Hayes said that he has had issues with parking as people feel as though because his property is just
203 an apartment building it is acceptable to park there. There is a potential to have a lot of vehicles show
204 up at this property without a place to park. There is a maximum of five or six cars that would be able to
205 park at the property. Chairman Schneider asked and Mr. Flint said that there is a small parking area
206 down below the building at the current Prospect Hill Antiques building. Mr. Flint said that between the
207 three buildings at their current site they have about 20,000 sq ft of space and on a rainy 4th of July
208 weekend day they can approach having 10 – 15 cars, which would be their best day. Most days they

209 have a couple of cars at a time. The gallery would probably not have that much traffic because there
210 would not be as many people who want to purchase art as they would have for furnishings; though
211 there will be some furnishings to lend itself to the art. Mr. Neuwirt said that his concern is that if the art
212 is not selling and the furniture is, Mr. Flint will change directions and put more furniture in the building
213 than art and this location could draw more people in than the business up the hill. There was further
214 discussion regarding these two locations and the merchandise in them.

215 Chairman Schneider asked and Ms. Gionet and Mr. Dunbar confirmed that they would rather the
216 building be vacant than have this business go into it. Mr. Hayes said that at the price the building is
217 being sold for it could be difficult for someone to want to spend the money to convert it to a residence.
218 Mr. Neuwirt said that someone could ask for a Variance to put a duplex into the building. There was a
219 discussion regarding the layout of the building and that someone with a lot of money could convert the
220 building to a residence.

221 Mr. Mastin said that they only want to improve the building, not make changes. Chairman Schneider
222 asked and Mr. Mastin confirmed that they would agree to that being a condition of the Variance. They
223 want to sell art in the building and they do not see that it would bring in a lot of traffic. Mr. Neuwirt said
224 that is speculation and decisions cannot be made on speculation. Mr. Mastin said that they will not be
225 having any parties and want to run a respectful business and be good neighbors.

226 Chairman Schneider asked if anyone who lives on Prospect Hill Rd is aware of any problems with
227 Prospect Hill Antiques. The abutters said that it is a mile up the road so they do not have issues.

228 Ms. Gionet said that the applicants are talking about art but that is not what the wording of the Variance
229 application says. Mr. Mastin said that the wording for the application was done at the suggestion of the
230 Town; there will be some furniture to help showcase the art.

231 Mr. Dunbar said that the property will be changing from residential to commercial. Ms. Gionet said that
232 they are concerned about what that change does to the value of their properties.

233 There was a discussion regarding the portion of the lot that is in Village Residential District and if they
234 could move the parking towards there and about the trees and drainage on the lot. There was another
235 discussion regarding the merchandise that will be sold in the building and that the applicants are
236 showing the maximum parking on the lot per the Police Chief and the possibility of changing the parking
237 location. Mr. Hayes asked and Chairman Schneider said that they are proposing nine parking spaces.
238 Mr. Flint explained that they were instructed to show the maximum parking on the plan.

239 Chairman Schneider asked and Mr. Flint went over the criteria for the Variance per the submitted
240 application.

241 Mr. Hayes said that he would encourage the Board to do a site visit and evaluate the parking situation as
242 Mr. Dunbar's right of way will be used to access the parking spots on the side of the building. Also, at
243 least one to two parking spaces will be used for the employees of the business. Mr. Neuwirt explained
244 that the parking issue is the Planning Board issue. There was further discussion regarding this matter.

245 Vice Chair Simpson asked and Mr. Dunbar explained that he has a right of way over the subject property,
246 he does not own the driveway.

247 Ms. Gage read a letter from Deborah Dellinger of 28 Birch Point Lane and 325 North Rd supporting the
248 proposed project into the record (see attached).

249 Vice Chair Simpson said that he might consider it acceptable to use this property as an art gallery,
250 however, based on the letter of support from Ms. Dellinger, he is concerned that this is an outlet of
251 Prospect Hill Antiques and there will be more traffic flow than an art gallery. There is an art gallery
252 down the street from this establishment and Vice Chair Simpson has never seen anyone visit it. Mr. Flint
253 gave further explanation regarding the proposed use of the property as he feels as though furniture
254 makes art show better.

255 Mr. Flint explained that during Memorial Day weekend they had 90 – 100 people per day at the “pop up
256 shop” that they have in the Harbor. At Prospect Hill Antiques, they had 17 cars one day, 15 cars another
257 day, and 22 cars on their busiest day and not all at one time. Mr. Flint said that he appreciates the
258 abutters concerns and will do their best to keep their promises if the proposal passes.

259 Rob Messenger of 44 Central St said that he is in support of the proposed project as the current business
260 is not a busy place and he does not think that this would be busy either as it has a select clientele.

261 Mr. Dunbar said that the drawing is not accurate as it shows the black top over the property line. There
262 was a discussion regarding this matter as Mr. Mastin felt as though the existing driveway curves and
263 there is a dirt part on Ms. Gionet’s property and Mr. Dunbar does not agree. Mr. Mastin said that they
264 did not make the drawing accurate for the property lines but to show the parking areas. Chairman
265 Schneider asked and Mr. Mastin said that they have not had the property surveyed. Mr. Hayes said that
266 the property is flagged on the side of the property that abuts his property. Mr. Dunbar said that he
267 surveyed his property before the church was sold. Mr. Flint said that they are not asking to change
268 anything on the property. Vice Chair Simpson said that he thinks that this is a tight location and they
269 should know where the property lines are located. There was further discussion regarding the right of
270 way as shown on the plan and that there is not a survey.

271 Chairman Schneider asked and there were no additional comments or questions from the applicant or
272 the abutters so he closed the meeting to public comment.

273 Mr. Neuwirt said that he thinks this is a unique situation that could mean that a historical building gets
274 preserved but there are some neighbor concerns that are valid. It is difficult as a Board to weigh the
275 options to decide what is the best option. Mr. Neuwirt continued expressing his opinion regarding the
276 application.

277 Chairman Schneider said that before he moved to Sunapee he owned two 19th century houses and
278 knows that they can deteriorate if they are not kept up. There are some abutters with concerns about
279 their property values if the business is permitted to operate in the building but if he lived next to the
280 building he’d want someone taking care of it rather than it being vacant. The problem is that if people

281 think their property values are going to deteriorate then it does not meet the criteria for a Variance as
282 no one knows what the property values will do. Chairman Schneider continued to explain his opinion
283 regarding the application including the problems with the parking and that he thinks that they should
284 have a requirement that the exterior of the building not be altered except for anything necessary for
285 safety and he does not care what is sold if it is art or antiques.

286 Vice Chair Simpson said that he thinks that there is a hardship for this application as it is a church that
287 was built in a central location for the Georges Mills community and unfortunately lost its parishioners.
288 Because the building was a church it presents some unique hardships to convert it to a residential
289 property. He does have some serious concerns regarding the impact the proposal would have on the
290 neighbors but he does not know if they would cause a loss of property value or injure their rights as they
291 can put up signs. Vice Chair Simpson continued to express his opinion regarding the application.

292 Mr. Lyons said that before this application is approved he would like to see a current survey so the
293 Board knows exactly what they are granting. He would also like to see the parking issue resolved and
294 that any approval should be narrow because what makes this application unique is the existence of the
295 old structure. Mr. Lyons continued to explain his opinion regarding the application.

296 Chairman Schneider reopened the meeting and asked if the applicants would like the case to be
297 deferred until they have a survey for the right of way and the parking arrangements can be resolved.
298 Mr. Neuwirt asked to comment before the applicants answer and Mr. Flint agreed. Mr. Neuwirt said
299 that he does not think that it is fair for the Zoning Board to use criteria to approve or deny an
300 application that is something they do at the Planning Board. There is a series of checks and balances
301 and the Zoning Board is supposed to vote on the change of use. Mr. Lyons asked how the Board knows
302 what they are approving if they do not know where things are located. Mr. Neuwirt said that the Board
303 is just approving a change of use to take a building that is mostly in a residential neighborhood and turn
304 it into a commercial venture; the parking location and number of spaces is done via the Planning Board.
305 The Zoning Board needs to make a recommendation based on the right criteria. Mr. Hayes disagreed
306 with Mr. Neuwirt as he believes that the Zoning Board is granting a Variance that becomes part of the
307 deed and the Board needs to look at the whole package and everyone is talking about the parking and
308 needs to be a condition on what the Zoning Board is granting. There was further discussion regarding
309 this matter.

310 Chairman Schneider said that he thinks that one of the issues with this application is if the Variance is
311 approved, it may lower property values and for the Board to consider that. The abutters are concerned
312 about the blockage of the right of way and the parking and a survey will need to be done. There was
313 further discussion regarding needing a survey and about the parking.

314 Mr. Flint gave the Board a copy of a partial survey and there was a discussion as to whether it was
315 recorded and accurate. Vice Chair Simpson asked and Mr. Dunbar said that it is not a part of his survey.

316 Chairman Schneider closed the meeting to public comments and none of the Board members had any
317 additional comments.

318 Chairman Schneider asked how many Board members were in favor of granting the Variance and there
319 was one. Chairman Schneider asked how many Board members were opposed to granting the Variance
320 and there were two; one Board member abstained from voting. Vice Chair Simpson said that he is
321 voting against the Variance because he does not know what the property entails because the two
322 drawings do not look the same so his vote is based upon a lack of information. Mr. Lyons said that he
323 abstained from voting because he would like to see more information. Chairman Schneider said that the
324 Variance is denied and if the plans are changed the applicants can come back. Ms. Gage asked for a
325 point of order for the Board to specify which of the five criteria for a Variance was not met for the
326 denial. Chairman Schneider said that he thinks that the application does not meet the first criteria that
327 the proposed use would not diminish surrounding property values as there has been testimony made by
328 abutters that this proposed use would diminish their property values. Chairman Schneider said that
329 there has been testimony that if the Variance is granted it might injure the rights of the abutter in the
330 back to access his right of way. Vice Chair Simpson said that he agrees with Chairman Schneider
331 regarding the potential for the Variance to injure the rights of the abutter as he does not believe the
332 value of the properties will be diminished but he voted against it based on the impact to the private
333 rights of the abutters and he is not convinced their rights will be protected. Chairman Schneider said
334 that changes might be made to eliminate this reason for a denial.

335 Mr. Neuwirt asked that the meeting be reopened to the public as the Board is advising the applicant on
336 what they can do. Chairman Schneider agreed to reopen the hearing but said that the case is done.

337 **OTHER BUSINESS: ZONING AMENDMENT PROPOSALS FOR 2019**

338 Chairman Schneider gave the Board copies of his proposed changes to the Zoning Ordinance.

339 Chairman Schneider said that his first proposed change is to Article III, Section 3.40 (k) and explained
340 that he thinks that there needs to be definitions to clarify this Ordinance.

341 Chairman Schneider said that his next proposed change is to Article VI, Section 6.13 and explained that
342 this says that if someone has a non-conforming structure that they want to expand outside of the
343 setbacks, it is permitted by right. Vice Chair Simpson clarified that if a house is built closer to a setback
344 than permitted then an owner can build on the side of the house that is not closer to the setback while
345 not increasing the non-conformity.

346 Mr. Neuwirt excused himself from the meeting.

347 Chairman Schneider said that he has a question regarding Article III, Section 3.50 (f) as he wonders if it
348 means that there can be an increase in the non-conformity with a Special Exception and if so in what
349 way can the non-conformity be increased. Ms. Gage said that if someone wanted to build an addition
350 on a structure that was already non-conforming in the front setback that would go further into the front
351 setback then they would be coming to the Board under this Ordinance. Chairman Schneider said that he
352 thinks this Ordinance is regarding additions that will not go further into the front setback. Vice Chair
353 Simpson confirmed that is how he reads this Ordinance as well and the applicant would ask for a Special
354 Exception. Chairman Schneider said that if someone wants to do an addition to the back of the building

355 then this would be permitted by right under Section 6.13. He thinks that Section 3.50 (f) is not clear
356 currently. Ms. Gage said that if the Zoning Board gets an application under this Section before any
357 proposed changes are approved by the voters, then they would need to make an interpretation of this
358 Ordinance. Chairman Schneider said that his interpretation would be that you can increase the non-
359 conformity in the front setback if it is not any closer to the road than it already is. There was further
360 discussion regarding this Ordinance and potentially changing the wording of it to decrease the
361 confusion.

362 Ms. Gage asked about Special Exceptions and if every Section under Article III, Section 3.50, such as
363 Section 3.50 (f) would refer to Section 3.50 (i) for the criteria. Vice Chair Simpson said no as there are
364 criteria in Section 3.50 (f): it is pre-existing, it is a primary structure; it is non-conforming due to an
365 inadequate front setback; and it does not increase the front setback. Vice Chair Simpson asked and Ms.
366 Gage said that there is no definition for primary structure in the Ordinance. There was a discussion
367 regarding defining primary structures and about re-writing the Ordinance.

368 Ms. Gage said that she is confused about Section 3.50 (i) as she feels as though the same proposal for an
369 addition under Section 3.50 (f) would be applicable to Section 3.50 (i). Chairman Schneider explained
370 that it would not fit because Section 3.50 (i)(1) says that the enlargement or replacement would have to
371 ordinarily be permitted by the Ordinance; meaning it is conforming and it is permitted by right under
372 Section 6.13 so it should be removed. Section 3.50 (i) should only apply to height. Ms. Gage asked and
373 Chairman Schneider confirmed that he would like Section 3.50 (i) to read "The ZBA may allow a pre-
374 existing non-conforming structure to have the roofline altered provided that". Ms. Gage asked and
375 Chairman Schneider confirmed that he does not think that a non-conforming enlargement or
376 replacement should be permitted by a Special Exception and it should require a Variance. Vice Chair
377 Simpson said that there does not need to be a Special Exception for every scenario. However, he is not
378 sure he agrees with Chairman Schneider regarding removing the words "enlarged" and "replaced" from
379 the Ordinance. Additionally, he would like to strike "commercial building" from the Ordinance. There
380 was a further discussion regarding the Ordinance and why it states "living area only" in Section 3.50
381 (i)(2).

382 There was discussion about the change / addition to the Zoning Ordinance of the word "envelope" and
383 how that has affected Zoning applications as if the non-conformity is not increased then you do not
384 need a Variance, however, if it is then you need a Variance or Special Exception.

385 There was a discussion regarding having anything defined to be highlighted throughout the Zoning
386 Ordinance.

387 Chairman Schneider asked and Vice Chair Simpson said that he is going to give his changes to the Rules
388 and Procedures to Ms. Gage and she will compile the draft for the Board.

389 **MISCELLANEOUS**

390 Ms. Gage gave the Board their packets for the June 21st meeting and explained that there is a hearing
391 under Section 3.50 (i) and Section 6.12.

392 Ms. Gage gave the Board copies of a new Certificate of Zoning Compliance that she is working on for
393 their review and feedback. Ms. Gage asked the Board to give comments to her by June 14th at 12:00.

394 Mr. Lyons asked and Vice Chair Simpson said that he should have asked for the Board to continue the
395 hearing for the Variance before they voted on it. Vice Chair Simpson said that he believes that Mr.
396 Lyons can ask for the Board to reconsider the case as he thinks that any of the Board members or any of
397 the public that are affected by a decision can ask for a rehearing.

398 Ms. Gage said that for the first hearing she made it clear to Mr. Raps her concerns regarding him
399 applying for a home business, however, he was insistent that was what he wanted to apply for. Vice
400 Chair Simpson said that the Board should not be commenting on this case as it is continued.

401 Ms. Gage asked if the Board would like her to give a brief introduction of cases, including that it has
402 been properly posted and noticed and a small summary off her memo. Chairman Schneider said that a
403 brief introduction might be beneficial. The Board said that the memo that Ms. Gage produces for each
404 case is helpful to them.

405 There was a discussion about surveys and if they should be required for certain applications.

406 Vice Chair Simpson made a motion to adjourn the meeting at 9:50 pm. Mr. Lyons seconded the motion.
407 The motion passed unanimously.

408 Respectfully submitted,

409 Melissa Pollari

410

411

412 Zoning Board of Adjustment

413 _____

414 Daniel Schneider, Chair

Aaron Simpson, Vice Chair

415 _____

416 James Lyons, Jr.

William Larrow

417 _____

418 George Neuwirt

Clayton Platt, Alternate