

1 **TOWN OF SUNAPEE**

2 **ZONING BOARD**

3 **JUNE 21, 2018**

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

6 **ABSENT:**

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

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

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

13 Richard Raps continued to present the merits of the case.

14 Ms. Gage said that she brought a copy of the subdivision plan that shows both the lots.

15 Mr. Raps said that he would like to have a small antique shop in the barn that is next to his hotel and his
16 residence. It would only be open in the summer from approximately 10:00 – 5:00.

17 Chairman Schneider asked and Mr. Raps confirmed that he is applying for a home business. Chairman
18 Schneider read the definition of a home business from the Zoning Ordinance. Mr. Raps said that his
19 proposed business fits the definition. Chairman Schneider asked and Mr. Raps said that he lives in the
20 hotel, which is on the same lot as the barn. Chairman Schneider asked and Mr. Raps explained that he is
21 renting his house out for the summer so he moved into the hotel building. The barn where the business
22 will go does not have any heat or plumbing and he does not live in that structure.

23 Vice Chair Simpson asked and Mr. Raps said that he will be selling antique furniture and antique décor.

24 Chairman Schneider asked if there were any questions or comments from the audience.

25 Anthony Lenhart, an attorney for Gregory Parzych, 173 & 175 Burkehaven Hill Rd, said that they are
26 hearing something different from what they heard in at the meeting held only weeks ago as Mr. Raps is
27 saying that he has changed his residence. Mr. Raps said that all he needed to do was move his clothes.
28 Attorney Lenhart said that it is clear that Mr. Raps’ home, which is where he stated he lived at the prior
29 meeting. Additionally, this does not meet the definition of a home business as the business will not be
30 conducted in the home; this is a hotel, which is a commercial operation. Attorney Lenhart continued to
31 explain how he does not believe that the proposed antique store is a home business.

32 Attorney Lenhart said that the right of way that goes over the property is shared by three properties.
33 The gentleman who spoke in favor of Mr. Raps application at the last meeting, stated that the intent is
34 to draw the traffic in from the road, not to draw the visitors staying at the hotel. This will cause more of
35 a bottleneck on the right of way. Attorney Lenhart continued to explain more about the effects the
36 traffic will have on the right of way.

37 Doris Raps said that she will be renting the house at 183 Burkehaven Hill Rd and asked if there has ever
38 been a history of the right of way being blocked. Chairman Schneider asked and Ms. Raps explained
39 that she and Mr. Raps are no longer married but she will be renting the residence from him. Attorney
40 Lenhart said that his client's concerns do not have anything to do with the history of the usage of the
41 right of way but what will happen if the commercial nature of the property is extended to the structure
42 on the edge of the right of way. Mr. Raps said that it is a 400 sq ft building and will be an antique store,
43 there will not be hundreds of cars going in.

44 Chairman Schneider asked and Ms. Gage confirmed that if the Special Exception is approved Mr. Raps
45 will need to go to the Planning Board for Site Plan Review.

46 Mr. Lyons asked if the Board grants the Special Exception if they will be granting a commercial use that
47 could continue after Mr. Raps sold the property. Vice Chair Simpson said that if someone wanted to do
48 another business it would have to be a home business, not a separate commercial business. Mr. Larrow
49 agreed that the Board would not be approving a commercial business, they would be approving a home
50 business.

51 Mr. Larrow asked and Mr. Raps said that he will not be living in the structure. Mr. Raps said that a home
52 business could be in a garage and there is not a difference. Chairman Schneider said that the difference
53 is that a home is a residence and this structure is not a residence. There was further discussion
54 regarding this matter.

55 Mr. Raps said that 179 Burkehaven Hill Rd is his residence and is what is on his license, tax bills, etc. He
56 does own another residence next door, however, that is not where he lives.

57 Mr. Raps said that he would like to know if Attorney Lenhart has proof that he represents Mr. Parzych.
58 Attorney Lenhart said that he asked if that is a requirement and was told that it is not. Chairman
59 Schneider agreed that it is not required.

60 Attorney Lenhart said that the applicant believes that this is all one property, however, it has been
61 subdivided. Mr. Raps said that he has moved back to the hotel since the last meeting. There was
62 further discussion regarding this matter.

63 Mr. Neuwirt asked if Mr. Raps wanted to lease the building to someone else what that person would
64 have to do to open a business and if a Variance would be required. Vice Chair Simpson confirmed that is
65 what would have to happen. Mr. Neuwirt asked why this should not be done with this application
66 because it will be a second commercial business on the same parcel.

67 Vice Chair Simpson asked and Mr. Raps said that he has ten units in the hotel and he is not occupying
68 any of them. Mr. Raps said that he is living in a two-bedroom unit on the second floor of the hotel,
69 which he used to rent out.

70 Mr. Neuwirt said that he believes that if Mr. Raps wants to open a second commercial business on the
71 same parcel he should get a Variance.

72 Mr. Raps asked and Ms. Gage said that she had a conversation with the Town Planner who explained to
73 her that uses may be layered on top of each other but they are typically addressed one at a time. Ms.
74 Gage continued that the Town Planner also said that there have been cases in Town where the work
75 was allowed to be done in a garage. Attorney Lenhart said that the hotel is not a use that is permitted in
76 this Zone and the antique store should not be considered an accessory use or a layered use and the
77 building is not owner occupied.

78 Chairman Schneider closed the meeting to public comment.

79 Mr. Neuwirt asked and Vice Chair Simpson confirmed that if the structure was being rented out to
80 someone they would need a Variance. Vice Chair Simpson continued that this is not the issue in front of
81 the Board. Mr. Neuwirt said that this is an issue where there is already a commercial enterprise and Mr.
82 Raps is seeking another commercial enterprise that is unrelated to the first. Mr. Neuwirt continued to
83 express his concerns regarding the Mr. Raps proposal and that he does not think that it fits the criteria
84 of a home business. There was further discussion regarding this matter.

85 Chairman Schneider said that he thinks that this is a commercial property, not a residence, and the
86 proposed business does not qualify as a home business.

87 Vice Chair Simpson said that he heard the applicant say that historically someone has lived in the hotel
88 building. However, if it is a home business and Mr. Raps moves out then it is no longer a home business.
89 Vice Chair Simpson continued that he questions if when Mr. Raps built his new house if the hotel
90 remained a grandfathered use and if he should have applied for a Variance as he no longer lived on the
91 property. However, the Board is now being told that Mr. Raps moved back into the hotel and wants to
92 qualify the proposed business as a home business. There was further discussion regarding this matter as
93 the hotel was being operated before Zoning.

94 Mr. Lyons said that he does not believe that the criteria for a home business have been met.

95 Chairman Schneider asked and there were no further comments from the Board.

96 Vice Chair Simpson made a motion to approve Case #ZBA18-05: Parcel ID: 0136-0007-0000;179
97 Burkehaven Hill Rd "Burkehaven Lodge"; Raps Revoc Trust, Richard E Raps Jr, Trustee; Zoned
98 Residential; for a special exception for home business in the residential district per Article IV, Section
99 4.10 to sell antique furniture and décor in a 403 sq ft area, summer season only. Mr. Lyons seconded
100 the motion. The motion failed unanimously. Chairman Schneider explained that the application for the
101 Special Exception was denied due to the fact that the structure does not meet the criteria for a home
102 business.

103 Mr. Raps asked and Chairman Schneider explained that the structure is not a residential structure as no
104 one lives there and the property is commercial and not residential. Mr. Raps asked and Vice Chair
105 Simpson said that he has 30 days to file a motion to reconsider and then he can go to Superior Court.

106 **CASE #ZBA18-10: PARCEL ID: 0115-0004-0000: 29 BURMA RD, SHANNON M MARTINEZ; SPECIAL**
107 **EXCEPTION PER ARTICLE III, SECTION 3.50(I) AND ARTICLE VI, SECTION 6.12 TO REPLACE A NON-**
108 **CONFORMING STRUCTURE (SHED / GARAGE) WITH SAME FOOTPRINT BUT DIFFERENT ENVELOPE AND**
109 **ROOF.**

110 John Parris presented the case on behalf of his wife, Shannon Martinez. Vice Chair Simpson asked and
111 Mr. Parris confirmed that he is one of the property owners.

112 Mr. Parris said that he would like to rebuild the garage in the back of his property, which is a little too
113 close to the property line and that they have a survey showing the garage. A few years ago, they
114 received the permit from Roger Landry to rebuild, however, they had another sizable project, which was
115 to connect to the new sewer line, that could not get done at the same time. They cannot bring the
116 garage away from the property line because the land is very small, less than a 1/3 of an acre, and it
117 would put the garage in the middle of where his daughter plays.

118 Chairman Schneider asked and Mr. Parris confirmed that the horizontal dimensions of the structure are
119 the same as the existing garage. Chairman Schneider read Section 6.12 and said that this application
120 meets the criteria for the horizontal dimensions. Mr. Parris said that he would like to change the
121 roofline of the garage to align with the roofline of the house so they look more cohesive. Mr. Parris
122 gave further explanation regarding this matter.

123 Chairman Schneider asked and Mr. Parris explained to the Board how his proposal meets the criteria for
124 a Special Exception under Section 3.50(i): the horizontal dimensions will not be increasing; the existing
125 structure is a garage; the existing structure is 13 ft 6 in; and the proposed structure will be
126 approximately 14 ft 6 in. Chairman Schneider asked if Mr. Parris has plans for the proposed garage. Mr.
127 Parris explained that he tried but he does not have the plan from LaValley's. The Special Exception
128 criteria continued to be discussed.

129 Chairman Schneider asked and there were no abutters with any questions or comments regarding the
130 case.

131 Mr. Larrow asked and Vice Chair Simpson confirmed that the envelope does change because the
132 structure will be changing by one foot. Mr. Larrow asked and Mr. Parris explained that the roofline is
133 being changed 90 degrees and the roofline is being changed by one foot. Chairman Schneider asked and
134 Mr. Parris confirmed that it is acceptable that if the Board chooses to approve the application they can
135 but a condition on the height of the building to not be more than 16 ft. Mr. Lyons asked why the
136 restriction would not be 14 ft 6 in and Chairman Schneider explained that Mr. Parris might have
137 measured incorrectly. Mr. Lyons said that his concern is that if this structure goes higher it would be
138 more visible from the road. There was further discussion regarding this matter.

139 Mr. Platt, who recused himself from the case, said that the total height change might be one foot but
140 with the way the structure sits it might look like more. Mr. Parris has the right to raise the structure 10
141 feet and he does not think that the visibility from the road is a part of the criteria for a Special Exception.
142 If the condition is only one foot and it is incorrect then Mr. Parris will have to return to the Board.

143 There was further discussion regarding that Mr. Parris does not have a submitted plan and the proposed
144 height of the building and that LaValley's is customizing the pitch of the roof to match the house. Mr.
145 Neuwirt said that it looks as though the roof height will be increasing by at least 4 ft, which is allowed
146 under the Special Exception criteria.

147 Chairman Schneider asked and there were no additional comments or questions from or for Mr. Parris
148 so he closed the meeting to public comment.

149 Case #ZBA18-10: Parcel ID: 0115-0004-0000: 29 Burma Rd; Shannon M Martinez and John Parris;
150 Zoned Rural Residential within the Shoreland Overlay District; Special Exception per Article III, Section
151 3.50(i) to replace a non-conforming structure (shed / garage) with same footprint but different envelope
152 and roof subject to the approved Shoreland Permit. Mr. Lyons seconded the motion. Chairman
153 Schneider said that he would like to add a condition regarding the maximum height of the garage not to
154 be more than 20 ft. Vice Chair Simpson agreed to amend his motion if Mr. Neuwirt would second the
155 amendment. Mr. Neuwirt seconded the amendment. Chairman Schneider said that the motion is now
156 conditioned that the maximum height will not be more than 20 ft high. The motion as amended passed
157 with three in favor and two opposed.

158 **CASE #ZBA18-06 & ZBA18-07: PARCEL ID: 0113-0021-0000: 60 RIDGEWOOD RD, TIMOTHY L & BETTE**
159 **L NOWACK (GEORGE NEUWIRT); TWO (2) VARIANCES FROM ARTICLE III, SECTION 3.10 (RURAL**
160 **RESIDENTIAL DISTRICT) TO PERMIT A GARAGE TO BE BUILT CLOSER TO THE PROPERTY LINE THAN THE**
161 **ORDINANCE ALLOWS, ASKING FOR A 10 FT RELIEF FROM THE 15 FT SIDE SETBACK REQUIRED AND**
162 **ASKING FOR A 20 FT RELIEF FROM THE 50 FT FRONT SETBACK REQUIRED.**

163 Mr. Neuwirt recused himself from the case. Vice Chair Simpson made a motion to appoint Mr. Platt as a
164 voting member for the case. Mr. Larrow seconded the motion. The motion passed unanimously.

165 Chairman Schneider said that because there are two different Variances being asked for each Variance
166 will require a separate vote.

167 Ms. Gage gave the Board additional plans for their review as well as a letter from an abutter.

168 Mr. Neuwirt presented the case on behalf of Mr. and Mrs. Nowack and confirmed that he has a letter
169 granting him permission to do so.

170 Mrs. Nowack explained that they moved to Sunapee full time last April into the vacation house they
171 owned for several years. They have spent one winter here and did not have a garage and found it to be
172 difficult to navigate the walkway down from the street. They have two head in parking spaces off the
173 road, which is where they want to put the garage and it is very slippery with the drainage in the area.
174 The Nowacks gave the Board copies of pictures of the parking area in the winter. Mrs. Nowack

175 explained that they only have 1/5 of an area and 42 ft of frontage on the road and an 8 ft right of way
176 for Stuart Caswell to access his dock so there isn't a lot of area for the garage. They have gone as small
177 as they can with the garage while being able to fit two cars in it. Mrs. Nowack continued that they are
178 concerned about safety while walking down the walkway in the winter and about the snow removal in
179 the winter. Mr. Nowack said that he sprinkled sand every morning as he could not get up and down the
180 walkway to even get mail. There was further explanation regarding the ice and walkway and the snow
181 removal and how the garage helps the Nowacks.

182 Chairman Schneider asked and Mr. Nowack confirmed that they could still build the steps down to the
183 house without building the garage, however, they will still have issues with ice and snow with the cars.

184 Mr. Neuwirt explained that they originally continued the case so that they could apply for a Shoreland
185 Permit and they have one that is approved. The plan that was submitted for the Shoreland shows that
186 this is a complicated project because the improvements that the Nowacks want to make to their
187 property address issues having to do with the Town, specifically maintenance and emergency vehicles
188 because the end of Ridgewood Rd does not meet the current turn-round criteria. They have spent time
189 with Mr. Hazelton as well as the other neighbors regarding how they can get a turn around for egress for
190 a plow truck, fire truck, etc. The Nowack's property improvement proposal is a catalyst for
191 improvement to the area; they want to build the garage but also want to help the Town. Mr. Neuwirt
192 continued that they had a meeting with Mr. Hazelton as he initially wrote a letter regarding this project
193 that was very damning but through negotiating different terms and such Mr. Hazelton is now more on
194 Board with the project.

195 Mr. Neuwirt gave the modified Shoreland plan that has been accepted by DES.

196 There was a discussion regarding the size of Ridgewood Rd if it is two rods wide. Mr. Neuwirt said that
197 he does not believe that all the road is two rods wide.

198 Jeff Fitzgerald, 62 Ridgewood Rd, said that the turn around on the end of Ridgewood Rd is on his
199 property.

200 Mr. Neuwirt explained the existing conditions plan to the Board, which was done based on a previously
201 done survey. The house was torn down and replaced in 2001 and there are setback lines on the plan as
202 well as the location of the current parking area. Mr. Neuwirt continued to explain the plan to the Board;
203 they are asking for a 10 ft reduction of the 15 ft side setback, leaving 5 ft.

204 Mr. Platt asked and Mr. Neuwirt said that they have agreed with Mr. Hazelton to move the garage back
205 towards the southeast by 5 ft. Mr. Larrow asked and Mr. Neuwirt said that the modified Shoreland plan
206 does not show this change. Mr. Neuwirt said that the plan to move the building 5 ft closer to the lake
207 was not agreed to by the Nowacks until 4:30 this afternoon.

208 Mr. Neuwirt explained that Mr. Hazelton wrote letters to all the abutters to tell them that he wanted to
209 hold a meeting at the Town Office this afternoon to have a discussion regarding improving the end of

210 Ridgewood Rd. Mr. Hazelton had several concerns regarding drainage and Mr. Neuwirt and the
211 Nowacks have tried to work with him.

212 Vice Chair Simpson asked and Mr. Neuwirt said that they meet the setback for the other property line.
213 Vice Chair Simpson asked if they are moving the garage 5 ft southeast if it will fall into the other setback.
214 The Nowacks explained that the lot widens but it has not been measured. Mr. Neuwirt said that they
215 are intending to meet the setback on the other side and are asking for 10 ft relief from the one side.
216 Vice Chair Simpson said that Mr. Hazelton's letter says that they will be moving the garage 5 ft
217 southeast. Mrs. Nowack explained that is closer to the lake. Mr. Neuwirt said that the proposed garage
218 will actually be more conforming. There was further discussion regarding moving the garage toward the
219 house.

220 Mrs. Nowack said that if the garage is not built then the cars remain where they are, which does not
221 help with the snow. Mr. Neuwirt explained how moving the garage back the 5 ft towards the lake will
222 help address Mr. Hazelton's concerns. Mr. Neuwirt said that it is not uncommon in Sunapee to have
223 garages close to the road. Moving the garage back 5 ft will allow the setback from the road to be 35 ft
224 from the centerline of the road rather than 30 ft. Mr. Lyons asked and Mr. Neuwirt confirmed that if the
225 garage gets moved back 5 ft then this would allow for more room for the Town and emergency vehicles.
226 Mr. Lyons said that Mr. Hazelton's letter says that this will "assist the Highway Department in our
227 pursuit of an easement to construct and maintain a modified hammerhead...". Mr. Neuwirt said that
228 they can only do their part; if you look at Mr. Hazelton's proposal, he is going to approach the
229 Fitzgerald's to address the end of the road. There was further discussion regarding this matter.

230 Mr. Neuwirt said that Mr. Hazelton was also concerned about drainage. The water comes down the
231 road and goes into the lake through a stone trench by the Hack's property. Mr. Neuwirt continued that
232 Mrs. Nowack is an Environmental Engineer and Mr. Nowack worked at NH DES for many years so they
233 understand their property and are trying to be contentious about their own water retention. They have,
234 therefore, added a rain garden to help with the storm water that comes down the back side of their
235 property. The water also comes down the walkway, runs across their property and into that same area.
236 They are going to install the retention pond, which has been approved by the State, to handle the
237 surface storm water. They are also trying to capture water at the top of the driveway and prevent it
238 from running into their neighbor's property and into the lake. There was further discussion regarding
239 the plans for the storm water drainage system including what will be going around the garage and that
240 there is currently drainage around the house.

241 Mr. Platt asked how far the garage will be from the edge of the road after it is shifted back 5 ft as he
242 knows that if you apply for a Special Exception it says the garage must be no closer than 10 ft to the
243 edge of the road right of way. Mr. Neuwirt said that they are applying for a Variance. Mr. Platt said that
244 he thinks that the Town has set 10 ft as a benchmark. Mr. Neuwirt said that he believes it will be
245 approximately 11 ft from the edge of the road and Mr. Platt said that he thought that the setback is
246 measured from the edge of the right of way, not the centerline of the road. There was further
247 discussion regarding the front setback location and where the road ends.

248 Mr. Lyons asked about the grade stakes that are in the driveway and Mr. Neuwirt explained that they
249 are for the old plan. Mr. Nowack said that the proposed garage will be moved 5 ft back from those
250 stakes after meeting with Mr. Hazelton.

251 Mrs. Nowack explained the design of the garage and that they chose a low profile to help create less
252 runoff. Mr. Nowack said that they plan to do terracing on the sloped side to also help with the runoff.

253 Chairman Schneider read three abutter letters, from Charles Dunlap, Sue and Shaun Murphy, and
254 William T and Emily D Hack that are supporting the proposed garage into the record (see attached).

255 Mr. Fitzgerald said that he owns the property to the immediate west of the Nowack's property and
256 extends across the end of Ridgewood Rd and he objects the request for the Variance from his property
257 line. This is the second Variance that the Nowacks have requested as they received one when they built
258 their house. They are continuing to overdevelop this property from what the property is capable of.
259 The 5 ft Variance will affect the overall Rural Residential character of the area the properties are zoned
260 in and this is not the harbor. He has researched and no one else in the area has received a 66% setback
261 reduction and this would set a precedent.

262 Chairman Schneider read Mr. Fitzgerald's letter into the record (see attached). Chairman Schneider
263 asked what Mr. Fitzgerald meant about how the proposed garage would block access to future
264 conforming buildings on his property. Mr. Fitzgerald explained that at the time he wrote his letter the
265 garage was proposed to be built right on the street, which he was concerned about, however, the
266 garage being moved back 5 ft is better as now he can access any part of his property from the end of
267 Ridgewood Rd.

268 Chairman Schneider asked if there is anyone else in the audience with questions or comments.

269 David Howland, 56 Ridgewood Rd, said that he has spoken with the Nowacks and he thinks that they
270 have made a sincere effort to manage storm water with their proposal. He was concerned that any
271 development might exacerbate the drainage issues and was hoping that there would be a condition in
272 the approval that he current conditions are not exacerbated. The drainage on Ridgewood Rd is not
273 managed and is currently left to the homeowners, which leads to disputes between neighbors and is not
274 good for their community. He welcomes any conversation regarding reworking the end of the street in
275 terms of drainage, however, where the water goes is an issue. Mr. Howland continued that he did not
276 know about the meeting with Mr. Hazelton and asked if the case should be continued so that something
277 can be worked out regarding the road.

278 Mr. Neuwirt said that the Nowacks are doing all that they can in regards to their own water retention.
279 They have answered the concerns of the Town by moving the garage back and the information
280 presented has been accepted by the State and by the Highway Director. He can't imagine that Mr.
281 Hazelton will ask them to do more as they have already gone over and above what the State required of
282 them. They did not have to do the additional improvements to get approval by the State and they trying
283 to do what they can to contribute to the end of the road. The key is to get the other people on
284 Ridgewood Rd to do their part.

285 Mr. Neuwirt said that in response to Mr. Fitzgerald's letter, a reduction in property value is a subjective
286 argument; garages are traditional and desired in New England with the winters. They were only one
287 property away on this road from seeking a Special Exception regarding the front setback. Vice Chair
288 Simpson asked if they move the garage back 5 ft if they qualify for a Special Exception. Mr. Neuwirt said
289 that they do not qualify because more than 50% of the properties within 500 ft must have non-
290 conforming structures and were one property away from that.

291 Mr. Neuwirt said that regarding Mr. Fitzgerald's concerns about drainage, they have created an
292 comprehensive plan and are going over and above the State's requirements in order for the Nowacks to
293 do their part in capturing and filtering water as it goes to the lake in three locations not specific to the
294 structure area. Mr. Neuwirt and Mrs. Nowack continued to explain the drainage system and how Mr.
295 Fitzgerald's property will not get water from the Nowack's property.

296 Mr. Neuwirt said that regarding snow removal, they are moving the garage back 5 ft to help with this
297 matter and explained how the snow removal has been done in the past by the Town and that the
298 Nowacks will be allowing the plow trucks to back into their driveways to turn around in. Mr. Platt asked
299 if the Nowacks were going to give the Town permission or an easement to use their driveway. Mr.
300 Nowack said that Mr. Hazelton told them that his drivers are told that if they have to back up onto
301 private property, they are supposed to notify the owner first and it was only to be done in an
302 emergency, therefore, an easement is not required. Mr. Platt asked and Mr. Nowack said that the Town
303 will use his driveway to turn around as needed. Mr. Nowack said that he asked Mr. Hazelton about
304 written permission and was told that they would just receive a phone call if they need to use their
305 property to turn around in.

306 Stuart Caswell, 57 Ridgewood Rd, said that he received a notice yesterday from the Town regarding this
307 proposal. He is hearing that Mr. Neuwirt and Mr. Hazelton have been talking for weeks about this
308 project. The registered letter that he received said that the Town wants to take land from his property
309 and Mr. Caswell would like to know how the Board can approve this project without the issue with the
310 Town worked out. Vice Chair Simpson asked and Mr. Caswell confirmed that the letter that he received
311 from the Highway Director said that the Town might take property from him in order to do the
312 hammerhead. He did not receive the letter until yesterday and was not able to attend the meeting that
313 was held at 4:30 today. He thinks that this case should be postponed so that they can see what is going
314 on. Chairman Schneider explained that they are a Zoning Board and they cannot speak to what the
315 Highway Department is doing.

316 Mr. Caswell said that what the Board has been presented is a set of plans that is not correct and that the
317 setbacks have changed. Mr. Neuwirt said that the side setback has not changed and the front setback
318 will improve. There was further discussion regarding this matter.

319 Mr. Neuwirt said that Mr. Fitzgerald's letter says that the front door of his property will face the
320 proposed garage, which would be approximately 30 ft away. He used a range finder and took a picture
321 with a camera from where the back corner of the garage will be located and it says it is 69 ft. Mr.
322 Fitzgerald asked if this is from the new proposed location and if the measurement is to his front door or

323 his porch as he has a porch and measured it to the 5 ft setback. There was further discussion regarding
324 this issue.

325 There was a discussion regarding the plans that have been submitted to the Board and for the Shoreland
326 Permit.

327 Vice Chair Simpson asked and Ms. Gage said that there is not a copy of the Nowack's prior Variance
328 approval in their property file. Vice Chair Simpson asked and Mrs. Nowack said that they received the
329 Variance in 2000 as the house was completed in 2001. Mrs. Nowack explained that they received a
330 Variance to reduce the side setback for a non-conforming lot from 25 ft to 12.5 ft.

331 Vice Chair Simpson said that he thinks that there are grounds for continuing the hearing. The Board has
332 been told that there is a letter from the Town regarding taking property and they don't know if the
333 proposed setbacks will be correct; the Board also does not have the correct plans. Vice Chair Simpson
334 continued that he thinks all the property owners should talk to each other as well as talk to the Town.
335 Until they have accurate plans and know what was previously permitted and if there were any
336 condition, the Board does not have enough information.

337 Chairman Schneider said that he questions the compliance with Mr. Hazelton's letter. Chairman
338 Schneider asked and Mr. Neuwirt confirmed that they will keep the garage the same size as proposed
339 just move it back. Chairman Schneider said that there is a fairly steep slope on the lot. Mr. Neuwirt said
340 that moving the garage back 5 ft will not have a big impact as the gradients are the same. Chairman
341 Schneider said that he would like to see a revised plan.

342 Vice Chair Simpson said that he does not know the distance from the Hack's property on the other side
343 but wanted to know why if the garage is moving deeper into the property it cannot be moved further
344 from the setback. Mr. Neuwirt said that in all his discussions with Mr. Hazelton, he essentially takes a
345 template and lays it over the road and they have discussed how the Nowack's property fits with the
346 template. The Nowacks agreed to do what they could do to help better the end of Ridgewood Rd. Mr.
347 Neuwirt continued that he does not know how they can solve the neighbors' issues.

348 Vice Chair Simpson asked and the Board did not have a copy of the letter sent to the owners on
349 Ridgewood Rd regarding taking property. Mr. Caswell said that he has a copy of the letter on his phone
350 and gave the Board permission to read it. Vice Chair Simpson read the letter to the record (see
351 attached). Vice Chair Simpson said that the letter does not say anything about taking property. Mr.
352 Caswell said that it says that the Town might be going onto his property and asked why he only got 24
353 hours' notice of the meeting. Mrs. Nowack said that they only received 24 hours' notice of the meeting
354 as well. Vice Chair Simpson said that his concern was that the Town was going to take property from
355 various abutters and the letter does not say that.

356 Mrs. Nowack asked if they move the garage back 5 ft how it effects what is done with the other
357 properties. Vice Chair Simpson said that one of the Variance criteria is to show why they cannot meet
358 the setback and if they are moving the garage back he thinks that it would be easier to meet both
359 setbacks as he does not know why they cannot move it closer to the other property line if their lot gets

360 wider. Mrs. Nowack said that she does not know if there is any way to do that so they can have a two
361 car garage. Chairman Schneider asked if they changed the garage to a one car garage if they can better
362 meet the setbacks. Mr. Neuwirt said that they are applying for a basic 20 ft by 20 ft two car garage
363 which is as small as it can get for their usage. There was further discussion regarding this matter.

364 Mr. Larrow said that there is a neighbor who developed a garage using the slope and made it part of the
365 design and it solved a lot of problems for them and for the Town. He is not suggesting that is what they
366 should do but wanted to know if they had thought about doing something like that if it was feasible.
367 Mr. Neuwirt explained that the cost of doing that would be substantially more.

368 Mr. Neuwirt said that in responding to Mr. Fitzgerald's last bullet point in his letter regarding tree
369 removal and privacy impacts, the Nowacks have gone through a considerable expense to try and buffer
370 Mr. Fitzgerald's property and they plan to plant privacy trees. Mr. Fitzgerald said that he is happy with
371 the trees that are there now. Mr. Neuwirt said that there is a grouping of trees on Mr. Fitzgerald's
372 property and they will be 8 ft from that grouping of trees. They will be removing 10 trees from the
373 building envelope and one of the trees is 10 inches in diameter and all the others are under that. There
374 was further discussion regarding this matter.

375 Chairman Schneider asked and Mr. Neuwirt went over the criteria for a Variance per the application
376 submitted. Mr. Neuwirt said that the basis of a Variance is that there is a uniqueness to the land that
377 distinguishes itself so that it requires relief. In this case, because of the slope down from the road, the
378 design of the building kills two birds with one stone and provides the basis for the Variance.

379 Mr. Larrow asked and Mr. Neuwirt said that the lot coverage will be 21% and the requirement is less
380 than 25%. There was continued discussion regarding this matter and that the bluestone area will be
381 removed and turned into grass as well as about the right of way.

382 Mr. Platt said that he questions the setback and where the garage will be located on the drawing. Mr.
383 Platt asked if the garage can be moved back 5 ft why it cannot be moved back 10 ft. Mrs. Nowack
384 explained that the further back it goes requires more retaining walls and she would only see the
385 concrete walls from her house. Mr. Neuwirt said that they also need space for the stairs and the gas
386 tank to be situated and have room to work. Mr. Lyons asked if the garage can be moved towards the
387 right of way. Mr. Neuwirt explained that if the garage moves back 5 ft then they could possibly move it
388 away from the Fitzgerald's property by 1 ft. Mr. Lyons asked if the garage can be smaller and Mr.
389 Neuwirt explained that it is already as small as they can make it while being adequate for the Nowack's
390 use. There was further discussion regarding the size of the garage.

391 Mrs. Nowack said that for every foot the garage is moved back, they add impermeable surface so that
392 will need to be calculated and might need to revise the Shoreland Permit. They wanted the garage
393 closer to the road to go with the natural flow of the land and keep the impermeable surface as little as
394 possible. Mr. Lyons asked and Mr. Neuwirt confirmed that the Shoreland Permit does not say anything
395 about moving the garage back. Mr. Neuwirt said that one of the solutions they have considered is to
396 have permeable pavers that they will have in front of the garage to not increase the impervious surface
397 and the Board could make an approval conditional on this. Mr. Platt asked if the amended plan will

398 need to be approved by Shoreland and Mr. Neuwirt confirmed that it will need to be modified. There
399 was further discussion regarding this matter.

400 Vice Chair Simpson asked about the Variance that the Nowacks previously received. Mrs. Nowack said
401 that there were no conditions placed on that approval. There was further discussion regarding this
402 issue.

403 Vice Chair Simpson made a motion that he would like to continue the hearing until the Board can review
404 a copy of the revised drawings as well as the prior Variance that was granted when the house was
405 constructed. Mr. Platt said that he would like to know the final location of the garage.

406 Mr. Neuwirt said that the Board has approved Variances with building locations that the Board decided
407 where the building would go. Vice Chair Simpson said that there is at least one abutter present who is
408 objecting to the Variance. Mr. Neuwirt said that will not change by showing that they will be moving the
409 garage back 5 ft.

410 Mr. Neuwirt said that on March 9th Mr. Fitzgerald approached the Nowacks and said that was OK with
411 the project if they would stipulate on their deed that they would not allow renters any longer; projects
412 like his have a way of introducing facts that are not necessarily relevant.

413 Vice Chair Simpson asked for a second on his motion and Mr. Lyons seconded the motion. Chairman
414 Schneider closed the meeting to public comment to address the motion, which is to continue the
415 hearing to allow the Board to review the previous Variance that was granted on the property and for
416 Mr. Neuwirt to revise the drawings to reflect where the proposed structure is going to be built. Mr.
417 Larrow asked and Chairman Schneider said that the Board cannot require that a DES Permit be approved
418 prior to granting a Variance; they can condition an approval based on acquiring a DES Permit.

419 Ms. Gage said that the next meeting will be July 5th and Vice Chair Simpson said that he will not be at
420 that meeting. Mr. Larrow asked if the Board can get more information from Mr. Hazelton about the
421 impact of the hammerhead. Ms. Gage said that she sat in on the meeting and they are two distinct
422 issues but Mr. Hazelton was satisfied with the garage moving 5 ft. The desire to work with the
423 neighbors at the end of the road is not directly related to this case. Chairman Schneider said that he
424 would like to see new plans and another letter from Mr. Hazelton that he is satisfied.

425 Chairman Schneider asked if there was any further discussion regarding the motion. Ms. Gage asked if
426 there are only four Board members at the July 5th if the Board will be able to continue to hear the case.
427 Chairman Schneider said that will be up to the applicants but they can also choose to defer the hearing
428 until July 19th. The motion passed unanimously.

429 Chairman Schneider asked the Board members to let Ms. Gage know if they are available on July 19th.

430 Mr. Neuwirt asked about presenting the criteria for the Variance for the front setback and Chairman
431 Schneider said that hearing will be continued to the next meeting as well. Vice Chair Simpson said that
432 he will make another motion if needed but the cases go hand in hand. Mr. Neuwirt said that he was
433 asked to present the criteria for the Variance for the side setback. He would like to know if he will need

434 to go through everything again and Chairman Schneider said that he will not. Mr. Neuwirt asked and
435 Chairman Schneider said that he will need to present the criteria for the Variance for the front setback
436 in its entirety.

437 Mr. Platt excused himself from the rest of the meeting.

438 **MINUTES**

439 Changes to the minutes from June 7, 2018: Change Line 154 to read "...having the barn as more..."
440 Change Line 216 to read "Mr. Hayes, who said he has experience as a contractor, said that at the
441 price..." On Line 336 remove the line that starts "Chairman Schneider agreed..."

442 Vice Chair Simpson made a motion to approve the minutes as amended. Mr. Lyons seconded the
443 motion. The motion passed unanimously.

444 **MISCELLANEOUS**

445 Ms. Gage asked if Mr. Neuwirt can attend the July 5th meeting so they will have five Board members to
446 hear the other case that is on the agenda for that night even if the Nowacks might choose to continue
447 the case until there is a full Board. Chairman Schneider said that if the Board knows that they will not
448 have enough members if an applicant can inform Ms. Gage that they would like to continue the hearing
449 before the meeting and Ms. Gage said that she will check on the legality of this.

450 **ZONING AMENDMENTS**

451 Chairman Schneider gave the Board copies of the newest version of Zoning changes and explained the
452 proposed change which is that he added a definition for a primary structure.

453 There was a discussion regarding Section 3.50(i)(1) and Section 6.13 and which height requirement
454 Section 3.50(i)(1) refers to as there are various height requirements throughout the Ordinance and
455 having a reference in Section 3.50(i) to the specific height requirements. The Board discussed all the
456 different places where height is referenced in the Ordinance.

457 Vice Chair Simpson made a motion to adjourn the meeting at 9:50 pm. Mr. Larrow seconded the
458 motion. The motion passed unanimously.

459 Respectfully submitted,

460 Melissa Pollari

461

462

463

464

465 Zoning Board of Adjustment

466 _____

467 Daniel Schneider, Chair

Aaron Simpson, Vice Chair

468 _____

469 James Lyons, Jr.

William Larrow

470 _____

471 George Neuwirt

Clayton Platt, Alternate