

1 **TOWN OF SUNAPEE**

2 **ZONING BOARD**

3 **AUGUST 2, 2018**

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

6 **ABSENT:** Clayton Platt, Alternate

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

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

9 **CASE #ZBA18-12: VARIANCE: PARCEL ID: 0104-0006-0000: SUSAN KENT, APPLICANT / OWNER; 1008**
10 **MAIN ST, GEORGES MILLS: VARIANCE FROM ARTICLE III, SECTION 3.40 (C) FOR A PROPOSED STORAGE**
11 **SHED TO BE PLACED WITHIN 50-FT OF MUZZEY CREEK (BODY OF WATER).**

12 Mr. Neuwirt recused himself from the case. Chairman Schneider explained that there are only four
13 voting members and three votes must be in favor of the application in order for it to pass. The applicant
14 choose to proceed with the hearing.

15 Susan Kent presented the merits of the case.

16 Ms. Kent explained that her property has two levels that are divided by a hillside with plants. The best
17 location for her proposed storage shed is the lower level, however, it will be within 50 ft of Muzzey
18 Creek, which is a body of water.

19 Chairman Schneider asked and Ms. Kent confirmed that the proposed size of the storage shed is 16 ft by
20 16 ft. Chairman Schneider asked and Ms. Kent explained that the shed will be used for personal
21 property and to add some privacy from Route 11. She wants to make sure she has enough space; she
22 could make the shed smaller but there is more than enough room in the backyard for that size shed.

23 Mr. Larrow asked if Ms. Kent knows her current lot coverage and how much lot coverage she is
24 proposing to have. Ms. Kent said that she has about 1/3 an acre and the footprint of the shed is 256 sq
25 ft; she will have approximately 250 sq ft of space left in the lower level of the backyard as well as the
26 area that is in the upper level. It was determined by the survey that the total impervious area is 1290 sq
27 ft without the shed, and the total proposed impervious surface is 16.5% of the lot.

28 Chairman Schneider asked and Ms. Kent confirmed that she has received a Shoreland Permit.

29 Mr. Larrow asked what is preventing Ms. Kent from putting the shed up on the knoll as it appears as
30 though a smaller shed could go outside the setbacks. Ms. Kent explained that area is not as flat and
31 would require quite a bit of work. Her preference was to put the shed on the lower level.

32 Vice Chair Simpson asked why the submitted survey shows the proposed shed to be 295 sq ft. Ms. Kent
33 said that 16 ft by 16 ft is 256 sq ft. Ms. Gage asked if the square footage includes the roofline. There
34 was further discussion regarding this matter.

35 Vice Chair Simpson asked what is unique about the property that prevents Ms. Kent from leveling out
36 the property and building the shed outside the setbacks. Ms. Kent said that she was looking at what was
37 already in place and would not require moving dirt. There is a tenant in the house and the upper level is
38 essentially the tenant's backyard. There is an existing apartment in the basement as well and there is no
39 storage.

40 Chairman Schneider asked if Ms. Kent resides in the house. Ms. Kent explained that she cannot live in
41 the house until she has a suitable area for storage so it is currently rented.

42 Chairman Schneider asked and none of the Board members had further questions for Ms. Kent.
43 Chairman Schneider asked if anyone in the audience had questions or comments regarding the case.

44 Mr. Neuwirt explained that he is an abutter to Ms. Kent's property. The purpose of the shed, per Ms.
45 Kent, is to allow her to be able to live in the house. The tax card shows the property as a single family
46 home and the notes state that there is a small apartment in the basement. Mr. Neuwirt said that the
47 apartment has not been inhabited for more than two years and asked the Board's interpretation as to if
48 they believe Ms. Kent is allowed to live in the apartment. Chairman Schneider said that at this point it is
49 speculation and the Board is not being asked to approve a use variance. Mr. Neuwirt asked and
50 Chairman Schneider said that he does not know if Ms. Kent moves into the apartment that she will be in
51 violation of zoning. Ms. Gage explained that single family homes are allowed to have attached
52 accessory dwelling units and it is clear on the property card that the Town has been aware that there is
53 an apartment on the property. Mr. Neuwirt said that the second unit would require separate water and
54 sewer hookups. Vice Chair Simpson said that he does not think that has anything to do with the Board.

55 Mr. Neuwirt said that he objects to the shed because it is enormous. His lot is very small, 0.14 acres
56 (6,600 sq ft), and he needs every ounce of benefit that he can get, whether it be functionally or visually.
57 If the shed was more reasonably sized or shaped he might not have an issue with it but it is half the size
58 of his house. Vice Chair Schneider said that he does not believe the Board can consider visual esthetics.

59 Susan Neuwirt said that her issue is that Ms. Kent said that she does not want to put the shed on the
60 upper level because there would be too much prep work to put it there. However, Ms. Kent had
61 someone cut three huge trees from the lower level to have room for the storage shed and she went
62 through all that work to put it in the lower section and could have done work in the higher level.

63 Ray Wentzell said that Ms. Kent took the trees down because they were all hazardous to the house. The
64 upper level is not big enough to put a shed there. Additionally, if a shed did go in the upper level all the
65 snow from the house would fall onto the shed so keeping the shed away from the house is more
66 sensible.

67 Mr. Larrow asked and Ms. Kent explained that the tenant uses the garage on the house.

68 Mr. Neuwirt said that the trees that Ms. Kent cut were within the setback and required permission to be
69 cut and he does not believe that there was a tree cutting permit obtained. Ms. Kent said that she was
70 not aware that a tree cutting permit was required. Mr. Wentzell said that he did not get a permit to cut
71 the trees because anything on Lake Sunapee and in other areas does not require a permit if the trees are
72 hazardous to the house. Mrs. Neuwirt said that the trees looked healthy. Vice Chair Simpson said that
73 he does not think this discussion is relative to the case.

74 Chairman Schneider asked Ms. Kent to go over the five criteria for a Variance per her application. Ms.
75 Kent read the criteria from her application.

76 Mr. Lyons asked if Ms. Kent has considered a smaller structure. Ms. Kent said that she can make it
77 smaller if that is what the Board prefers. Mr. Lyons asked if Ms. Kent was going with the proposed sized
78 shed for a particular reason. Ms. Kent said that she considered different options and initially was going
79 to order a pre-built shed but her ability to access the backyard has been compromised so it needs to be
80 stick built. The dimensions she chose are the same as one of the storage units she saw at Home Depot.
81 She wants it to be attractive and an appropriate size so she can move from her current residence to this
82 house and have enough space. Once she looks at the costs, the shed might be smaller but she wanted
83 something that is a reasonable size. There is space around the building for maintenance and there is still
84 yard area between the shed and the house; she also does not want to mow a lot of lawn. She wants to
85 move here and had lived in a 2,500 sq ft house and didn't want to underestimate the space that she
86 needs. Mr. Lyons asked and Ms. Kent confirmed that she might have furniture that will not fit into this
87 residence that will require a storage shed that is 16 ft by 16 ft.

88 Ms. Kent said that she might be able to alter the width of the structure but it would still fall within the
89 50 ft setback.

90 Chairman Schneider asked and there were no additional questions for Ms. Kent so the meeting was
91 closed to public comments.

92 Vice Chair Simpson said that he knows that the lot is small and it is a pre-existing / non-conforming lot
93 but he does not know if that creates a hardship. Vice Chair Simpson asked if the porch is for the use of
94 the basement apartment. Chairman Schneider reopened the meeting in order to allow Ms. Kent to
95 explain that the porch is a screened porch that goes to the house. Vice Chair Simpson said that he is not
96 taking a position regarding the size of the shed. He does not see the hardship and thinks that the shed
97 can be built outside the setback.

98 Chairman Schneider closed the meeting to public comments.

99 Chairman Schneider said that he does not think that there is a hardship to not have a shed. Vice Chair
100 Simpson said that the hardship has to be related to the property characteristics. The shed is less non-
101 conforming than the house as far as the setback requirement. However, it would be more non-
102 conforming in total. Chairman Schneider said that it would still increase the non-conformity of the lot.
103 An addition to the house would be easier to do than this shed.

104 Mr. Larrow said that he thinks that people want to have sheds but this is extreme for the lot. Muzzey
105 Creek has been determined to be a body of water, however, it is runoff from up the road. If the shed
106 was put on the upper level then the land might need to be reworked and the shed made smaller; the
107 size of the proposed shed is extreme. Chairman Schneider said that he believed Muzzey Brook also was
108 runoff from Otter Pond.

109 Mr. Lyons said that he is concerned with the size of the shed in relation to the property and there are
110 other alternatives.

111 Vice Chair Simpson said that he does not think that the Creek comes from Otter Pond. Mr. Larrow said
112 that the water comes down the hill and across the road and goes into the Lake.

113 Chairman Schneider said that there is a reason that there are setbacks from waterbodies and one is to
114 keep things from going into the lake such as fuels for lawnmowers, paints, and solvents. The Board
115 cannot put enforceable restrictions on what goes into the shed and the runoff is a concern that he has.
116 It is reasonable to have a shed, however, it is not a hardship to not have one and he does not think that
117 this meets the definition of hardship. Mr. Larrow said that he does think a shed can be built on the
118 upper level.

119 Vice Chair Simpson made a motion to approve Case #ZBA18-12: Variance: Susan Kent, Applicant /
120 Owner; Parcel ID: 0104-0006-0000: 1008 Main St, Georges Mills; Zoned VR (Village Residential) w/
121 Wetlands and Shorelines Overlay District: Variance from Article III, Section 3.40 (c) for a proposed
122 storage shed to be placed within 50-ft of Muzzey Creek (body of water); subject to Shoreland Permit
123 #2018-02165 and subject to the shed being constructed in accordance to the 256 sq ft indicated on the
124 building permit rather than the 295 sq ft on the proposed plan. Mr. Lyons seconded the motion. The
125 motion failed unanimously. Chairman Schneider explained that the application is denied as it does not
126 meet the hardship requirements of the variance statutes.

127 **MINUTES**

128 Mr. Neuwirt rejoined the Board for the remainder of the meeting.

129 Changes to the minutes from July 7, 2018: There were no changes to the minutes.

130 Mr. Larrow made a motion to accept the minutes as written. Mr. Lyons seconded the motion. The
131 motion passed with four in favor and one abstention.

132 **ZONING AMENDMENTS**

133 Chairman Schneider said that he does not have any additional changes to the Zoning Amendments.

134 **MISCELLANEOUS**

135 There was a discussion regarding the Town of Bradford's Application for a Variance and if the application
136 can be modified to use in Sunapee as well as about having a disclaimer. The discussion also included
137 having language on the application regarding disability hardship and about a recent court decision.

138 Ms. Gage asked the Board if when they vote on a Variance, if only one criteria needs to fail in order for
139 the Variance to fail. Mr. Neuwirt said that Newport votes on all five criteria independently. Chairman
140 Schneider said that he went to a seminar and it is not required to vote separately on all five criteria. Ms.
141 Gage said that for an appeal, specifically for the Susan Kent case, the Board has only given one criteria
142 that has not been met. The Board discussed addressing all the criteria during a hearing. There was also
143 a discussion regarding if Ms. Gage should talk to applicants about the size of their projects.

144 Mr. Larrow made a motion to adjourn the meeting at 7:57 pm. Vice Chair Simpson seconded the
145 motion. The motion passed unanimously.

146 Respectfully submitted,

147 Melissa Pollari

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151 Zoning Board of Adjustment

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153 Daniel Schneider, Chair

_____ Aaron Simpson, Vice Chair

154 _____

155 James Lyons, Jr.

_____ William Larrow

156 _____

157 George Neuwirt

_____ Clayton Platt, Alternate