

1 **TOWN OF SUNAPEE**

2 **ZONING BOARD**

3 **NOVEMBER 1, 2018**

4 **PRESENT:** Aaron Simpson, Vice Chair; William Larrow; George Neuwirt; Clayton Platt, Alternate; Jeffrey
5 Claus, Alternate; Nicole Gage, Zoning Administrator

6 **ABSENT:** Daniel Schneider, Chair; James Lyons, Jr.

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

8 Vice Chair Simpson called the meeting to order at 7:00 pm.

9 Mr. Neuwirt made a motion to appoint Jeff Claus as a voting member. Mr. Larrow seconded the motion.
10 The motion passed unanimously.

11 **CASE #ZBA18-16: SPECIAL EXCEPTION: BRIAN & MARIANNE DOYLE; PARCEL ID: 0136-0056-0000: 56**
12 **BIRCH POINT RD; ZONE RS / SHORELINES OVERLAY; SPECIAL EXCEPTION PER ARTICLE III, SECTION 3.50**
13 **(I) TO ALLOW EXISTING GRANDFATHERED NON-CONFORMING STRUCTURE TO BE ENLARGED,**
14 **REPLACED AND THE ROOFLINE ALTERED TO ALLOW FOR A BASEMENT TO BE ADDED UNDER.**

15 Charles Arnold, Marianne Doyle, and Brian Doyle presented the merits of the case.

16 Mr. Arnold explained that the property is a single family house on a grandfathered non-conforming lot.
17 Mr. Platt surveyed the property and it appears a though a pin was moved so the structure is in the
18 setback; the State also raised the water level, which pushed the 50 ft setback back. Mr. Arnold said that
19 they received a permit to demolish the existing structure and rebuild in the existing envelope so they
20 could start building in the existing footprint. Vice Chair Simpson asked and Mr. Arnold confirmed that
21 they do have a DES permit.

22 Mr. Arnold said that they would like to raise the structure to have a basement as currently there is just a
23 crawl space that is full of water and mold. The house will remain two stories and will go to 33 ft at the
24 highest point.

25 Mr. Neuwirt asked and Mr. Arnold explained that they did receive a permit to rebuild the house as is as
26 they were waiting to be heard by the Zoning Board and wanted to start on the project so they could
27 demo and pour concrete. They have poured the foundation to have the house rebuilt at its proposed
28 height but are prepared to modify it as needed if the Special Exception is denied. There was further
29 discussion about this matter.

30 Mr. Neuwirt asked and Mr. Arnold explained that they want to raise the height of the structure. Mr.
31 Larrow asked and Mr. Arnold confirmed that the house will be raised because of the increase in the
32 height of the basement. There was further discussion regarding the reason that they decided to get a
33 permit before the Zoning Board meeting.

34 Vice Chair Simpson asked about the survey and if the house is in the setback. Mr. Larrow asked and Mr.
35 Arnold explained that during the survey process they discovered that the existing house is within the
36 setback. Mr. Platt said that the existing house is pre-existing and non-conforming but they will be
37 building in the same footprint.

38 Mr. Neuwirt asked if they got a permit to demo and rebuild in the same envelope, when it was decided
39 that they wanted to raise the house. Ms. Gage said that they received a permit to rebuild in the same
40 footprint and same envelope and are asking for a Special Exception to increase the height. There was
41 further discussion regarding this matter.

42 Vice Chair Simpson asked and Mr. Arnold explained that they will saw off the sections of the foundation
43 that are too high if they are denied. Mr. Neuwirt asked and Mr. Arnold explained that the foundation
44 will be 4 ft higher than the current foundation and the house will be 9 ft higher than the current house.

45 There was a brief discussion regarding Section 3.40 (h) as Vice Chair Simpson said that he thinks that this
46 Section needs to be addressed.

47 Mr. Arnold went over the reasons for the Special Exception per the submitted application.

48 Mr. Arnold said that they are increasing the dimensions toward the lake because the floor is going to be
49 raised and they will need stairs off the existing deck. However, there is a provision in the Ordinance that
50 allows for a 32 sq ft area if it is less than four feet off the ground with associated stairs. Mr. Arnold
51 asked if the stairs are not allowed in the setback and it was explained that they are a minor structure
52 and permitted by right.

53 Mr. Neuwirt said that he thinks that he understands that the applicants applied for a permit to not miss
54 the decent weather and to be able to tear the house down and pour the foundation. Mr. Arnold agreed
55 and said that they were hoping to be able to get the Special Exception or they can rebuild in the existing
56 envelope.

57 Mr. Arnold said that the pre-existing structure is a house and was less than 24 ft in height; no more than
58 10 ft additional in height than the pre-existing structure is allowed and they are asking for 9 ft. The roof
59 changes are within the height requirements set forth in this Ordinance. Vice Chair Simpson said that he
60 thinks that this is what pertains to Section 3.40 (h). Mr. Arnold said that he believes that all roof
61 changes are within the height requirements of the Ordinance.

62 Mr. Arnold said that the judgment of the ZBA regarding abutters is the Board's decision. Vice Chair
63 Simpson asked and Ms. Gage confirmed that she has not received any letters from abutters regarding
64 this case. Vice Chair Simpson asked and Mr. Doyle said that they do not have any letters from abutters.
65 Mrs. Doyle said that David Page was going to come to the meeting in support of the proposal but could
66 not attend.

67 Mr. Arnold said that Ms. Gage has a copy of the DES Permit and they are hoping that the Board agrees
68 that the enlargement is consistent with the intent of the Ordinance.

69 Vice Chair Simpson asked and Mr. Arnold confirmed that the lot will be less pervious because they are
70 changing a section of the driveway from impervious to pervious with pervious pavement. There was
71 further discussion regarding this matter.

72 Mr. Neuwirt asked what was discovered during the survey process. Mr. Platt explained that the lot is
73 narrower on the road frontage than was indicated on the deed. There is no impact because everything
74 is pre-existing from over 40 years ago. He did a base map for the Shoreland plan right after the Doyle's
75 purchased the property. Mr. Larrow asked about the dotted line indicated on the plan and Mr. Platt
76 explained that it is the eave line to indicate the impervious area.

77 Mr. Arnold explained that they are going to make the house bigger on the driveway side of the property,
78 which is the conforming side. They are before the Board to be able to raise the building. They will be
79 building a 508 sq ft addition on the driveway side, which is not part of the application as it is conforming.
80 Vice Chair Simpson said that the addition does not require a Variance or Special Exception because of
81 Section 6.13 of the Ordinance. Mr. Larrow asked and Mr. Arnold confirmed that they did do a foundation
82 expansion for the addition. Mr. Arnold said that part of the foundation could be sawed off and buried if
83 they choose not to do the addition, however, they currently plan on doing a small addition in the
84 conforming part of the lot.

85 Vice Chair Simpson asked and there was no one in the audience with any questions or comments
86 regarding the case.

87 Mr. Neuwirt said that it is difficult to look at this as a completed application because the Board has no
88 verification of what the height of the existing structure was because the house has been demolished.
89 Vice Chair Simpson asked and Ms. Gage said that she does have documentation on the original structure
90 from the demolition permit and the CZC permit applications. There was a further discussion regarding
91 the height of the pre-existing structure as well as about the survey.

92 Vice Chair Simpson asked about Section 3.40 (h) and (i). Mr. Arnold said that the eaves are below 30 ft.
93 Mr. Arnold said that regarding Section 3.50 (i)(5) he feels that it refers to the 35 ft maximum. Mr. Platt
94 said that referring back to 3.40 (h) would make raising a roof impossible at any time. Vice Chair Simpson
95 said that he thinks that there is inherent conflict in the Ordinance. Mr. Platt said that he thinks that
96 Section 3.40 (h) allows for a dormer, gable, or skylight to be allowed to be added to a non-conforming
97 structure by right.

98 Vice Chair Simpson said that he apologizes as he should have explained at the beginning of the meeting
99 that the Board is short one person. If the applicant does not get three votes in favor it will not pass and
100 there are only four members present. The case can be continued until there are five members or they
101 can proceed with the hearing. The applicants decided to proceed with the hearing.

102 Vice Chair Simpson closed the meeting to public comment.

103

104 Mr. Neuwirt said that he doesn't object with the project but, typically, the Board is able to go to the site
105 and do some verification and they could not with this application; it seems like the process is backwards.
106 Mr. Neuwirt continued to explain his thoughts regarding the application.

107 Mr. Claus said that he agrees with Mr. Neuwirt but he thinks overall the new proposed height falls
108 within the Ordinance. However, doing the math, it is hard for him to believe the initial height was 23 ft
109 11 inches and the evidence has been torn down so it feels like it is a little slight of hand. The proposed
110 roof of 33 ft does fall within the guidelines.

111 Mr. Larrow said that the Board only goes by the drawings and he does not feel like they got the right
112 information. He does not have a problem with the building of the house or the roof height but he does
113 not agree with saying that the Board is allowing for an enlargement and he thinks that should be struck.

114 Vice Chair Simpson asked and Mr. Claus said that his math assumes 8 ft ceilings and a two story
115 structure he is looking at the low point off the deck and the elevation change of 4.5 ft; using 10 inches
116 for floor structures they are around 22 ft from the lowest point on the ground and there is a pitch of 7 or
117 8 for the roof. Mr. Neuwirt and Mr. Claus continued to discuss their estimated math for the height of
118 the structure. Mr. Neuwirt and Mr. Clause both agree that the proposed structure is under the
119 maximum height allowed. Mr. Neuwirt said that the proposal does seem reasonable. There was further
120 discussion regarding this matter.

121 Mr. Neuwirt made a motion to approve Case #ZBA18-16: Parcel ID: 0136-0056-0000: 56 Birch Point Rd;
122 Zone RS / Shorelines Overlay; Special Exception per Article III, Section 3.50 (i) to allow existing
123 grandfathered non-conforming structure to be enlarged, replaced, and the roofline altered to allow for a
124 basement to be added under. Mr. Larrow seconded the motion. The motion passed unanimously. Mr.
125 Larrow made a motion to amend the vote to reference the Shoreland Permit #2018-0295. Mr. Neuwirt
126 seconded the motion. The motion passed unanimously. Vice Chair Simpson explained that the approval
127 is subject to compliance with the Shoreland Permit.

128 Mr. Neuwirt said that for this case, if the house hadn't been torn down and all the Special Exception
129 criteria were met the Board would have had to approve the case by right. Mr. Arnold said that he does
130 not know what they did wrong because they did everything permitted in the Ordinance. Vice Chair
131 Simpson said that the issue is that they tore the house down so the Board could not verify anything. Mr.
132 Arnold asked and Mr. Neuwirt said that he does not need to do anything else now because the Board
133 approved the application. Mr. Platt said that he does not know of anyone on the Board ever going to a
134 house and measuring the height of it.

135 **CASE #ZBA18-17: VARIANCE: TRUST FOR DEIRDRE D WATCHEL / GEORGE S WATCHEL REVOC TRUST;**
136 **PARCEL ID: 0121-0037-0000: 118 FERNWOOD POINT RD; ZONE RR / SHORELINES OVERLAY; VARIANCE**
137 **FROM ARTICLE III, SECTION 3.10 TO ALLOW A 12' 0" SETBACK WHERE A 15' 0" SETBACK IS REQUIRED,**
138 **FOR A SECOND FLOOR ONLY 33 SQ FT ADDITION.**

139 Mr. Larrow made a motion to have Mr. Platt fill in for a missing Board member. Mr. Neuwirt seconded
140 the motion. The motion passed unanimously.

141 Ms. Gage gave the Board a copy of an email from an abutter to the property.

142 Pam Hanson, an architect for the applicants, presented the merits of the case.

143 Ms. Hanson explained that the applicants would like to reduce the side setback from 15 ft to 12 ft. This
144 will allow the applicants to build 33 sq ft at the second level of their home; approximately two thirds of
145 the addition is above the existing first floor and the other third will be cantilevered beyond the first floor
146 footprint. About one half of the cantilevered space will project into the 15 ft setback.

147 Vice Chair Simpson asked and Ms. Hanson confirmed that she supplied the Board with before and after
148 pictures. Vice Chair Simpson asked and Ms. Hanson explained that the application is not an “after the
149 fact” application but the pictures have been photoshopped.

150 Ms. Hanson said that the applicants are long time residents and Mrs. Watchel’s father was the original
151 developer for Fernwood Point. In 2011, the applicants did a major renovation and received two
152 Variances for the side setbacks as well as a Special Exception for the garage. The second floor bedroom
153 is very small and they would like to push out one corner of it to make more usable space.

154 Ms. Hanson said that in 2011, CLD Engineers did all of the Shoreland Permitting for the applicants and
155 they complied with all of the requirements and they pulled the house 5 ft from the water to increase the
156 Shoreland Protection. The proposed addition slightly increases the impervious are by 12 sq ft but are
157 still within the limits of the Ordinance. Ms. Hanson continued that if the Board grants the Variance, she
158 will do a Permit by Notification to DES for that small increase.

159 Ms. Hanson said that the proposed addition is adjacent to the neighbor’s garage and is not encroaching
160 on their residence. The abutter’s residence and garage are both in the setback on their side of the
161 property line. They have also provided an letter indicating that they have seen the plans and do not
162 have any problems with the proposed addition. Ms. Hanson said that the property to the south does
163 not have a residence on it, only a boathouse that is owned by a trust.

164 Vice Chair Simpson asked if the lot has been surveyed and Ms. Hanson said she only has the work from
165 CLD that was done in 2011 and that had been submitted to the Board and approved then. There have
166 been no changes to the site since that work was completed.

167 Vice Chair Simpson read the letter from George Lillehei of 116 Fernwood Point Rd (see attached). Vice
168 Chair Simpson asked and Ms. Hanson confirmed that the Lilehei’s have the garage next to this structure.
169 Vice Chair Simpson asked and Ms. Gage confirmed that she received a letter from the Nichols in support
170 of the proposal. Ms. Hanson explained where the Nichol’s live on the cul de sac.

171 Ms. Hanson said that the applicant’s house is indicated on the Tax Map sideways.

172 Vice Chair Simpson asked and Ms. Hanson confirmed that the applicants own the property inside the
173 circle.

174 Ms. Hanson said that the applicants do not feel as though their proposal goes against the spirit of the
175 Sunapee Zoning Ordinance and that granting the Variance would allow them fair and reasonable use of
176 their property.

177 Vice Chair Simpson asked and Ms. Hanson said that the first floor will be unchanged. The second floor
178 will get bigger and they will be building out over what is currently a first floor with a low roof. Mr. Claus
179 said that when you look at the two images there is hardly a noticeable change. Mr. Platt said that there
180 is no change to the ground.

181 Vice Chair Simpson asked how the applicants do not have reasonable use of their property, which is
182 what the Statute asks. Ms. Hanson said that she believes that the applicants have reasonable use of the
183 property, however, the applicants are limited in how they use the room because it is so small and the
184 pulldown for the attic is in the room. Mr. Larrow said that what is being said is that there is no real
185 hardship. Mr. Platt said that the lot is 0.242 acres in a Zone that requires 1.5 acres. Ms. Hanson said
186 that it is one of the smallest lots on the point. Mr. Platt said that he thought that the law was that the
187 request is reasonable, not that there are reasonable alternatives. Vice Chair Simpson said that the law
188 says that the Zoning requirement as applied to the property interferes with the reasonable use of the
189 property, considering the unique setting of the property in its environment. Mr. Neuwirt explained that
190 one of the criteria for a Variance is hardship, which means if the Board does not grant them the Variance
191 then the applicants would not be able to use the property to its fullest extent. There is already a
192 beautiful house that is used to its extent. This is a grey area where the proposal is reasonable and the
193 neighbors do not object, but it doesn't necessarily meet the criteria. Ms. Hanson said that it would be
194 difficult for the applicants to add on to the footprint of the house to obtain a larger bedroom. This is a
195 more reasonable way of giving the applicants a larger guest room than increasing the footprint of the
196 house.

197 Vice Chair Simpson asked and there were no additional questions for Ms. Hanson regarding the case,
198 therefore, he closed the meeting to public comments.

199 Mr. Claus said that when he looks at the precedence that was set in 2011 it is hard to stand in the way of
200 allowing the tiny sliver as it does not seem as though there are any impacts.

201 Mr. Platt said that this is a non-conforming lot and is very narrow and there are not a lot of alternatives;
202 it is a minor proposal and there is almost no impact. They should take some consideration into the fact
203 that these lots are small with large houses on them and there may be times where small changes are
204 requested.

205 Mr. Larrow said that he was looking through the requests that were made in 2011 and the one that
206 struck him was the setback from the lake from 50 ft to 25 ft and wonders why this case was not done via
207 a Special Exception. Vice Chair Simpson said that the previous Special Exception in 2011 was for the
208 front setback. Mr. Platt said that it could have been because there are other structures close to the road
209 in this area. He thinks that the 25 ft setback from the lake was because the original house was closer to
210 the lake and then when they built the new house they moved it back. Mr. Larrow said that he does not
211 think that the project is unreasonable.

212 Mr. Neuwirt said that he has not problems with the project. Vice Chair Simpson said that he agrees that
213 the project is reasonable and that the hardship falls into a grey area as he does not necessarily see the
214 hardship.

215 Vice Chair Simpson asked and there was no further discussion regarding the case.

216 Mr. Platt made a motion to approve Case #18-17: Trust for Deirdre D Watchel and George S Watchel
217 Revoc Trust at 118 Fernwood Point Rd; Tax Map 121 Lot 37 allowing a Variance from Article III, Section
218 3.10 to allow a 12' 0" setback where a 15' 0" setback is required, for a second floor only 33 sq ft addition
219 conditional on receiving a Shoreland Permit and all the work proceeding per said Shoreland Permit. Mr.
220 Larrow seconded the motion. Vice Chair Simpson said that he thought that this was going to be only a 7
221 sq ft encroachment. Ms. Hanson explained that 7 sq ft of the addition will be in the setback. Mr. Platt
222 amended his motion that the second floor addition of 33 sq ft of which 7 sq ft is within the 15 ft setback.
223 Mr. Larrow seconded the motion. The motion passed unanimously.

224 **MINUTES**

225 Changes to the minutes from October 4, 2018:

226 Mr. Larrow made a motion to continue the minutes until the next meeting. Mr. Neuwirt seconded the
227 motion. The motion passed unanimously.

228 Mr. Larrow said that he did not receive a copy of the minutes with his packet. Vice Chair Simpson said
229 that he would like to have copies of the minutes in the packets because he thinks that it would make
230 things easier. Ms. Gage said that she will put whatever the Board wants into their packets, however, she
231 was told that no other Boards get minutes and the only reason this Board was getting them was because
232 she was doing the packets. The Board determined they would print the minutes themselves and would
233 like Ms. Gage to bring a few copies to the meeting.

234 **ZONING AMENDMENTS**

235 Vice Chair Simpson said that he did see an email with Zoning Amendments, however, he has not had a
236 chance to read it. He thinks that the Special Exception the Board heard brings to light the issues with
237 height in the Ordinance. There was further discussion regarding this matter.

238 **MISCELLANEOUS**

239 Mr. Neuwirt said that he takes issues to Mr. Platt's objection on the responsibility of the Board to
240 actually measure to see whether information provided to the Board is verified. Mr. Platt said that he
241 questioned if the Board had ever done it. Mr. Neuwirt said that the Board should have the opportunity
242 to ensure that the information presented is accurate. Vice Chair Simpson said that he is more
243 concerned with the fact that the applicant filed for a CZC that indicated the structure was going to be 33
244 ft high as it doesn't seem to be a replacement; their intention was to raise the building. Mr. Neuwirt
245 said that the Board cannot speculate as the structure was demolished. Mr. Platt said that the solution
246 would be to have Mr. Arnold say that he measured the building and it was 23 ft 11 inches and to put a

247 stamp on it. There was further discussion regarding this case and the future addition indicated on the
248 plan.

249 Ms. Gage said that there was a condition on a case regarding a front setback reduction on a State road
250 and she checked with the Town's attorney about it; if it is the desire to always have NH DOT input, it
251 would be better for her to handle it before the meeting. There are some Town's who have it written
252 into their Ordinance but the Town's attorney said that the Board does not need NH DOT input on the
253 setbacks. The permit is on hold as she has sent a letter to NH DOT but she has not heard back from
254 them yet. Mr. Platt said that he does not know why NH DOT would have any input on anything outside
255 the right of way. Mr. Claus said that his experience is that the State does not want to get involved if it is
256 not within their right of way. Ms. Gage asked and the Board confirmed that if there is something in the
257 right of way she should write a letter to NH DOT for their input. Vice Chair Simpson asked and Ms. Gage
258 confirmed that the State is not an abutter for cases on State roads.

259 Vice Chair Simpson adjourned the meeting at 8:38 pm.

260 Respectfully submitted,

261 Melissa Pollari

262

263

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265 Zoning Board of Adjustment

266

267 Daniel Schneider, Chair

Aaron Simpson, Vice Chair

268

269 James Lyons, Jr.

William Larrow

270

271 George Neuwirt

Clayton Platt, Alternate

272

273 Jeffery Claus, Alternate