

1 **TOWN OF SUNAPEE**

2 **ZONING BOARD**

3 **May 11, 2017**

4 **PRESENT:** Daniel Schneider, Chair; Clayton Platt; George Neuwirt; Aaron Simpson; William Larrow;
5 Roger Landry, Zoning Administrator

6 **ABSENT:**

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

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

9 **CASE #17-02: PARCEL ID: 0137-0011-0000: SEEKING A VARIANCE OF ARTICLE III SECTION 3.10 TO**
10 **REDUCE ROAD FRONT SET-BACK FROM 75 FT. TO 20 FT. ALLOWING CONSTRUCTION OF A SHED ROOF.**
11 **127 EDMONT ROAD, RICHARD & RAYLENE BLY.**

12 Chairman Schneider asked and there was no one present for the case.

13 Chairman Schneider said that there is an email in the file from Mr. Bly that says that he cannot have his
14 land surveyed due to the wet land around his house and that he needs time for the property to dry to be
15 able to survey and he needs a date of June 11, 2017. Mr. Simpson said that this sounds like a request of
16 a continuance.

17 Mr. Simpson made a motion to continue the hearing based upon the email. Mr. Neuwirt seconded the
18 motion. Chairman Schneider said that this is an "after the fact" Variance and he feels as though this
19 should be the last continuance. Mr. Platt agreed that the case cannot be continued indefinitely. Mr.
20 Neuwirt asked and Mr. Platt and Mr. Simpson said that they do not believe that there are any rules that
21 govern how many times a case can be continued. Mr. Larrow said that the Board requested that the
22 survey be done two months ago and he feels as though they are using stall tactics. He will vote for an
23 extension this time but thinks that this has to come to a head. Mr. Simpson asked and Vice Chair Platt
24 said that he does not think that the wetland on this property would be a great hindrance to a survey.
25 Mr. Neuwirt asked if Mr. Bly is entitled to continue something numerous times then what can the Board
26 do to say that he cannot. Chairman Schneider said that there is no entitlement, it is the Board's choice.
27 He feels as though Mr. Bly is stringing the Board along and this is an "after the fact" Variance so it has
28 already been done. Mr. Neuwirt asked the repercussions if the Board refuses to give an extension.
29 Chairman Schneider said that he thinks that Mr. Bly would have to file the application again. Vice Chair
30 Platt disagreed and said that he thinks it would be a denial of the Variance and Mr. Bly would need to
31 remove the roof. Chairman Schneider said that it is possible the Zoning Administrator could make Mr.
32 Bly tear it off. Mr. Simpson called the motion. The motion passed with four in favor and one against.

33 **CASE #17-05: PARCEL ID: 0106-0047-0000: SEEKING A VARIANCE AS PER ARTICLE VI, SECTION 6.12 TO**
34 **INCREASE THE HORIZONTAL DIMENSIONS OF A NON-CONFORMING STRUCTURE ADDING 31 SQ FT TO**
35 **THE FOOTPRINT. 750 JOBS CREEK RD, JUDITH S. MCKENNA.**

36 Vice Chair Platt recused himself from the case as he is the surveyor of record.

37 Chairman Schneider explained that because Vice Chair Platt recused himself and the Board does not
38 have any alternates the applicant will need three votes in favor of the application for it to be approved.
39 The applicants decided to proceed with the case.

40 Christopher Kessler, from Pellettieri Associates, presented the merits of the case for the applicant.
41 Chairman Schneider asked and Mr. Simpson confirmed that there is a letter in the file authorizing him to
42 speak for the applicant. Judith McKenna, the applicant, was also present for the hearing.

43 Mr. Kessler said that they are seeking a Variance from Article VI, Section 6.12 to expand the existing
44 non-conforming structure located within the 50 ft waterfront buffer. The existing structure, which is a
45 seasonal camp, sits within the 50 ft buffer. There is a small portion that extends behind the buffer but a
46 substantial portion is within the buffer zone. Because it sits partially on the setback line it is not eligible
47 for a Special Exception so they are asking for a Variance to expand the existing structure 31 sq ft within
48 the 50 ft waterfront buffer with additional expansion behind the 50 ft waterfront buffer, as allowed by
49 Town Zoning Regulations. Mr. Kessler continued that the 31 sq ft would be landward of the existing
50 house footprint, behind the 40 ft setback. Mr. Kessler showed the Board on the plan the location of the
51 proposed square footage within the setback on the plans.

52 Chairman Schneider asked why Mr. Kessler said 40 ft setback instead of 50 ft setback. Mr. Kessler
53 explained that the Special Exception language allows for expansion outside the 40 ft setback. Mr.
54 Simpson asked and Mr. Kessler confirmed that they are not applying for a Special Exception. Mr.
55 Simpson said that they are subject to the setback requirements set forth in 3.40. Mr. Kessler confirmed
56 this and said that they are trying to stay within the spirit of the Ordinance.

57 Mr. Kessler said that the expansion is landward and is going to be between the existing structure and
58 the 50 ft setback. It will allow for some additional living space and a connector for the proposed
59 addition behind the structure.

60 Mr. Kessler said that there will be some areas, a pair of existing stairs and a small bump out for the
61 existing utility panel, that will be removed from the 50 ft buffer. There is also an existing portion of
62 driveway and walkway that are within the 50 ft setback that will be removed as part of this project. The
63 proposed area to be removed is about 15 sq ft and they are proposing 31 sq ft within the buffer.

64 Chairman Schneider asked and Mr. Kessler confirmed that there will be nothing closer to the waterfront
65 than what is currently on the site.

66 Mr. Kessler said that his understanding is that because the structure sits on the 50 ft setback line, with
67 part of the structure behind the 50 ft setback line, they need to seek a Variance instead of a Special
68 Exception. Mr. Kessler read Article III, Section 3.50-k to the Board "if a pre-existing house is located

69 entirely within the 50' water bodies setback, additions may be made to the structure provided that: (1)
70 the house is at least 40' from the water body at all points where the addition is proposed. (2) the
71 proposed addition is to be only on the side of the structure away from the water body and behind the
72 existing structure. (3) the proposed addition is no higher than 25' from the finished grade at its highest
73 point." Chairman Schneider said that the requirements are more stringent if the house is only partially
74 in the setback than if it is fully within the setback and the Board has talked about eliminating the
75 requirement. Mr. Kessler said that it is strange that a house that it partially within the setback lines has
76 to meet more stringent requirements than a house that is located completely within the setback.

77 Mr. Kessler said that there is an existing shed that is behind the 50 ft setback but within the side setback
78 that will be removed. Mr. Larrow asked and Mr. Kessler said that the side setbacks are met with all the
79 proposed points of the new building, it runs very close to the line and will be subject to pinning by a
80 licensed site surveyor.

81 Chairman Schneider asked and Mr. Kessler explained the 1,111.9 ft shown on the plan is the elevation of
82 the house. Ms. McKenna said that the existing house is very small. Mr. Kessler said that the existing
83 footprint is 590 sq ft with 490 being located within the 50 ft setback. They are proposing 505 sq ft
84 within the 50 ft setback. In total, there is a 15 sq ft increase in the footprint in the 50 ft setback,
85 however, that is offset from the portion of driveway and existing driveway that is impervious.

86 Mr. Simpson said that there is a dotted line around the proposed addition and Mr. Kessler confirmed
87 that they are the eaves. Mr. Simpson asked if the eaves are supposed to be considered part of the
88 building. Mr. Kessler said that eaves are allowed to have an 18 inch overhang into a setback. Mr.
89 Simpson asked if Mr. Kessler knows where that allowance is in the Ordinance. There was further
90 discussion about this matter. Mr. Larrow asked and Mr. Kessler said that he believes that the side
91 setback in the Rural Residential Zone is 15 ft and the proposed structure is right on the property line.
92 Mr. Platt said that Sunapee is the only town that allows for 18 inch eaves, however, it is the way that it
93 has always been. It was explained that the 18 inch overhang is allowed in the definition of setback, part
94 of which reads "the area between the property line and the minimum setback line shall remain free of
95 structures and fully open to the sky with the exception of a roof projection up to 18 inches into the
96 setback."

97 Chairman Schneider asked if the Board has any additional questions regarding the application. Mr.
98 Simpson said that he would like Mr. Kessler to go over the criteria for the Variance.

99 Mr. Kessler said that the proposed use would not diminish surrounding property values because the
100 proposal will enhance the existing structure that is on the property, thus increasing the value of this
101 property, which would not have a negative impact on any of the surrounding residences. There is also
102 no infringement on a setback that would have an impact on direct abutters or anybody using the lake.

103 Mr. Kessler said that granting the Variance would not be contrary to the public interest because this
104 proposal is to expand an existing structure in scale with both the property and the surrounding
105 structures that are adjacent to it. The structure and this property will be the only property impacted by

106 granting the additional 31 sq ft of space. It will not negatively impact any public user or surrounding
107 property.

108 Mr. Kessler said that denial of the Variance would result in unnecessary hardship because the Zoning
109 Restriction, as applied to the property, interferes with the reasonable use of the property considering
110 the unique setting of the property in its environment because the way the building rests on the property
111 and the setback lines of Lake Sunapee it is held to more stringent regulations than if it were located
112 completely within the 50 ft setback. This is clearly following the spirit of the Ordinance and is allowed in
113 other sections of the Ordinance.

114 Mr. Kessler said that no fair and substantial relationship exists between the general purposes of the
115 Zoning Ordinance and the specific restriction on the property because the Ordinance allows for existing
116 non-conforming structures to be expanded landward of the reference line, assuming that they are
117 located behind the 40 ft setback, which this structure does. This would be allowed if the structure was
118 located completely within the 50 ft setback. A more non-conforming structure would be allowed to be
119 expanded, rather than one that is sitting on the setback line. Mr. Larrow said that they are not dealing
120 with a Special Exception. Mr. Kessler said that the spirit of the Ordinance is that existing non-
121 conforming structures are allowed to be expanded upon as stated in several places throughout the
122 Ordinance and there are setbacks that are applied to those so they are working within the spirit of the
123 Ordinance. Mr. Simpson said that it does not apply to this situation because the property is not
124 completely within the setback. Mr. Larrow said that Mr. Kessler keeps referencing that Ordinance and
125 the Board is saying that it does not apply in this case. Mr. Kessler said that they believe that because
126 this building will be expanded away from the lake in a manner that puts no part of the building closer to
127 the reference line and besides the dimensional requirement of 31 sq ft, it will not make this building any
128 more non-conforming than it is today.

129 Chairman Schneider said that there are no abutters present.

130 Mr. Simpson asked if the structure was pre-existing to when the Ordinance was adopted. Mr. Kessler
131 said that it is their understanding that it was and there was a Letter of Compliance issued by the Town in
132 2008 allowing them to undergo some renovations.

133 Mr. Simpson asked if there was ever another structure on the property after the Ordinance was
134 adopted. The concrete deck suggests that there was a house closer to the lake. Mr. Kessler said that
135 the deck and the boat slips that go out from it was once a large boathouse with living space above it. He
136 does not know the exact dates but it is referenced in the Wild Goose photography. His understanding is
137 that the structure burned and was not reconstructed and those are the remnants of the building.

138 Mr. Simpson asked if the structure is in the road setback. Mr. Kessler showed that the line goes right to
139 the corner of the building. The road kick backs slightly at a corner and the structure is not within the 50
140 ft road setback.

141 Mr. Kessler said that since the time this application was submitted and this meeting and due to some
142 grade issues they are looking to increase the height of the structure 1 ft 3 in to get a better relationship

143 between the finished floor elevation and the grade around it. Mr. Kessler asked and the Board
144 explained that this case cannot be added to this hearing as it was not noticed. Mr. Larrow asked if the
145 increase will exceed the height limit. Mr. Kessler said that he does not believe it exceeds the limit but
146 Section 6.12 says “a non-conforming structure existing at the time of the passage of this Ordinance may
147 be replaced on the same or a smaller footprint and having the same or lower height by a new structure
148 having the same purpose and use provided that the non-conformity to this Ordinance is not increased
149 thereby. The replacement or alteration of a non-conforming structure with a structure that increases
150 the horizontal or vertical dimension or one which increases the non-conformity to this Ordinance, shall
151 only be permitted by Variance or, if permitted hereby, by Special Exception.” Mr. Kessler continued that
152 Article 3.50-(i) says that “the ZBA may allow a pre-existing non-conforming structure to be enlarged,
153 replaced and/or the roofline altered. Mr. Larrow asked and Mr. Kessler explained that by Special
154 Exception you are allowed to enlarge or replace a structure no more than 10 ft additional in height than
155 the pre-existing condition or the existing structure is less than 24 ft in height, both of which they are
156 within. Chairman Schneider said that they will have to come back for a Special Exception. Mr. Simpson
157 said that it sounds reasonable but the Board should not comment on it and they cannot squeeze it into
158 this hearing.

159 Chairman Schneider asked if there is a Shoreland Permit. Mr. Kessler said that the Shoreland Permit has
160 not been submitted as they wanted to make sure that the Board was comfortable with the proposal.
161 They wanted Town approval so that if there were any changes they would be able to do that without
162 altering the State approval.

163 Chairman Schneider asked and there were no more questions for Mr. Kessler. Chairman Schneider
164 closed the public input part of the hearing and asked the Board for their comments.

165 Mr. Simpson said that he does not have a problem with the project and giving a Variance. He would
166 want to add that the hardship is that the location of the pre-existing house and given what they could
167 do, this is probably less disruptive. They could probably pick the house up and move it but as the house
168 sits it would be a hardship. He would want a condition on obtaining a Shoreland Permit and would also
169 want a condition that it is not within the Jobs Creek Rd setback as the line on the survey presented is
170 complete. Chairman Schneider said that the Board may want to include both front and side setbacks.

171 Chairman Schneider said that this case is why he thinks that Variances exist; it is a reasonable solution to
172 the property. Mr. Larrow agreed and said that the presentation explained everything and he thinks that
173 an approval should be subject to both conditions Mr. Simpson mentioned.

174 Mr. Simpson made a motion to approve Case #17-05: Parcel ID: 0106-0047-0000: seeking a Variance as
175 per Article VI, Section 6.12 to increase the horizontal dimensions of a non-conforming structure adding
176 31 sq ft to the footprint, 750 Jobs Creek Rd, Judith S. McKenna; subject to obtaining a Shoreland Permit
177 and that the addition meet all the side setbacks and the road setback. Mr. Larrow seconded the motion.
178 The motion passed unanimously.

179 **MISCELLANEOUS**

180 Mr. Kessler asked if there is a copy of the proposed changes to the Zoning Ordinances. Chairman
181 Schneider said that it has to be finalized with them first and then go to the Planning Board and then go
182 to the voters. Mr. Kessler asked if the Board is accepting any public comments. The Board said that Mr.
183 Kessler can stay for the discussion if he would like.

184 **MINUTES**

185 Changes to the minutes from the April 13, 2017 Zoning Board Meeting: Change Line 42 to read "...and is
186 probably one of the more..." Change Line 51 to read "...to be impartial; if the Board..." Change Line 115
187 to read "Mr. Simpson said that for a time..." Change Line 120 to read "...conforming than it was
188 before..." Change Line 131 to read "...there is a procedural problem with..." Change Line 141 to read
189 "...measured from any point in any..." Change Line 227 to read "said that he wished that..." Change Line
190 246 to read "part of the group than not..."

191 Mr. Simpson made a motion to approve the minutes as amended. Vice Chair Platt seconded the motion.
192 The motion passed unanimously.

193 **MISCELLANEOUS - DRAFT OF THE TALKING POINTS FOR THE JOINT MEETING WITH THE PLANNING**
194 **BOARD.**

195 Chairman Schneider passed around a revised draft of the proposed changes. He has added some
196 definitions and removed some parts of the previous draft.

197 The Board decided to defer any discussion regarding the definition of structure as they have a case
198 coming before them soon that relates to this definition.

199 The Board discussed non-conforming structures. Chairman Schneider proposed three different
200 definitions of a non-conforming structure: one that is a non-conforming structure; a non-conforming
201 structure that has been approved by Variance, Special Exception, or Equitable Waiver; and a definition
202 of a pre-existing, non-conforming structure.

203 Chairman Schneider gave Mr. Kessler a copy of the draft changes and explained that they are for
204 discussion purposes.

205 There was a discussion regarding the definition of height.

206 Mr. Neuwirt gave the Board members a list of definitions that he has been working on.

207 Mr. Kessler asked why a structure approved by a Variance or Special Exception or Equitable Waiver
208 would be different from a pre-existing non-conforming structure. Chairman Schneider gave the example
209 of the case Mr. Kessler presented that the Board just approved as once it has been built it is no longer
210 pre-existing. Mr. Kessler asked if this is because the structure is approved wouldn't it fall under the
211 definition of a pre-existing non-conforming structure. Chairman Schneider said that it would not
212 because it was not pre-existing, it did not exist before the current version of the Ordinance. Mr.
213 Simpson asked at what point the definition of a pre-existing non-conforming structure would be used.

214 Mr. Kessler said that if someone wants to put an addition on a Variance or Special Exception approved
215 structure it appears that he either doesn't have to ask for permission or he is barred from the process
216 altogether. There was further discussion regarding this matter including adding that approved non-
217 conforming structures must follow the same rules as pre-existing non-conforming structures.

218 The Board discussed proposed changes to Section 6.10 and Section 6.32 and properties that want to
219 move further away from a setback but are still within a setback so they require a Variance as well as
220 what happens if someone wants to increase the square footage within the setback. Mr. Kessler
221 explained that he would never ask to move a structure back within the 50 ft Shoreland setback because
222 DES would want the footprint to be moved beyond the 50 ft setback.

223 Mr. Neuwirt said that most of the definitions that he has proposed came from Hanover, though some
224 came from other towns. On a lot of the definitions he thought it was good to specify what the Board is
225 talking about to make them clearer.

226 Mr. Larrow asked if there are better words for impervious. Mr. Neuwirt said that when he does permits
227 anything with a roof on it is impervious and walkways, driveways, etc. all go into what the State
228 calculates as impervious. There was further discussion regarding these issues and how there are
229 conflicts in many of the definitions.

230 Mr. Kessler said that instead of using the word impervious structure the Board could use impervious
231 surface. Mr. Kessler said that the State sees gravel as impervious. There was further discussion
232 regarding this issue and that the State sees gravel based patios as impervious.

233 There was a conversation about the proposed definition of footprint.

234 Mr. Kessler asked about impervious patios and the Board explained that they cannot talk about them
235 because of an upcoming case.

236 There was a discussion regarding docks that have decks that extend onto land.

237 The Board discussed Mr. Neuwirt's proposed definitions including: accessory buildings / structures;
238 remodeling, alterations, and reconstruction; footprint and whether height applies to the definition of
239 footprint; and slope. The Board also discussed the regulations that were adopted regarding building
240 envelopes, including Section 4.33.

241 Mr. Neuwirt asked and Mr. Kessler confirmed that a patio with a gravel base is considered impervious to
242 the State. Mr. Kessler said that this is true within 250 ft of the Shoreland.

243 Vice Chair Platt made a motion to adjourn the meeting at 8:52 pm. Mr. Simpson seconded the motion.
244 The motion passed unanimously.

245 Respectfully submitted,

246 Melissa Pollari

247

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249 Zoning Board of Adjustment

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251 Daniel Schneider

Aaron Simpson

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253 Clayton Platt

William Larrow

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255 George Neuwirt