

1 **TOWN OF SUNAPEE**

2 **ZONING BOARD**

3 **JULY 13, 2017**

4 **PRESENT:** Daniel Schneider, Chair; Clayton Platt, Vice Chair; Aaron Simpson; George Neuwirt; William  
5 Larrow; Jim Lyons, Alternate Member

6 **ABSENT:** Michael Marquise, Interim Zoning Administrator

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

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

9 **CASE #17-07: PARCEL ID: 0118-0017-0000: SEEKING A VARIANCE OF ARTICLE III, SECTION 3.10 TO**  
10 **REDUCE FRONT SETBACK FROM 50 FT TO 10 FT TO CONSTRUCT A GARAGE. 42 MARYS RD, RICHARD &**  
11 **JEANNE JAFFE.**

12 Richard and Jeanne Jaffe presented the merits of the case.

13 Mr. Jaffe said that he did not think that he needed to come before the Board because a few years ago  
14 they lifted the house up due to water problems they were having and the Plan that was submitted to  
15 the State for the DES Permit as well as to the Town for that permit showed the two-car garage. Mr.  
16 Landry advised them that even though that was approved the permit for the garage needed to be  
17 separately considered.

18 Mr. Jaffe said that the majority of the lots around Perkins Pond conform with the Zoning requirements;  
19 they are Zoned Rural Residential and most do not meet the minimum lot size, the setbacks, etc. Mr.  
20 Jaffe gave further explanation to this matter as none of the garages on Mary's Rd are 50 ft from the  
21 setback.

22 Mr. Jaffe said that they cannot set the proposed garage further from the road as it would go into the  
23 lake setback or would go into the area where a culvert drains onto their property.

24 There was further discussion regarding other properties on the road.

25 Chairman Schneider asked and Mr. Jaffe confirmed that his house does have a number on it.

26 Mr. Simpson asked Mr. Jaffe why he did not apply for a Special Exception. Mr. Jaffe explained that Mr.  
27 Landry told them that there are five garages that are within 500 ft of their home that do not comply but  
28 that they are supposed to be on the same side of the road and two of the other garages are on the other  
29 side of the road.

30 Mr. Larrow asked about the Town paving Marys Rd. Mr. Jaffe said that it has been discussed but the  
31 concern is that paving would increase the speed of traffic. Mr. Jaffe said that he does not believe that it  
32 has ever formally been considered. Mr. Simpson asked and Mr. Jaffe said that it is not certain if Marys

33 Rd is a private road as it is Town maintained. Mr. Platt said that he thinks that it is an emergency access  
34 way and is maintained by the Town but the Town does not have any responsibility to maintain it if they  
35 do not want to. There is further discussion regarding this matter as the Town put the sewer through  
36 Marys Rd.

37 Mr. Platt said that in Sunapee the setback is measured from the center of the road, not the edge of the  
38 road. Therefore, Mr. Jaffe's Variance is not for 10 ft, it is 26 ft or 27 ft. There was further discussion  
39 regarding this matter.

40 Chairman Schneider said that he would find it difficult to approve the Variance as he does not know the  
41 distance from the centerline. There was further discussion regarding this matter and if the wording of  
42 the approval can be amended.

43 Mr. Jaffe asked and Chairman Schneider confirmed that a setback has to specify a distance from a  
44 certain point. Mr. Jaffe said that he does not know if there is a definition of Marys Rd and it constantly  
45 changes. There was further discussion regarding this matter as the Board wants the setback from the  
46 centerline clearly defined.

47 Chairman Schneider said that he thinks that this case should be deferred until they have an accurate  
48 measurement for the setback, and he thinks it will require another notice to abutters. Mr. Jaffe asked if  
49 the Board can tell him if the proposal would be acceptable to them if the measurement is accurately  
50 defined. Chairman Schneider said that they cannot answer Mr. Jaffe until the Board votes. Mr. Simpson  
51 said that the Board does not know where the legal right of way is located. Chairman Schneider said that  
52 one of his concerns is snow removal and whether it will be acceptable to the Highway Director. Another  
53 concern is that Mr. Jaffe makes a statement under 3-a that "most of the homes on Marys Rd have a  
54 detached garage, etc." and he drove down Marys Rd with that in mind and he does not know if that  
55 statement is correct. Mr. Jaffe said that they did a video and a count and 10 out of 23 have garages.

56 Mr. Neuwirt said that the survey work for the property should have included the road and it did not. In  
57 order for it to be accurate, it is important to show the Jaffe's property in relation to everything else. He  
58 believes that there should be an accurate measurement of the setback. Mr. Neuwirt continued  
59 explaining his thoughts regarding this matter.

60 Mr. Simpson said that Note 3 on the submitted plan says "Garage construction will require a Special  
61 Exemption from the standard front setback (50 ft from centerline). Structure should conform to Section  
62 3.50 (b) in the Sunapee Zoning Ordinance." Mr. Simpson said that he does not know if the garage  
63 qualifies for a Special Exception, however, the architect made the assumption that it met the criteria for  
64 a Special Exception. There was further discussion regarding this matter as there has to be a majority of  
65 houses on 500 ft on either side of the same side of the road and Mr. Jaffe said that Mr. Landry said that  
66 it did not qualify. There was further discussion regarding this matter and if houses are counted as well.

67 There was another discussion regarding the setback.

68 Mr. Jaffe said that if the setback is from the centerline of the road rather than the edge of the road he is  
69 asking for less of a Variance than what he originally applied for was for.

70 Mr. Simpson said that there is a section of the property between Mr. Jaffe's property and the road does  
71 not look like Mr. Jaffe's property. There was a brief discussion regarding if the Jaffe's property infringes  
72 on Marys Rd or if the road could infringe on the Jaffe's property.

73 The Board explained to Mr. Jaffe that they feel as though he needs to determine the correct  
74 measurement and see if he could proceed with a Special Exception.

75 Mr. Larrow asked if there is a possibility that the garage can move back a bit towards the lake. Mr. Jaffe  
76 said that the problem with pushing it back further is that there is a culvert that drains onto the property.  
77 There was further discussion regarding the water and the drainage and the wet area on the property.

78 Mr. Simpson said that if Mr. Jaffe can build the garage to meet the setback requirements, he does not  
79 think that he would qualify for hardship. Mr. Jaffe said that he does not think that there is any way for it  
80 to be built to meet the setbacks. There was further discussion regarding this matter as the  
81 measurement is not from the centerline of the road.

82 Chairman Schneider said that not having a garage is not a hardship, it may be an inconvenience but the  
83 Board may or may not find it a hardship. Mr. Jaffe said that they have a lot of neighbors who have  
84 garages and are all in the same situation. They are stuck with what they have even though their home is  
85 made non-conforming by virtue of an Ordinance that does not accurately describe the reality of life  
86 around Perkins Pond. They do not have land across the road and cannot build there. If they fill the land  
87 closer to the lake to have a buildable lot within the permissible setback it would push more water  
88 towards the lake.

89 Mr. Simpson said that if Mr. Jaffe had applied for a Special Exception the Board would not look at  
90 hardship as only Variances require applicants to prove hardship. There was further discussion regarding  
91 this matter and that the Board believes that Mr. Jaffe should look at applying for a Special Exception and  
92 what Mr. Jaffe would need to look at for the Special Exception.

93 Chairman Schneider said that Mr. Jaffe can decide if he wants the Board to vote on the case or continue  
94 it.

95 Vice Chair Platt said that he thinks that if someone in the audience has a comment or question they  
96 should be able to speak.

97 Mr. Jaffe said that he'd like the hearing to be tabled but he is concerned as he does not know how long  
98 it will take to get in touch with Mr. Marquise. The Board said that it should not be difficult to get in  
99 touch with Mr. Mr. Marquise. Mr. Simpson said that if Mr. Jaffe does decide to apply for a Special  
100 Exception he should continue the Variance application until the decision on the Special Exception is  
101 made. Chairman Schneider said that Mr. Jaffe can continue the case another month as well if he does  
102 not get the required measurements. Mr. Jaffe asked and the Board confirmed that if he needs to

103 continue the case again then he can email Mr. Marquise. Chairman Schneider said that if Mr. Jaffe  
104 applies for a Special Exception it is a whole new process.

105 There was further discussion regarding the centerline of the road for the setback as well as how Mr.  
106 Jaffe can measure 500 ft in either side of this property for a Special Exception. Mr. Neuwirt said that Mr.  
107 Jaffe should know where the centerline of the road is for a Special Exception request as well so that the  
108 same criteria is maintained. Mr. Simpson said that Mr. Jaffe needs to know where the centerline of the  
109 road right of way is located. There was further discussion regarding this matter and that Mr. Jaffe  
110 should check with the Water and Sewer Department to see if they have a plan for Marys Rd. Mr. Jaffe  
111 asked what to do if there is not a defined right of way. Mr. Simpson said that if there is not a defined  
112 right of way he thinks Mr. Jaffe could make an argument that the right of way is where the road is  
113 located. There was further discussion regarding this issue.

114 Chairman Schneider asked and there were no comments from anyone in the audience regarding this  
115 case.

116 Mr. Simpson made a motion to continue the matter until the next meeting to allow the applicants to  
117 obtain additional information about the road setback for Case #17-07, Parcel ID: 0118-0017-0000. Vice  
118 Chair Platt seconded the motion. The motion passed unanimously.

119 **CASE #17-08: PARCEL ID: 0118-0054-0000: SEEKING A SPECIAL EXCEPTION OF ARTICLE IV, SECTION**  
120 **4.90 FOR A 1 BEDROOM, 1,000 SQ FT ACCESSORY DWELLING UNIT. 80 BURMA RD, MICHAEL NOTKIN.**

121 Michael Notkin presented the merits of the case.

122 Mr. Notkin explained that there is an existing structure on his property that he is trying to have formally  
123 approved as an accessory dwelling unit. It is approximately 968 sq ft and at least a portion of the  
124 structure has been there for 50 – 60 years. Mr. Notkin continued that he uses the main unit and the  
125 accessory unit has one bedroom, has its own parking, and meets setback requirements.

126 Mr. Notkin said that there is a proposal to attach the accessory unit to the main unit and that is the only  
127 part that needs to be done. Vice Chair Platt asked and Mr. Notkin said that the proposed breezeway is 4  
128 ft wide. Mr. Notkin said that there will be doors at both ends of the breezeway and possibly an  
129 emergency exit door in it. Vice Chair Platt asked and Mr. Notkin confirmed that the breezeway meets  
130 the front setback and is 50 ft from the centerline. There was further discussion regarding the setbacks  
131 and that the building is currently a garage / storage building.

132 There was a brief discussion regarding the dimensions of the building as Mr. Notkins does not know the  
133 exact measurements, however, it is listed on the property record card as 968 sq ft.

134 Mr. Larrow said that he does not think that this application is stretching the Ordinance with the  
135 attachment. Mr. Simpson said that the attachment must be heated and Mr. Notkin said that there will  
136 be electric baseboards in the breezeway. There was further discussion regarding the State RSA.

137 Mr. Neuwirt asked how the attachment will be built. Mr. Notkin said it will be on a slab or gravel. There  
138 was further discussion regarding the construction of the breezeway, which will be 60 – 65 ft long.

139 Mr. Larrow asked why this building cannot be used in its current state. Mr. Notkin said that he wants to  
140 use the structure for people to be able to stay in the property. When his bank did an appraisal, they  
141 were told by Mr. Landry that there was an issue with the previous owner and he is trying to clean it up  
142 and get it to be a structure that he can use. Mr. Larrow asked why it is not possible for Mr. Notkin to  
143 use the structure as a dwelling unit as it is. Mr. Notkin said that Mr. Landry said that it is not possible  
144 and that it needs to be an accessory dwelling unit. There was further discussion regarding this matter  
145 and the Zone and the property size.

146 Mr. Simpson asked and Mr. Notkin said that if the structure is moved it will not meet the setbacks.  
147 Chairman Schneider asked and Mr. Notkin said that the existing structure is 25 ft from the centerline  
148 and he does not have a survey showing the dimensions. Vice Chair Platt said that setbacks for an ADU  
149 must meet the same guidelines as the single-family unit. Chairman Schneider said that he would like  
150 documentation that the structure meets the setbacks, that it is under 1,000 sq ft, and a copy of the  
151 construction plan.

152 There was further discussion regarding ADU's and setbacks and other options that Mr. Notkin could  
153 pursue including a Variance to have a second dwelling unit on the property if it is not an ADU.

154 Mike Lovell, an abutter of the property, said that it seems clear that the dwelling unit should be  
155 attached to the house and he is not sure building a 60 ft hallway fits the spirit of the ordinance. There  
156 should be an easier way to build a mother-in-law apartment in the house. He does not feel as though  
157 the construction will help the neighborhood. Mr. Neuwirt explained that the Board cannot determine  
158 how it has to be connected. There was further discussion regarding the connector.

159 Mr. Neuwirt said that the problem the Board is having is that the building itself doesn't meet the criteria  
160 of an ADU as the building does not meet the setbacks.

161 Chairman Schneider asked if there was anyone else in the audience with questions or comments and  
162 there were none.

163 Mr. Notkin asked and Chairman Schneider said that the setback from the centerline of the road in this  
164 Zone is 50 ft. Mr. Notkin asked if there is any guidance the Board can offer as to what to do with the  
165 structure. Vice Chair Platt said that it can be used as it is being used now. Mr. Neuwirt said that it could  
166 be moved to meet the setbacks. There was a discussion regarding if Mr. Notkin could apply for a  
167 Variance and conditions that can be put on an approval.

168 Chairman Schneider asked and there were no more questions for the applicant.

169 Vice Chair Platt made a motion to approve Case #17-08: Parcel ID: 0118-0054-0000: seeking a Special  
170 Exception of Article IV, Section 4.90 for a one bedroom, 1,000 sq ft accessory dwelling unit, 80 Burma  
171 Rd, Michael Notkin, owner. Mr. Neuwirt seconded the motion. Vice Chair Platt said that for a Special  
172 Exception if all the criteria are not met it cannot be approved and it is too close to the road. Chairman

173 Schneider said that Paragraph C of Section 4.90 (5) is not met by the application. Mr. Larrow said that  
174 he does not know if #4 is met either. Chairman Schneider said that he does not know if the Board  
175 should debate that. Mr. Simpson said that only the Board only has to find that one criterion is not met  
176 in order for the Special Exception to be denied. The motion failed unanimously.

177 **Changes to the minutes from the June 8, 2017 Zoning Board Meeting:** Change Line 35 to read "...with  
178 any comments." Change Line 58 to read "...who determines whether an action by..." Change Line 59 to  
179 read "The enforcement role is very..." Change Line 67 to read "...swapping the order of the Planning and  
180 Zoning Board meetings." Change Line 71 to read "...does not offer benefits."

181 Mr. Simpson made a motion to approve the minutes as amended. Mr. Larrow seconded the motion.  
182 The motion passed unanimously.

### 183 **MISCELLANEOUS**

184 There was a brief discussion regarding roads and if someone could use survey pins to determine the  
185 width of a road and surveys.

186 **Changes to the minutes from the May 11, 2017 Zoning Board Meeting:** Change the date on the May  
187 11th the minutes from April 13, 2017 to May 11, 2017. Change Roger Landry, Zoning Administrator, from  
188 "Present" to "Absent." Change Line 79 to read "...subject to pinning by a..." Change Line 241 to read  
189 "...considered impervious by..."

190 Mr. Simpson made a motion to approve the May 11, 2017 minutes as amended. Mr. Larrow seconded  
191 the motion. The motion passed unanimously.

### 192 **PROPOSED ZONING AMENDMENTS**

193 Chairman Schneider gave the Board an updated copy of the proposed Zoning Amendments. The Board  
194 discussed requesting a meeting with the Planning Board in September to discuss the changes as well as  
195 some cases that the Board have heard that they have had questions about the Ordinances.

196 Vice Chair Platt made a motion to adjourn the meeting at 8:32 pm. Mr. Simpson seconded the motion.  
197 The motion passed unanimously.

198 Respectfully submitted,

199 Melissa Pollari

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205 Zoning Board of Adjustment

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207 Daniel Schneider

Aaron Simpson

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209 Clayton Platt

William Larrow

210

211 George Neuwirt

Jim Lyons, Alternate