

1 **TOWN OF SUNAPEE**

2 **ZONING BOARD**

3 **DECEMBER 14, 2017**

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

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

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

8 Vice Chair Platt recused himself from the hearings.

9 Mr. Larrow made a motion for Mr. Lyons to sit in for Clayton Platt. Mr. Simpson seconded the motion.
10 The motion passed unanimously.

11 **REHEARING: CASE #17-12: PARCEL ID: 0127-0010-0000: SEEKING A VARIANCE PER ARTICLE III,**
12 **SECTION 3.40 (C) TO ALLOW CONSTRUCTION OF A 12' HOUSE ADDITION 18.5 FT FROM LAKE SUNAPEE**
13 **WHERE 50 FT IS REQUIRED– 143 LAKE AVE, PINKOWSKI REALTY TRUST ii.**

14 Attorney Carl Hanson presented the case on behalf of the applicant.

15 Ms. Gage gave pictures of the property to the Board for their review.

16 Atty. Hanson gave some background information regarding the property as the applicants have owned it
17 for 55 years. During the time that they've owned the property, the applicants have not made any
18 changes to the footprint of the property and it is essentially the same footprint since it was built.

19 Atty. Hanson gave the Board a plan of the property that was prepared by Mr. Platt showing the footprint
20 of the building as well as an outline of the meeting room. The footprint of the cottage is smaller than
21 the meeting room and the living quarters are very tight.

22 Atty. Hanson said that the house sits entirely within the 50 ft setback and it presents a hardship for this
23 property because in order to strictly enforce the setback there could be no addition to the footprint of
24 the property.

25 Atty. Hanson said that the owner of the property has some mobility issues. She has fallen down the
26 stairs of the property twice and has been injured. Her physician requires first floor living and there is a
27 letter from the doctor clarifying this issue. This amounts to a disability and they are requesting the
28 addition of a first-floor bedroom and associate bathroom in order to accommodate her disability. It is a
29 320 sq ft addition on the back of the house and will have a lower roof line than the rest of the house.
30 The addition would be minimally visible from the lake and the road because of the vegetation.

31 Atty. Hanson said that the accommodation is necessary for the applicant to enjoy the use of her
32 property. There were some suggestions at the previous hearing regarding an elevator or an additional

33 stairway. Her doctor has advised her to avoid stairs entirely and the addition of an elevator to the
34 property is not reasonable given the small size of the property as it would take up at least 65-70 sq ft of
35 space on each floor and it would require raising the roofline. It would also be an unreasonable cost.

36 Atty. Hanson said that he thinks the Board should find that there is a hardship given that the property is
37 built entirely within the 50 ft setback and there is no way to make an addition to the house without
38 violating the setback. The Variance procedure was created to allow the Board to make reasonable
39 adjustments to the exact terms of the Ordinance to allow a reasonable use of the property. Atty.
40 Hanson continued to explain this matter.

41 Mr. Simpson asked if Atty. Hanson expects all the evidence presented at the last hearing to be
42 considered for this hearing. Atty. Hanson said that it is all part of the record. Mr. Simpson said that this
43 hearing starts a new record and the case needs to be presented as a new case. There was further
44 discussion regarding this issue.

45 Atty. Hanson explained how the purpose of the Zoning Ordinance will be preserved if the Board grants
46 the Variance for the case including that the runoff situation will be improved.

47 Chairman Schneider asked Atty. Hanson to go over the criteria submitted on the Variance application.
48 Atty. Hanson said that the Board has the application and he would be happy to address any questions
49 that they may have regarding the narrative submitted with the application.

50 Mr. Simpson said that he is confused with the hardship and asked if it is the nature of the property or
51 due to the disability. Atty. Hanson explained that he is making both arguments, though they are not
52 mutually exclusive. There was further discussion regarding this matter.

53 Atty. Hanson said that the second argument is that there is a hardship because the owner of the
54 property has a disability and this modification is required for her to reasonably use the property. Under
55 the Statute, the Board is empowered to grant a Variance, notwithstanding any hardship.

56 Mr. Lyons said that the original application said that the only reasonable addition is along the westerly
57 side of the building. Looking at the petition for this hearing, it does look as though there is another
58 alternative. Atty. Hanson said that both potential additions are on the same side. There was further
59 discussion regarding this issue.

60 Chairman Schneider asked if there are any public comments or questions for the applicant.

61 Andy Pinkowski, Mrs. Pinkowski's son, said that they felt compelled to look for alternate ways to
62 accomplish what they need to do; however, they are not equal. There is additional cost and difficulty
63 with the second plan as compared to the first plan, which is their preference. Mr. Pinkowski said that
64 his family has been coming to this property his entire life and gave further information regarding his life
65 in Sunapee. Without this type of accommodation, his mother will not be able to keep using the house.

66 Harry Gazelle said that the Board is discussing a property where the house, garage, and boathouse are
67 non-conforming. Mrs. Pinkowski recently lost her husband and she is asking for an addition to the

68 house to make her life more reasonable for medical reasons. One alternative would be to take the
69 house down and build a mega-house in the same footprint. As a past member of the Zoning Board, he
70 appreciates the responsibility the members have to make decisions. He thanked the Board members for
71 their time and effort as he knows the challenge they go through to make decisions for the Town. Mr.
72 Gazelle said that based on the fact that an elevator in the house would not have space, and he hopes
73 that the Board uses their common sense and judgement and finds in favor of Mrs. Pinkowski.

74 Mr. Simpson asked if everyone is going to be able to age into a Variance and asked how the Board
75 should deal with this going forward; if every applicant comes to the Board with a disability do they have
76 to approve the request. Atty. Hanson said that he believes that the Statute would require that. There
77 was further discussion regarding this matter and if the Board can require the construction to be
78 removed after the permitted use is no longer required.

79 Mr. Neuwirt said that Atty. Hanson speaks as though the Board has all the information and they do not.
80 They do not know that the drainage will be improved or how the property will be reworked because
81 there is not an approved Shoreland Permit. Atty. Hanson said that the Board has the plan that shows
82 the various features that will be used to deal with storm water runoff.

83 Chairman Schneider said that he does not know that the Board has a topographic map and he'd like any
84 approval conditional on the Zoning Administrator receiving one showing that all the other aspects of the
85 Zoning Ordinance are met. He would also like any approval to be conditional on an approved Shoreland
86 Permit. Atty. Hanson said that he thought that any approval from the Board would be conditional on
87 Shoreland approval.

88 Mr. Larrow asked if there is any specific reason that can be given that this information was not given to
89 the Board at the October 12th meeting as the Board didn't know that there was a disability. Atty.
90 Hanson said that the discussion at that meeting included that the applicant is elderly and had some
91 issues with stairs, but it was not as clear as it should have been.

92 There was a discussion regarding the proposed increase in the footprint and how it would impact the
93 future and if there could be a condition that stated the granted space would not be considered part of
94 the footprint.

95 Mr. Neuwirt said that his problem with the case is that this is what the Zoning Ordinance was meant to
96 control. Mr. Neuwirt continued explaining his thoughts regarding the case.

97 Chairman Schneider informed Mr. Pinkowski that the Board has a letter that allows him to speak on Mrs.
98 Pinkowski's behalf.

99 Mr. Pinkowski said that it is the Board's responsibility to make sure that the conditions are met, but the
100 conditions are met with his mother's physical disability. There was further discussion regarding this
101 matter.

102 Mr. Lyons said that the new construction seems expensive and asked if the family has looked into ramps
103 and / or elevators. Mr. Hanson said that a ramp would not be suitable because it would be outdoors.

104 Mr. Lyons said that they could remove the existing laundry room and shed and build a series of enclosed
105 ramps in that footprint. Mr. Hanson said that it would take up a lot of space from the 623 sq ft house.
106 There was further discussion regarding this matter.

107 Mr. Neuwirt asked if there is a plan that shows the improvements to the drainage. Mr. Platt said that
108 the plan he submitted at the last meeting had all the drainage information on it. Mr. Neuwirt said that
109 his concern was that an approval by the Board could be denied by the State. He researched the case
110 and spoke to the head of the Shoreland Program and he asked her opinion of a hypothetical case and
111 was told that the State allows for the expansion of buildings within the setback. One of the State's
112 biggest concerns is the drainage and it would be good for the Board to see the drainage plan. There was
113 further discussion regarding this matter and that the DES permit has been applied for but not yet
114 approved.

115 Mr. Simpson asked if the boundary issue has been resolved. Mr. Hanson said that it has not. Mrs.
116 Pinkowski said that they just found out about the issue when the land was surveyed. Mr. Simpson asked
117 about the distance from the deeded line to the side of the house and if it meets the side setback. Mr.
118 Platt said that it still meets the side setback of 10 ft as it is a non-conforming lot. There was further
119 discussion regarding the deed line and the proposed line.

120 Chairman Schneider said that there is a topographical map in the file.

121 Chairman Schneider closed the meeting to public comment. The Board members each expressed their
122 thoughts regarding the case including: putting a condition on an approval regarding the preexisting
123 footprint, with not all the Board members agreeing to this condition; putting a condition on an approval
124 regarding the Shoreland Permit; and including a reference to a plan in an approval.

125 Mr. Simpson asked to reopen the case to allow Mrs. Pinkowski the chance to discuss her thoughts
126 regarding a conditional approval regarding the preexisting footprint. Chairman Schneider reopened the
127 case to the public.

128 Mr. Pinkowski said that Atty. Hanson volunteered a response to the preexisting footprint in response to
129 a question as to whether any alternative options have been explored. They do not have any intention of
130 expanding the property or letting it out of their family. However, if a future purchaser of the property
131 wants to put an expansion on it, he believes that the Zoning Ordinances as they exist would require any
132 expansion to come before the Board. Mr. Simpson explained that their concern is that someone tears
133 down the house and builds a large home in that envelope. There was further discussion regarding this
134 matter and a conditional approval for the preexisting footprint and that the Board could require the
135 approved addition to be torn down when Mrs. Pinkowski no longer uses the property based on a
136 Variance for a disability.

137 Mrs. Pinkowski said that she cannot predict the future and asked if the Board can ask her family to tear
138 the addition down. Mr. Simpson said that the Board is discussing making the conditional approval so
139 that the addition would not need to be torn down. There was a discussion regarding the challenges a
140 new owner would face if the family wants to sell the property with the restriction.

141 Mr. Simpson clarified that he would like the condition to be if someone wanted to enlarge the house or
142 tear the house down and build a new house, the 325 sq ft addition would not be part of the footprint.
143 Chairman Schneider and Mr. Neuwirt did not think that the condition was necessary. There was further
144 discussion regarding this matter. The Pinkowskis said that if the Board wants to make a conditional
145 approval, they are not in a position to agree or disagree to it.

146 Mr. Larrow made a motion to approve Case #17-12: Parcel ID: 0127-0010-0000: seeking a Variance per
147 Article III, Section 3.40 (c) to allow construction of a 12 ft house addition 18.5 ft from Lake Sunapee
148 where 50 ft is required; 143 Lake Ave, Pinkowski Realty Trust II; with the stipulation that it requires an
149 approved Shoreland Permit; and subject to the plans presented to the Board dated September 25, 2017;
150 and that any expansion to the building footprint, both vertical and horizontal, will have to come before
151 the Board. Mr. Simpson seconded the motion. Mr. Simpson asked what criteria is being used for the
152 hardship. Mr. Larrow said the disability. Mr. Simpson said that he'd vote on the disability, not on the
153 land. Chairman Schneider said that he finds the hardship applicable on both. Mr. Neuwirt said that he
154 finds the hardship on the disability. The motion passed with four in favor and one opposed.

155 **CASE #17-15: PARCEL ID: 0127-0010-0000: SEEKING A SPECIAL EXCEPTION PER ARTICLE III, SECTION**
156 **3.50 (K) TO ALLOW A 16 FT X 22 FT ADDITION TO A PRE-EXISTING STRUCTURE LOCATED ENTIRELY**
157 **WITHIN THE 50 FT WATER BODIES SETBACK – 143 LAKE AVE, PINKOWSKI REALTY TRUST II.**

158 Mrs. Pinkowski gave verbal permission for Mr. Platt to present the merits of the case.

159 Mr. Platt explained that this an alternative plan to create the living space that would be more than 40 ft
160 from the lake and it qualifies for a Special Exception under Article 3.50 (k). Mr. Platt explained the
161 submitted plans to the Board and said that this plan was created after some feedback from DES.

162 Mr. Neuwirt said that the Board just granted a Variance for construction on the backside of the house
163 and asked if this is being built in addition to that construction. Mr. Pinkowski said no and explained that
164 they are looking at both plans in terms of pricing; it will be one or the other.

165 Mr. Platt went over the criteria submitted on the application for the Special Exception.

166 Mr. Neuwirt asked, and Mr. Platt said that the height of the addition from the lowest point will be 16.5
167 ft. Mr. Lyons asked about the plan that says that the existing roofline is less than 24 ft +/- 9 ft. Mr. Platt
168 said that they are raising the shed roof, which is approximately 5 ft high, up to 16.5 ft.

169 Chairman Schneider said that, if the Special Exception is approved, he believes it should be approved
170 based on the condition that the remainder of the house maintains it existing footprint, so it is not in
171 addition to the Variance that has been approved.

172 Chairman Schneider asked if there were any questions or comments for the applicant.

173 Mr. Simpson said that the on the application, the third criteria says that "the proposed addition is less
174 than 25 ft in height at the lower part of the ground by the entry door. The roofline will be +/- 16 ft
175 above existing ground." Mr. Platt explained that the highest point from the door is approximately 16 ft

176 because it is a one-story addition. There was further discussion regarding this matter and the finished
177 grade of the ground.

178 Mr. Simpson made a motion to approve Case #17-15: Parcel ID: 0127-0010-0000: seeking a Special
179 Exception per Article III, Section 3.50 (k) to allow a 16 ft x 22 ft addition to a pre-existing structure
180 located entirely within the 50 ft water bodies setback; conditioned on obtaining a Shoreland Permit, and
181 conditioned on the plans submitted dated November 16,2017, and conditioned on this being an
182 alternative to an enlargement granted previously in #17-12. Mr. Larrow seconded the motion. The
183 motion passed unanimously.

184 **CASE #17-16: PARCEL ID: 0127-0010-0000: SEEKING A SPECIAL EXCEPTION PER ARTICLE III, SECTION**
185 **3.50 (I) TO ALLOW A PRE-EXISTING, NON-CONFORMING STRUCTURE TO BE ENLARGED AND THE**
186 **ROOFLINE ALTERED FOR A PROPOSED 16 FT X 22 FT ADDITION – 143 LAKE AVE, PINKOWSKI REALTY**
187 **TRUST.**

188 Mr. Platt presented the merits of the case.

189 Mr. Platt explained the changes to the roofline to the Board as the applicant would like to raise the
190 existing roofline on what is currently a shed by 5 ft.

191 Mr. Simpson asked how the enlargement would ordinarily be permitted under the Ordinance with the
192 height restrictions. Mr. Platt said that the new roof does not increase the horizontal footprint as it is
193 above the existing structure.

194 Mr. Platt continued to go over the criteria submitted on the application for the Special Exception.

195 Chairman Schneider asked if there were any public comments or other questions for the applicant and
196 there were none.

197 Mr. Larrow made a motion to approve Case #17-16: Parcel ID: 0127-0010-0000: seeking a Special
198 Exception per Article III, Section 3.50 (I) to allow a pre-existing, non-conforming structure to be enlarged
199 and the roofline altered for a proposed 16 ft x 22 ft addition; 143 Lake Ave, Pinkowski Realty Trust;
200 subject to approval of the Shoreland Permit and based on the drawing dated November 16, 2017 and is
201 an alternative to the approval of Case #17-12. Mr. Neuwirt seconded the motion.

202 Mr. Lyons wanted to clarify with the Board that if an application meets all the criteria for a Special
203 Exception then the application must be approved. Mr. Simpson said that is the way that he treats
204 Special Exceptions, though he understands that some criteria requires a subjective judgement, which
205 may not require the same outcome as the last case. There was further discussion regarding this matter
206 and a ruling from the NH Supreme Court.

207 Chairman Schneider asked if any of the Board members feel as though the requested Special Exception
208 is not consistent with the intent of the Ordinance. Mr. Simpson said that he is concerned that the
209 grounds for granting the Variance for 17-12 was that the lot could not be otherwise utilized and now
210 they are saying that it can. There was further discussion regarding this matter.

211 The motion passed unanimously.

212 **MINUTES**

213 Vice Chair Platt rejoined the Board to review the minutes.

214 Changes to the minutes from November 9, 2017: Change Line 46 to read "...that the current garage has
215 not flooded..."

216 Mr. Larrow made a motion to approve the minutes as amended. Vice Chair Platt seconded the motion.
217 The motion passed unanimously.

218 Changes to the minutes from November 28, 2017: Remove "The motion passed unanimously" from Line
219 18. Remove "Mr. Simpson continued discussing his feelings on the case" from Line 30. Change Line 76
220 to read "Approval of the minutes was continued..."

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

223 **MISCELLANEOUS**

224 Ms. Gage gave the Board a Table of Contents for the Zoning Ordinance. Ms. Gage also gave the Board a
225 schedule of the meeting dates for 2018 for their review and the Board discussed their availability.

226 There was a brief discussion regarding the Planning Board public hearing for the Zoning Ordinances. Ms.
227 Gage explained that the proposed Zoning Amendments will impact applications after the public hearing
228 on December 21st as they are in effect unless they are voted down.

229 Mr. Larrow made a motion to adjourn the meeting at 7:47 pm. Mr. Simpson seconded the motion. The
230 motion passed unanimously.

231 Respectfully submitted,

232 Melissa Pollari

233 Zoning Board of Adjustment

234 _____

235 Daniel Schneider

_____ Aaron Simpson

236 _____

237 Clayton Platt

_____ William Larrow

238 _____

239 George Neuwirt

_____ Jim Lyons, Alternate