

1 **TOWN OF SUNAPEE**

2 **ZONING BOARD**

3 **OCTOBER 26, 2016**

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

6 **ABSENT:**

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

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

9 **CONTINUATION: CASE #16-25: PARCEL ID: 0211-0018-0000: REVIEW JUSTIFICATION REQUEST FOR**
10 **REHEARING OF CASE #16-19 DENIED ON SEPTEMBER 8, 2016. ALBEE AUTOMOTIVE, 962 ROUTE 11.**

11 Vice Chair Schneider explained that as this is not a rehearing of the case, it is a hearing to review the
12 justification request for a rehearing. There will be no comments from anyone other than the applicants.

13 Susan Hankin-Birke, an attorney with the McSwiney Law Firm in New London, presented the case with
14 Shawn and Debra Albee. Attorney Hankin-Birke gave packets of information to the Board.

15 Attorney Hankin-Birke explained that the applicant has recently purchased the property, which is a 16.7
16 acre parcel. She has reviewed the Decision of the Board denying the application as well as the minutes
17 from the previous meeting and she believes that the Board misapprehended one of the five criteria
18 required to be met in order for the Variance to be granted. Ordinance 10.42-(c) states that “denial of
19 the permit would result in unnecessary hardship to the owner.” Attorney Hankin-Birke continued that
20 the Board did not really flush out for the applicant in its Decision exactly why they felt that the hardship
21 criteria was not met. The form that is used by Sunapee is somewhat different from forms that are used
22 by other Towns and also somewhat different from the form printed in the Municipal Handbook, which is
23 typically used by Board members. Attorney Hankin-Birke said that she attached that form to the
24 application so that the Board can see that unnecessary hardship is a several part test. The test criteria
25 are: “owing to special conditions of the property that distinguish it from other properties in the area,
26 denial of the variance would result in unnecessary hardship. There is a fair and substantial relationship
27 between the general public purpose of the ordinance provision and the specific application of that
28 provision to the property and that the proposed use is a reasonable use.” Attorney Hankin-Birke said
29 that she does not know from reading the Board’s decision what it was about this project that the Board
30 felt wasn’t demonstrated in terms of hardship.

31 Attorney Hankin-Birke said that another document she gave the Board is a sketch of the Town Tax Map
32 that is annotated to show where the subject property is and that the size of the parcel is substantial to
33 the other parcels around it; though across the street is rental cabins on a more substantial lot. Lot #16,
34 which is half the size or smaller than the subject property, is where the Board granted a Variance to

35 allow self-storage, which is a commercial enterprise. When you look at the number of buildings on that
36 lot they are pretty close together and it is a densely occupied lot. Attorney Hankin-Birke continued that
37 there are other parcels in the area that are commercial, however another property she'd like to discuss
38 is the Osborne Marine property. The property is in a similar district and started out as a marina, then
39 expanded to have boat storage and repair, and then expanded again to have equipment repair. It may
40 be worth noting, however, that the property was owned by someone who had been in the Town of
41 Sunapee for some time but there is nothing in the Ordinance that says that if someone has lived in Town
42 for a certain amount of time they should somehow fair better in front of any of the Boards than
43 someone who is a relative newcomer. Attorney Hankin-Birke continued that it is something that is a
44 little concerning if you look at other properties for which Variances have been granted.

45 Attorney Hankin-Birke said that what is very different about this parcel is the fact that the buildings on it
46 are located proximate to Route 11. At least for the last 30 plus years the Town has seen fit to allow
47 commercial uses on the property. Attorney Hankin-Birke continued that Shaun Carroll, who was at the
48 previous meeting, explained that Borlind of Germany used to own the property and had about 20
49 employees, plus they had a warehouse there and had tractor trailers on and off the site. What is being
50 proposed by this applicant is much less in terms of traffic and activity right on the road than what was
51 going on with Borlind of Germany. Attorney Hankin-Birke said that the former warehouse is being used
52 as a dance studio and the other building has been used for office spaces and they are still operating
53 under a Variance that allows them to do so.

54 Attorney Hankin-Birke said that there was a man in the audience who had bought a newer house where
55 they had subdivided a piece of property into smaller lots. He had mentioned that the sound of the
56 traffic on Route 11 was a lot louder than he expected and she believes that his house is fairly close to
57 Route 11. Not only are there issues with traffic but the noise that comes from Route 11 in that
58 particular area was admitted by the abutter who was concerned about additional noise. They proposed
59 that on the 16.7 acre site, the shop would be in the center of the site and they would leave the wooded
60 buffer to cut down the noise. This is not a high traffic operation, it is a second location for a car repair
61 shop with the existing shop continuing. Attorney Hankin-Birke continued discussing this matter.

62 Mr. Larrow said that it was unclear to him during Attorney Hankin-Birke's presentation as to whether
63 they were only doing car restorations as he had specifically asked about the website. The abutter was
64 concerned that it would grow into something bigger and Attorney Hankin-Birke said that the Albee's
65 would ultimately like to have their entire operation on this site. Attorney Hankin-Birke said that they
66 are not moving the entire operation to this site and apologized if she misspoke. The applicant plans to
67 maintain the current shop where it is and they will do the same types of services at the new shop but it
68 will have more space to store vehicles safely and out of view of the public if it is a longer restoration
69 project. Mr. Larrow said that the concern of the abutter and himself was what this operation would
70 include and what it will eventually become. Attorney Hankin-Birke said that she must have misspoken
71 but explained that what she just said is what is anticipated.

72 Attorney Hankin-Birke said that regarding noise, this will be a closed facility with doors though in
73 summer months they may be open. She does not know that there will be a lot of noise from this type of

74 business and with the size of the lot and the buffer of trees. This is not a rock crushing business nor will
75 there be heavy equipment, it is a lot of hand tools and power tools; working on vehicles is not typically a
76 noisy process such as a warehouse with tractor trailers on Route 11.

77 Vice Chair Schneider said that the documents given to the Board were dated October 6th but no one on
78 the Board saw them before the meeting. Attorney Hankin-Birke said that the documents were hand
79 delivered to the Town Office within the 10 days of their appeal deadline and Mr. Landry gave them to
80 her today to distribute to the Board. Vice Chair Schneider said that he has difficulties reading eight
81 pages of legal language during the meeting and asked why they did not get the information before the
82 meeting. Mr. Platt said that it is not the fault of the applicant.

83 Mr. Platt asked and Attorney Hankin Birke denied that part of her argument is that the noise on Route
84 11 makes this site so that no one wants to build on it. Attorney Hankin-Birke said that the buildings that
85 are on the site and the fact that there is really no buffer is the issue. When she described the plan, the
86 shop and parking area will be toward the center of the lot and directly behind that will be the Albee's
87 residence. Their own choice for their home is back from Route 11. Attorney Hankin-Birke continued
88 that what she is saying is that the types of buildings and where they are on the lot is part of what has
89 created a special circumstance. They went through this history of the property and why there have
90 been so many different businesses there and she can't say that anyone can say when they cannot
91 remember when the property was used as a residence.

92 Vice Chair Schneider asked Mr. Landry why the documents were not given to the Board prior to the
93 meeting. Mr. Landry said that he could not give the documents to the Board prior to the case as they
94 could make a predetermined decision prior to hearing the case. The Board is acting as a jury and a jury
95 does not get the information for the case prior to hearing it. Mr. Platt asked and Mr. Landry confirmed
96 that this decision came from the Town's attorney. Mr. Neuwirt said that it is difficult for the Board to
97 listen to Attorney Hankin-Birke and also read the documents.

98 Mr. Simpson asked if the issue the Board is deciding on is to give another rehearing based on new
99 information. Mr. Neuwirt asked and the Board agreed that the noise on Route 11 was brought up at the
100 last hearing. Mr. Larrow said that everything the Board has heard so far has been brought up before.
101 Attorney Hankin-Birke confirmed this but said that the hearing was not taped so there is no record of
102 exactly what was said during the course of the hearing, which is unusual for this Board. Mr. Simpson
103 asked if a recording is required by law. Attorney Hankin-Birke said that she does not know but every
104 other meeting is taped and asked why this meeting was not taped. It is also unusual for the Chairman of
105 the Planning Board to attend a Zoning Board meeting, stand up and identify himself as the Chair, and
106 then give the reasons that he is urging the Board not to vote for the case. Additionally, at the Planning
107 Board meeting shortly after the hearing the matter of the Albee hearing was brought up by Chair. Mr.
108 Simpson said that Attorney Hankin-Birke should not bring up the Planning Board hearing. Attorney
109 Hankin-Birke said that it is part of this case. Mr. Simpson said that it may be part of Attorney Hankin-
110 Birke's background but he was not at the Planning Board meeting and he has no idea what they did.

111 Mr. Simpson said that when the Board discovered that the recorder was off it was well after the Albee
112 hearing and they were shocked. Mr. Simpson asked and Attorney Hankin-Birke said that she does feel
113 as though there was an impropriety done when the meeting was not recorded. Mr. Simpson said that
114 Attorney Hankin-Birke feels that the Board has prejudged the applicants. Attorney Hankin-Birke said
115 that she does believe that there was a prejudgement of the case. Mr. Simpson said that he takes
116 offense to Attorney Hankin-Birke saying that as he had not heard about the case before receiving the
117 packet of information. If the decision the Board gave the applicant was less than clear, that is valid, but
118 throwing mud will not change whether the Board decides to grant a rehearing or not.

119 Attorney Hankin-Birke said that one of her concerns is that she looks at a business like Osborne Marine,
120 which is owned by a local person and no one stopped them from not only creating a business there or
121 from expanding it. Similarly, the Board allowed the storage facility to go in down the street from this
122 property. Mr. Platt asked and Attorney Hankin-Birke said that she does not know when the storage
123 facility was built. Attorney Hankin-Birke said that there is a metal fabrication shop, the Iron Garden,
124 which is on Route 11 as well. The Board said that they do not believe that the metal fabrication shop
125 came before the Board as it is more of a home business. Attorney Hankin-Birke said that there is also
126 Avian Technologies, which Mr. Landry said came before the Board; and Sunapee Canvasworks, which
127 the Board said is a home business.

128 Mr. Platt asked if Attorney Hankin-Birke would not differentiate the Osborne Marine case, which was an
129 existing business with an existing footprint and they were not building anything new, from this case
130 where the applicant wants to build a brand new building in a residential zone, on top of an existing
131 dance studio and existing office. Attorney Hankin-Birke said that this is a 16.7 acre parcel Mr. Platt said
132 that he thinks it is similar size to Osborne's. Attorney Hankin-Birke said that it is a sizeable parcel, and if
133 what Mr. Platt is saying is that Osborne Marine, because of where it was located, because it was not in
134 view of the road, and it was a sizeable lot, was appropriate for several commercial uses then she thinks
135 that it is similar. Mr. Platt said that he thinks that Osborne Marine was approved because it was an
136 existing business and he thinks that the Board was clear in their approval that there would be no
137 expansion outside the existing footprint. Mr. Platt said that the gravel pit was approved for two years, it
138 was not approved for long term commercial use.

139 Attorney Hankin-Birke said that she pointed out the law in the State of NH that was determined by
140 Anderson vs. Motorsports Holding in 2007 that says "selected enforcement of stringent application of
141 the Ordinance in similar institutes constitutes conscious intentional discrimination." She has given some
142 citations to the State and Federal Constitution in terms of due process and equal protection in being
143 able to utilize ones property as is reasonable and the ability to be treated similarly to other people.

144 Attorney Hankin-Birke said that the other significant issue is that the Board did not seem to identify any
145 fair and substantial relationship between the general public purposes of the Ordinance and the specific
146 applicant of the provision to this property and the issue is, what are they protecting the public from.
147 The public would be protected from visual commercial enterprise, which seems to be an issue along the
148 road and this has been dealt with this case in as it will not be visible. In terms of the noise issue, she
149 does not feel as though there is any evidence that indicates that having a vehicle repair shop is a

150 particularly noisy enterprise, especially as it will be taking place inside a building. If you look at the other
151 businesses that are allowed along Route 11 where it is residentially zoned those businesses are often
152 noisier than this one. Attorney Hankin-Birke continued that the noise factor that is created by the traffic
153 on the road was what identified by the person at the last meeting who lived not far from the property.
154 A shop that is contained inside a building should not result in a lot of noise.

155 Attorney Hankin-Birke said that another important point is that in Hannaford Brothers vs. the Town of
156 Bedford the NH Supreme Court looked very closely at whether or not what is being proposed for a
157 Variance would affect the essential character of the locality. There was testimony at the last hearing
158 about the amount of traffic and the increase in it during the last 40 years but there has been a
159 significant growth in the population so Route 11 is busier. Attorney Hankin-Birke continued that the
160 proposal is less in terms of traffic than what was going on when Borlind of Germany was operating there
161 with 20 employees and tractor trailers coming and going. She has analogized this particular situation to
162 Harborside Associates LP vs. Parade Residence Hotel, which is a 2011 case where they pointed out that
163 the distinguishing factors of the lot, including the size of the lot, flat elevation, the existing commercial
164 uses, well within view of the hearing and abutters, are all distinguishing special conditions of this parcel.
165 Those conditions alone make proposed further commercial use of this property reasonable so there is
166 not any kind of change of the essential character of the locality as you cannot see the garage in the
167 center of the lot from the road.

168 Attorney Hankin-Birke said that another essential test that case law discusses is that the Board should
169 be weighing what is the public benefit verses the hardship on the owner and she is hard pressed to find
170 the benefit to the public. The hardship the owner of the property has is that the property already has
171 commercial buildings right along Route 11 and it is a 16.7 acre parcel and they are proposing to put a
172 commercial use towards the center of the property in a contained area. This is not going to have a
173 negative impact on the public nor on any abutter as there will not be anyone who can see it nor any
174 indication that there will be any substantial noise or traffic. The proposed use is a reasonable one as
175 having a place to leave vehicles in a fenced area makes sense. The commercial use would be occurring
176 within a building and allowing for mixed uses on this size lot is reasonable, especially as it has been
177 approved for Variances and operating commercially for approximately 50 years. It is hard to understand
178 why the Board granted Variances in the past to prior uses, which were right next to the roadway and
179 within view of the public, when this proposal is being denied.

180 Attorney Hankin-Birke said that the applicant is not required to prove that the requested Variance to
181 permit the use of the property for an automotive repair shop and parking area is necessary, they only
182 have to show that the proposed commercial use is reasonable and she thinks that is what they have
183 done with the case laws she provided.

184 Attorney Hankin-Birke said that she wants to make the Board aware of the fact that the applicant has
185 purchased the property knowing the Zoning that is in existence is not a basis for which a Board can deny
186 a Variance. In looking at the Master Plan it specifically noted that more than 2/3 of all respondents
187 favored home businesses and light industry. The 2010 Master Plan indicates that those were very
188 similar to those in the 1998 Master Plan. Recommendation # 1 in the Master Plan is "encourage home

189 based occupations and businesses.” While this does not fall under the Town’s strict definition for Home
190 Business, there are businesses operating on the property and this business can operate in tandem with
191 those and there is no reason to not allow this type of mixed use, residential and commercial, on such a
192 sizeable lot where there is already commercial use.

193 Attorney Hankin-Birke said that her primary concern is the hardship criteria, which they believe was
194 met. In the Board’s Decision and in the minutes there was nothing that really explains the provisions
195 that they did not meet. They hope that the Board will provide the Albee’s with another opportunity to
196 present their application and to allow it to be taped like other cases and that the Board will look at the
197 case with an open mind and consider the arguments and consider the law.

198 Vice Chair Schneider closed the hearing to outside comments.

199 Vice Chair Schneider said that he was not present for the original case so he cannot comment about
200 what was brought up during that hearing verses this hearing.

201 Vice Chair Schneider asked if any of the Board members believes that they should table this hearing until
202 the Board can review the documents that have been prepared. Mr. Simpson suggested taking a ten
203 minute recess and reading through the documents. The citations are just citations without case laws
204 attached so he is not sure that ten minutes will be adequate time to review the laws.

205 Mr. Platt said that he thinks the questions area whether the Board heard anything new that they did not
206 hear at the previous meeting and if the Board is concerned about the tape.

207 Mr. Larrow said that he has mixed emotions about the case but based on what was presented at this
208 hearing in terms if there was new information there was none. It was a foul on the Board’s part because
209 the recorder was not on and the Board has admitted that and done minutes and reviewed them. The
210 presentation of the new documents at the meeting is a bit unfair because he would like to read them
211 and make sure he understands what is going on. Mr. Larrow continued that what he is hearing is “me
212 too,” which to him means that because there are other commercial properties Attorney Hankin-Birke is
213 implying that the Board is not abiding by the law and he does not believe that. If the Board feels as
214 though they are not abiding by the law they need the Town’s attorney to tell them that not have an
215 applicant’s attorney tell them that they are not. He does not want to make a decision based on what
216 the applican’ts attorney tells them that they need to think.

217 Mr. Neuwirt said that he thinks that it is like the Board is in the process of being educated as during the
218 first case the Board didn’t get it so now the attorney is trying to educate them. It is like someone
219 making an argument and then the next time around just saying it louder; it does not change the meat of
220 the argument. When you look at the conclusion of the documents it is basically a summary of what the
221 Board did and didn’t do and the attorney is implying that the Board’s behavior in voting against the case
222 was somehow influenced by Peter White because he is an influential person in Town as the Planning
223 Board Chair. Mr. Neuwirt continued that it is not the case with him as he thinks that when people come
224 before the Board he can render a decision that is based on a reasonable argument. He is not an

225 attorney, he looks at projects as to whether they are reasonable or not. If you look at the merits of the
226 case, he does not see anything new he just sees it as yelling louder and the message is still the same.

227 Mr. Platt said that the Town of Sunapee is very active in using Special Exceptions to control Zoning and
228 growth. The number of Special Exceptions allowed in the Rural Residential District are more than he
229 thought but an auto repair business is not in that section and the voters did not seem to think that it
230 was appropriate in that District. Vice Chair Schneider said that the property is currently zoned Rural
231 Residential and whether it should be is not something to be decided by the Board.

232 Mr. Neuwirt asked and Mr. Simpson said that he knows that they addressed the hardship issue in the
233 minutes and he also feels that there were a couple of areas that were not satisfied but he was not
234 present to amend the minutes because he was sick. The most glaring problem was the hardship with
235 the land and he feels as though the Board addressed it and that it is in the minutes. The Board is not
236 limited to see if there are new facts, if something is overlooked it can be grounds for a rehearing. Mr.
237 Larrow said that he doesn't know if they have overlooked anything. Mr. Simpson said that he does not
238 know if the Board heard anything in the presentation as to what they should be considering for the
239 rehearing other than the Board is biased and only use select enforcement and there is favoritism in
240 Town. It would be appropriate if they had done them but he does not think that any of those things
241 exist. Mr. Larrow said that he does not think that they are relevant enough to grant a rehearing as
242 opposed to what the Board has missed to grant a rehearing. There was further discussion regarding this
243 matter.

244 Mr. Simpson made a motion to approve the request for a rehearing for Case #16-19, denied on 9/8/16,
245 Albee Automotive, 962 Route 11 for tonight's Case #16-25, Parcel ID: 0211-0018-0000. Mr. Larrow
246 seconded the motion. The motion failed with four against and one abstention.

247 Vice Chair Schneider said that he was not at the first hearing, however, he did read the minutes and
248 visited the property, and he feels as though the argument was asking for re-Zoning. He does not think it
249 was a good argument for a Variance. Attorney Hankin-Birke said that she appreciates Vice Chair
250 Schneider's dialogue but minds may differ.

251 **CONTINUATION: CASE #16-31: PARCEL ID: 0126-0023-0000: ADMINISTRATIVE APPEAL: SEEKING**
252 **APPROVAL OF APPEALING THE TOWN OF SUNAPEE SELECTMEN'S APPROVAL OF BUILDING PERMIT**
253 **#3516, 23 OLD NORCROSS LN, MICHAEL JESANIS.**

254 Mr. Platt recused himself from the case.

255 Michael Jesanis, 8 Old Norcross Ln, presented the merits of the case.

256 Mr. Jesanis said that he and his wife are full time residences and abut the property with the proposed
257 application owned by the Bolsingers at 23 Old Norcross Ln. He thinks that this case is simpler than the
258 last case as what he is asking is that before the Bolsingers build a house on this property that they come
259 before this Board to ask for a Variance or Special Exception. They should not have been issued a
260 Certificate of Zoning Compliance by the Board of Selectmen.

261 Mr. Jesanis said that the Board of Selectmen are authorized to grant a Certificate of Zoning Compliance
262 indicating that the project complies with the Zoning Ordinance, subject to any relief from this body. The
263 Selectmen are not authorized to vary from the Ordinance or grant Variances or Special Exceptions.

264 Mr. Jesanis said that the law makes this very straight forward. He is not an attorney though he has
265 brought one case with him and the language that he is going to cite is marked. The NH Supreme Court
266 has found in cases like this that it is not about the Spirit of the Ordinance, it is not about hardship, nor is
267 it about public interest; it is about if the proposal strictly complies with the Ordinance. The State says
268 “we construe the words and phrases of an Ordinance according to the common and approved usage of
269 the language. When the language of the Ordinance is plain and unambiguous, we need not look beyond
270 the Ordinance itself for further indications of legislative intent, and we will not guess what the drafters
271 of the Ordinance might have intended, nor add words that they did not see fit to include.” Mr. Jesanis
272 said that this will form the basis of the discussion covering the appeal memorandum that he filed last
273 month.

274 Mr. Jesanis said that he also has a “Guide to Zoning Boards,” which is not a legal document but that is
275 issued by the Office of Energy and Planning of the State of NH which says: “when an appeal is made to
276 the Board of Adjustments under these provisions, the Board must apply the strict letter of the law, it
277 cannot alter the Ordinance or waive any restrictions under the guise of interpreting the law.”

278 Mr. Jesanis said that he believes in this case the Ordinance is clear and unambiguous and this project
279 does not meet the clear and unambiguous words of the Ordinance. The project is non-conforming and
280 within the lake setback; the question is under what provision might it be exempt for coming before the
281 Board for a Variance or Special Exception and there are two provisions. The first provision is under
282 Section 6.12, which requires a Variance if the replacement structure increases the horizontal or vertical
283 dimension or increases the non-conformity. The Ordinance does not have language that specifies where
284 the increases occur and if the increases are outside the setback area that it is OK. In 2014, the voters
285 approved a very clear an unambiguous Warrant Article that says that Section 6.12 will be amended by
286 adding wording that will make it clear that any horizontal or vertical change to a non-conforming
287 structure will require a Variance or Special Exception. It does not say where those expansions will occur.
288 The proposed plan clearly increases the horizontal dimensions and in the memorandum submitted it
289 lists the amounts. The project increases rather than decreases the non-conformity with the Ordinance
290 as it fails to meet the clear and unambiguous language of Section 6.12. Mr. Jesanis continued that in his
291 appeal memorandum he indicated that the project likely increased the vertical dimension as well and he
292 made that assumption not having access to the plans which were filed with Mr. Landry but since he has
293 filed the appeal he has discovered that he was incorrect. The proposed house is not higher than the
294 existing house but the horizontal dimensions are clearly larger so the project does not meet Section
295 6.12.

296 Mr. Jesanis said that Section 6.32, which was adopted in 2014, says that a Grandfathered structure is
297 one that is existing on or before March 12, 1987. The home being replaced was built in the late 1990s
298 and the prior house was completely torn down and removed. The current home is not eligible for relief

299 under the clear language of Section 6.32 and needs a Variance, even if it were going to be built in the
300 same or smaller footprint.

301 Mr. Jesanis said that Section 6.32 also states that the project must be less non-conforming and this
302 project increases rather than decreases the non-conformity. All of the non-conformity is within the
303 setback and the Board can confirm with the numbers submitted to DES as this is where almost
304 everything came from. The plan includes the building, the patios, the walkways, and the walls, all of
305 which are subject to the Ordinance. The Ordinance was amended in 2014 to remove a prior exclusion to
306 some of these items. Looking at the increase of structures within the setback you go from 1,860 sq ft to
307 2,520 sq ft within the setback, which is a 35% increase of coverage. Mr. Larrow asked and Mr. Jesanis
308 said that when he says structure he is including everything, not just the building.

309 Mr. Jesanis said that the Board might ask why the project was approved by DES as they look at issues
310 within the Shoreland and he believes they approved it for two reasons. One is that DES does not count a
311 pervious patio as being a problem within the setback. The Town's Ordinance does not distinguish
312 between pervious and impervious and this past year there was a measure to exempt small pervious
313 patios which was rejected by the voters. There is a substantial increase in the coverage with the
314 pervious patio. Mr. Jesanis continued that the 400 sq ft measurement of the patio is his estimate as he
315 does not have the actual size.

316 Mr. Jesanis said that the other factor that DES probably looked at was the driveway into the property.
317 The driveway now goes through more of the setback than the proposed driveway and that was
318 something that was important to DES but it doesn't matter to the Town's Ordinance as the Town
319 doesn't require driveways to be setback from the lake or from his abutting property.

320 Mr. Jesanis said that this a more non-conforming proposal in addition to not meeting the plain standards
321 for a non-conforming parcel being able to get a permit without coming before this Board. He thinks that
322 the language of the Ordinance is clear and unambiguous and he asks the Board to approve his appeal
323 and vacate the Certificate of Zoning Compliance.

324 Mr. Simpson asked if Mr. Jesanis is familiar with Section 3.20 of the Zoning Ordinance and Mr. Jesanis
325 said that he is not. Mr. Simpson said that Section 3.20 talks about permeable and impermeable surfaces
326 and asked if Mr. Jesanis' numbers distinguish the impervious. Mr. Jesanis said that he does not believe
327 that Section 3.20 establishes the setback requirements. Mr. Simpson said that it talks about lot
328 coverage. Mr. Jesanis said that in respect to setbacks issues the Ordinance does not distinguish
329 between pervious and impervious. Vice Chair Schneider said that the numbers Mr. Jesanis supplied the
330 Board need to be measured against the total property area to determine if the percentage increase is
331 over the allowable percentages then it would be more non-conforming. If it is below that percentage,
332 even if it is an increase, then it is not non-conforming. Mr. Jesanis said that he believes that the
333 Ordinance requires that the structures all be outside the setback, it is not about whether it meets within
334 the percentage of the lot, which is what he understands Section 3.20 to be. There is a total lot and most
335 of it is outside the protected area and then how much of the lot you can cover with pervious and
336 impervious surfaces. There was further discussion regarding this matter.

337 Mr. Jesanis said that the structures are more non-conforming in regards to the setback rules per the
338 chart he submitted from the numbers he obtained from the DES permit. The only number he didn't
339 have was the size for the pervious patio so he estimated that measurement. Mr. Jesansis continued that
340 he has explained how DES could determine that it meets their standards, however, it does not meet the
341 Town's standards.

342 Mr. Jesanis said that there were two pages filed with the appeal, the first is the property as it currently is
343 and on it is a table in the upper right that shows the existing conditions of the site. The current building
344 is 900 sq ft within the setback area, a driveway which is 600 sq ft, the patios and walkways, which are
345 925 sq ft and the walls, which are 35 sq ft. The second page has the same figures for the proposed
346 project, the only thing he had to calculate was the size of the pervious patio to the east of the home,
347 which is brand new within the setback and not in the existing footprint of the house or the patios. He
348 believes that the law is clear that the parcel is not entitled to the exemptions and should be asking for a
349 Variance even if there was no increase in the non-conformity.

350 Vice Chair Schneider asked if the pervious patio is inside or outside the previous footprint. Mr. Jesansis
351 said that it is clearly outside the footprint.

352 Mr. Simpson asked in Section 6.12 if it is the non-conformity that should be looked at and Mr. Landry
353 said yes. Mr. Jesanis said that the plain language of 6.12 does not use those terms, it uses the term
354 "increase in horizontal or vertical dimension or one which increases the non-conformity to this
355 Ordinance." If it fails either of those two tests, it fails 6.12, and going back to the Dover case it may
356 not have been what was intended but the ballot question was very clear as it said any increase.

357 Mr. Simpson asked if Mr. Jesanis has any suggestions as to how the Board should be interpreting
358 something that may not have been around in 1987 but was replaced with a less non-conforming
359 structure. Mr. Jesanis said that the Ordinance is clear that the building has to be built before 1987
360 or the section doesn't apply. Buildings existing on that date in 1987 are eligible to be considered
361 under the rest of the language in that section. Vice Chair Schneider said that it is reasonable to him
362 that someone builds a house on an existing footprint and if someone else wants to tear that house
363 down and build it on the existing footprint then that is still Grandfathered. Mr. Jesansis said that it
364 may be reasonable but it is not what the Ordinance says. The Ordinance exists for a reason and has
365 been amended for a reason and if there is a flaw in the Ordinance then it should be amended
366 further. Vice Chair Schneider said that the Board looks at the Spirit of the Ordinance. Mr. Jesanis
367 said that in a Variance application they can look at the Spirit of the Ordinance but in an
368 Administrative Appeal the Supreme Court has been clear that the Board has to look at the language
369 of the Ordinance.

370 Vice Chair Schneider said that Section 3.50-(k) says "If a pre-existing house is located entirely within
371 the 50' water bodies setback, additions may be made to the structure provided that the house is at
372 least 40' from the water body at all points where the addition is proposed; he proposed addition is
373 to be only on the side of the structure away from the water body and behind the existing structure;

374 and the proposed addition is no higher than 25' from the finished grade at its highest point." Vice
375 Chair Schneider continued that he does not know if all of the pre-existing footprint is within the
376 setback but it seems as though it doesn't make sense to have more stringent regulations on a house
377 that is partially within the setback than one that is fully within the setback. Mr. Jesanis said that
378 other communities do, for example, in New London if you want to totally replace a structure within
379 the setback you need to fully comply with the Ordinance or get a Variance. If the house is
380 destroyed by fire there is a looser standard or if you are adding an addition there is a looser
381 standard. Grantham, Concord, and Hanover are all similar in that regard; how something got there
382 isn't important but the words are important.

383 Mr. Neuwirt asked and Mr. Jesanis confirmed the setback on the plan.

384 Vice Chair Schnieder asked and Mr. Jesanis confirmed that he was given full access to the plans
385 submitted that the Town had. Mr. Jesanis said that he met with Mr. Landry last week.

386 Mr. Neuwirt asked and Mr. Jesanis confirmed that his argument is that any increase horizontally or
387 vertically in the dimensions requires a Variance. Mr. Jesanis said that one of the horizontal dimensions
388 goes from approximately 87 ft to 95 ft. The other structures are all over the place in terms of where
389 patios and walkways are currently, including one right down by the water.

390 Mr. Simpson asked Mr. Jesanis about the sentence in the Ordinance that says "a non-conforming
391 structure existing at the time of the passage of this Ordinance may be replaced on the same or a
392 smaller footprint and having the same or lower height by a new structure having the same purpose
393 and use provided that the non-conformity to this Ordinance is not increased thereby;" and if he is
394 saying that it does not apply because it was not pre-existing. Mr. Jesanis said that the footprint is
395 not defined as within or outside the setback the proposed house will be a larger house on a larger
396 footprint than the existing house. The project does increase the non-conformance of the
397 Ordinance. The second sentence basically is saying what the first sentence means, which is if it is
398 larger it needs a Variance.

399 Mr. Simpson asked if the non-conformity within the setback has been increased. Mr. Jesanis said
400 that it has by 35%, including the walkways, patios, etc., which are covered under the Ordinance.
401 Mr. Simpson asked why they are covered under the Ordinance. Mr. Jesanis said that the exception
402 was there was repealed in 2014 for those items so they are considered part of the setback. Mr.
403 Simpson asked and Mr. Jesanis said that he does not have a copy of the 2014 Ordinance.

404 Mr. Jesanis said that in 2016 the Planning Board put forward a Warrant Article to specifically
405 exempt small pervious patios from the Ordinance and the voters rejected that proposal. Mr.
406 Simpson asked if Mr. Jesanis has a citation for the Ordinance that was appealed.

407 Mr. Larrow said that it is important to go to the Definition of a "Structure" and the Ordinance does
408 not recognize patios and walkways as structures and asked how Mr. Jesanis can include those

409 amounts. Mr. Larrow said that the definition of a structure is something having a fixed location on
410 the ground and he does not consider a patio a structure and asked how all of that can be added in.

411 Mr. Jesanis said that Article 4 of the 2014 Warrant asked “are you in favor of the adoption of
412 Amendment, proposed by the Planning Board for the Town Zoning Ordinance as follows: Amend
413 Article III, Section 3.40(g) – Additional Requirements – by repealing this section which currently
414 allows certain decks and walkways within the 50’ shoreline setback.” This was the provision before
415 that was repealed and in 2016 the Planning Board sought to exempt small pervious patios. Mr.
416 Jesanis said that he has not looked at the 2013 Ordinance.

417 Mr. Jesanis said that in respect to what is reasonable for not reasonable the Court has determined
418 that the Board can use its judgement to determine what is reasonable or not reasonable and that is
419 what a Variance is about, however, this is not a Variance hearing.

420 Mr. Landry represented the Town for the hearing.

421 Mr. Landry said that he received a building permit application from McGray and Nichols for Brian and
422 Lorraine Bolsinger for 23 Old Norcross Lane. Both of these properties are accessed by a right of way,
423 which became an issue many years ago when Mr. Jesanis bought the property and they wanted to make
424 some changes to the right of way.

425 Mr. Landry said that in reviewing the requirements for the building permit, which was partly going to be
426 built in a pre-existing, non-conforming footprint, he went all the way back to the original building, which
427 was built by William Norcross in 1975. Mr. Landry said that he has an old tax card with a picture that
428 shows the two story house and the measurements on the back showing it was 21 ft by 45 ft.

429 Mr. Landry gave a survey done by Bristol and Sweet in 1982 subdividing the lots and showing where the
430 houses were at the time. Vice Chair Schneider asked and Mr. Landry confirmed that he established the
431 size and location of the previous house. Mr. Landry said that the house is identified as roughly 48 ft
432 from the water’s edge and that footprint was replaced by a new home built by Harry Snow for a Mr.
433 Murch in 1998. Mr. Landry had a copy of the Building Permit that was approved by Michael Marquise
434 and the Board of Selectmen. Building Permit #1102, shows that the new portion of the footprint meets
435 all the setback requirements and it does not increase the height of the structure. Part of the house is
436 two stories and measures 21 ft by 45 ft and sits within the original footprint of the original house built in
437 1975. The rest of the house that Mr. Snow built is outside that footprint. The remaining portion of the
438 new house built in 1998 is shown as 51 ft or more from the Shoreland and the requirement was 50 ft
439 and Mr. Marquise confirmed that by saying that it met all the setback requirements. Mr. Landry
440 continued that none of the new portion of the house that Mr. Snow built in 1998 required a Variance,
441 nor did it have to be built prior to 1987 because it was not non-conforming. The only part that was non-
442 conforming was the wing of the house which was put into the same footprint as the Norcross house.
443 There was a brief discussion regarding the wing, part of which went into the pre-existing footprint.

444 Mr. Landry explained a survey done by Pelleteri Associates that shows the original footprint, the
445 proposed footprint, the pervious patio, etc. The replacement structure that Mr. Snow built is now going

446 to be torn down and the Bolsingers want to build a new house, which isn't going to totally occupy the
447 pre-existing footprint because part of it is going to be pulled back as it is not a perfect rectangle. There
448 will be less non-conforming coverage than there ever was before.

449 Mr. Landry said that the pervious patio is not non-conforming because that particular zone, which is
450 residential, is allowed up to 20% pervious coverage and up to 50% pervious and impervious coverage,
451 which is in the Dimensional Controls Table.

452 Vice Chair Schneider asked and Mr. Landry confirmed that he established that non-conformity was not
453 increased and, therefore, a Variance was not required.

454 Mr. Neuwirt asked and Mr. Landry confirmed that Mr. Jesanis is saying that the patio is a structure but
455 Mr. Landry is saying that because the expansion of the patio falls under 20% it does not require a
456 Variance. Vice Chair Schneider asked if Mr. Landry has determined what the percentages are. Mr.
457 Landry said that he did not because he looked at Mr. Jesanis' appeal related to Section 6.12 and Section
458 6.32.

459 Mr. Landry said that he has spoken to the Town's attorney about how Section 6.12 and Section 6.32
460 should be applied and gave copies of the correspondence to the Board and Mr. Jesanis which said "the
461 replacement of a non-conforming structure with a structure that increases the horizontal or vertical
462 dimension or one which increases the non-conforming to the Ordinance, shall only be permitted by
463 Variance, or if permitted hereby, by Special Exception. 6.32 (1)(a) Note: the replaced building may be
464 enlarged along those dimensions where the enlargement would meet the current Zoning Regulations".
465 The enlargements to this house all meet the current Zoning Regulations because they are outside the 50
466 ft setback from the Shoreland, the 15 ft side setback, and the 50 ft setback from the road. Mr. Landry
467 continued that the attorney's email goes on to say "I believe the only way to interpret these two
468 provisions consistent with each other, is to allow for expansions of non-conforming structures whose
469 dimensions are compliance with the current Ordinance and/or do not increase the non-conformity. If
470 the contemplated dimensions of the proposed work do not comply with the applicable limitations in the
471 current Zoning Ordinance or the proposed work would increase the non-conformity, then a Variance or
472 Special Exception is necessary."

473 Mr. Simpson said that he is troubled by the definition of structure as a patio could be considered a
474 structure. Mr. Landry said that it is Mr. Simpson's interpretation and it is not the way that it has been
475 applied. Mr. Simpson said that they have had a number of cases come before the Board where people
476 have wanted to put in a patio and they have denied them. The Board proposed to the Planning Board
477 exempting people putting in patios as Mr. Jesanis discussed and though the Planning Board approved it,
478 the voters did not. He is concerned when he is hearing other Board members say that patios are not
479 structures as he believes the Board was told that anything constructed with stone or materials that are
480 manmade are a structure if they are affixed to the ground. Mr. Larrow said that he does remember that
481 conversation and he knows that they have had previous discussions and what the Board proposed and
482 that it failed but he is not sure with the current Ordinance. There was further discussion regarding this
483 matter and cement patios and that the voters voted to take language out but not put language back in.

484 Mr. Landry said that he looks at the pervious and impervious coverage and gages it accordingly. He has
485 told people who want to increase the coverage that they need a Variance. Mr. Simpson asked what
486 happens if someone wants to pave their driveway within the 50 ft setback. Mr. Landry said that it is a
487 good point as, unfortunately, neither the Town nor the State rules on it. Mr. Neuwirt said that whatt a
488 road is made out of is impervious so it doesn't make a difference if it is pavement or crushed rock. Mr.
489 Simpson said that he is trying to distinguish between a constructed driveway and a constructed patio as
490 both can be attached to a building. Mr. Neuwirt explained the definition of the word "construct". Mr.
491 Landry said that the definition does not mean anything to Zoning. Mr. Neuwirt said that it is a literal
492 interpretation.

493 Mr. Neuwirt asked if everyone agrees that there is not an increase in the building within the 50 ft
494 setback. Mr. Jesanis agreed with that on the house itself and said that he does not have any quarrel
495 with the facts that Mr. Landry laid out from the structure built in 1975 and the replacement structure
496 built in the 1990's. There was further discussion regarding the previous footprint and the proposed
497 footprint.

498 Vice Chair Schneider asked if there was anyone in the audience who wanted to speak about the case.

499 Susan Hankin-Birke of the McSwiney Law Firm in New London spoke on behalf of the Bolsingers.

500 Attorney Hankin-Birke gave a memorandum to the Board as well as authorization from the Bolsingers to
501 speak on their behalf and a letter from Mrs. Bolsinger regarding some of the history between the
502 parties. Mr. Simpson asked if this is relevant to the Board's discussion. Attorney Hankin-Birke said that
503 she believes that it might be. Mr. Simpson asked and Attorney Hankin-Birke agreed that the Board
504 should not be looking at the Regulations to determine if a permit was required. Attorney Hankin-Birke
505 said that Mrs. Bolsinger wanted to share the history with the Board and let them know what was going
506 on, it is up to the Board if they read it.

507 Attorney Hankin-Birke said that in terms of the argument regarding the provisions one of the critical
508 differences in her reading of the Town's Ordinances of Section 6.10 that deals with non-conforming
509 structure. Structures can be non-conforming for a number of reasons, such as a Variance was granted at
510 one time, or a waiver because someone built something by accident. Those things are different than the
511 Town's Grandfathering Policy. The Grandfathering Policy talks about structures that existed before
512 March 12, 1987. Those types of uses and structures are constitutionally protected. It is one of the
513 things that all Ordinances are based on and the law is very clear that you cannot take that away. She
514 believes that what Mr. Landry was describing about the history about how the Town applies the
515 Ordinance and with regard to pre-existing structures they are allowed to continue; even if they are
516 replaced they are still covered by the Grandfathering Policy. Attorney Hankin-Birke continued that
517 when you look at the history from the 1970s up through now, the same footprint has bee tracked by the
518 Town and that is what is Grandfathered. If you read the Grandfathered Policy, which was amended in
519 2014, Paragraph 1 explains how to document the existing footprint. She believes what Mr. Landry was
520 reviewing with the Board is how closely it has been documented anytime there has been upgrades to
521 the residence. Attorney Hankin-Birke continued that she believes what was added in 2014 was the last

522 part of Paragraph 1-a: “note: the replaced building may be enlarged along those dimensions where the
523 enlargement would meet the current Zoning Ordinances.” She thinks that the Board has to interpret
524 this plain language based on what the Zoning Ordinance says in totality. What they have is clearly a
525 Grandfathered structure because it existed within the 50 ft setback before the inception of that Zoning
526 Provision. Therefore, under the Grandfathering Policy it is allowed to be maintained there and can be
527 rebuilt. Additionally, because it is a Grandfathered structure, any part of the building that is outside the
528 50 ft setback could be enlarged either vertically or horizontally as long as it meets the current Zoning
529 Ordinances. Attorney Hankin-Birke said that the critical part of reading the Ordinance is to make sure
530 that you when you read Section 6.12 you incorporate Section 6.32, which is the Grandfathering Policy. It
531 would be different if the consideration was regarding something granted by a Variance rather than the
532 Grandfathering Policy.

533 Vice Chair Schneider said that Attorney Hankin-Birke is basically saying what the Town’s attorney said.

534 Vice Chair Schneider asked if there is anyone else present with comments or questions about the case
535 and there were none. Vice Chair Schneider asked if the Board has any further questions or comments.

536 Mr. Jesanis said that the Town’s Council does not address the meaning of the date, March 12, 1987. He
537 looks at Section 6.32 as being an expansion or exception of Section 6.12. It is easier to meet Section
538 6.32, if you have a building before 1987, then you have the benefit of the additional sentence that says
539 you can expand your building as long as the expansion is conforming. Mr. Jesanis continued that
540 Attorney Whitely does not address that there are two separate sections, both of which lead to the same
541 conclusion.

542 Mr. Jesanis said that the letter provided by the Bolsingers is filled with extraordinary inaccuracies. Mr.
543 Simpson said that he is not considering the letter as it is not relevant to the case. Vice Chair Schneider
544 said that he will read it after the meeting.

545 Mr. Landry said that the Grandfathering Clause has been in existence since 1987 and though it has not
546 been in the Zoning Ordinances it has been part of the Ordinances as far as what is Grandfathered and
547 what is not. In 2014, it went on the Warrant to be put into the Zoning Ordinances in case there were
548 any questions about it because people kept asking for copies of the Policy. He believes that the Zoning
549 Board recommended that it go into the Zoning Ordinance.

550 Mr. Simpson asked if Mr. Landry can explain the Ordinance as it was adopted with the date March 12,
551 1987. Mr. Landry said that it is the date the Policy was signed by the Board of Selectmen. There was
552 further discussion regarding the date of the Policy.

553 Vice Chair Schneider closed the meeting to public comments.

554 Vice Chair Schneider said that he does not think that non-conformity is increased as they stayed within
555 the original footprint of non-conformity within the 50 ft setback. His only question is regarding the patio
556 as his recollection is that the Town’s attorney said that a patio is a structure. In his opinion the Board
557 should ask the Town’s attorney whether or not the patio is part of the footprint and therefore requires a

558 Variance. Vice Chair Schneider continued that he understands that the Bolsingers want to build a house
559 and he does not believe that the house itself needs a Variance but he questions the patio. Vice Chair
560 Schneider asked and Mr. Landry confirmed that he has issued a Cease and Desist on the Building Permit.
561 What might be equitable would be to deny the appeal with a condition that would be required if the
562 Town's attorney feels that the patio is a structure and therefore part of the footprint. He believes that it
563 is more practicable to allow the start of the construction of the house and then take up the issue with
564 the patio.

565 Mr. Simpson said that he shares Vice Chair Schneider's concerns that the patio might be a structure and
566 it is being built in the 50 ft setback so it exceeds the exiting footprint within the setback. He is not sure
567 that denying the appeal is the appropriate middle ground and he would like to hear what Mr. Landry
568 proposes.

569 Mr. Neuwirt said that he takes a simplistic approach to this and asked Mr. Landry if he thinks that if the
570 entire project has been held up because of the interpretation as to whether or not the pervious patio is
571 a structure. Mr. Simpson said that it is not the Board's interpretation. Mr. Neuwirt said that Mr. Jesanis
572 is arguing that a patio is a structure and therefore an enlargement that requires a Variance. Vice Chair
573 Schneider said that Mr. Jesanis had other arguments such as expanding horizontally outside the non-
574 conforming Variance and that this house was built after 1987. Mr. Neuwirt said that he looks at the
575 projects that he has brought before the Board such as Brandolini's project which was a concrete and
576 stone structure on the ground. He does not just look at whether this is a structure or not, he looks at
577 the totality of the project as to whether it is improving the lot and if the project is reasonable and
578 beneficial. He thinks that it is absurd that an entire project is held up for months because of discussions
579 as to whether a pervious patio is a structure or not. Mr. Neuwirt continued that at the very minimum he
580 believes that there should have been a permit issued for the demolition and construction of the house
581 and then they could have worked out the patio. Vice Chair Schneider said that this was not able to be
582 done because of the nature of the appeal. There was further discussion regarding this matter.

583 Mr. Larrow said that what the Board has in front of them is an application for an appeal that needs to be
584 denied or approved. The Board could kick ideas around all night but it does not solve the problem as to
585 what the Ordinances say or what the request is as that is what the Board has to rule on.

586 Mr. Neuwirt said that he thinks that a reasonable solution is that the home gets issued a permit for
587 demolition and construction as it is as there is no enlargement within the setback. Mr. Simpson said
588 that Mr. Neuwirt is assuming that the homeowner wants to build a house without the patio and they
589 might want to redesign the house because a patio is part of the living space. Mr. Neuwirt said that he
590 thinks that the homeowner has locked himself into the footprint of the non-conformity of the structure
591 and is using that in the new plan. He does not see how a customer in this circumstance does not have
592 the option to have it run by them that they cannot do the patio; he sees it as a reasonable option. There
593 was further discussion regarding this issue.

594 Mr. Larrow made a motion to reopen the meeting. Mr. Simpson seconded the motion. The motion
595 passed unanimously.

596 Mr. Landry said that his suggestion is to deny the appeal with the exception that they will not build the
597 patio and by November 10th he will have an answer for the Board from the Town's attorney on this
598 issue. Then the Board could vote whether they need an amended permit on the patio. Mr. Simpson
599 asked if Mr. Landry is saying that the appeal can be granted and the house can be built within the
600 footprint and said that he does not think that this can be done. The building permit would need to be
601 denied and the Selectmen would have to re-grant the permit without the patio. Mr. Neuwirt said that
602 the actual permit would be reworded based on the Board's decision. Mr. Simpson said that he does not
603 think that this can be done. The Board can grant the appeal and overturn the Selectmen's decision and
604 then the Bolsingers could ask for another building permit. Mr. Landry said that it does not make sense
605 as the attorney may determine that the patio does not count. There was further discussion regarding
606 this matter.

607 Louise Bonfiglio of McGray and Nichols said that the building permit does not include the patio, it is only
608 includes the house. Mr. Landry agreed that the building permit does not include a charge for the square
609 footage for the patio because it is pervious. The patio is part of the landscaping project.

610 Mr. Neuwirt said that the Board looks at the project in its entirety. Mr. Landry said that if the Town's
611 attorney tells him that the patio is part of the footprint they will need to pay another fee and apply for
612 an amended building permit. Mr. Simpson said that he does not think the Town's attorney is the final
613 word.

614 Mr. Simpson asked Attorney Hankin-Birke what she thinks that the Board should do about the patio as
615 he is hearing from the builder that they did not apply for a patio. Mr. Landry said that the patio was not
616 included in the cost per square foot. Mr. Simpson said that does not mean anything to him. He is
617 worried about the footprint on the ground.

618 Mrs. Bonfiglio said that her clients have been held up since September with Mr. Jesanis making demands
619 and then making them come before this Board. Attorney Hankin-Birke said that if there is no patio on
620 the building permit and there is an agreement that the permit that was issued does not include building
621 the patio then it would seem to her that if the issued permit is upheld then everyone is on the same
622 page. The issue of the landscaping is a separate issue and the Bolsingers will have to deal with the Town
623 to do the patio and landscaping.

624 Mr. Simpson asked how the drawing Mr. Jesanis has relates to the building permit package. Mr. Landry
625 said that Mr. Jesanis submitted the completely landscaped project as well as the building. The 11 in by
626 17 in paper has the site plan that includes the landscaping and patio. The building permit was issued
627 based on plans that did not include the patio.

628 Mr. Jesanis said that the patio was third in line in the arguments that he made. The legal standard of
629 what the Ordinance says and what it means is quite clear and that is the basis of his appeal, the patio is
630 secondary.

631 Vice Chair Schneider closed the meeting to public comments.

632 Mr. Larrow said that he supports what Vice Chair Schneider said what the proposal should be.

633 Mr. Simpson made a motion to approve the Administrative Appeal appealing the Town of Sunapee's
634 approval of Building Permit #3516, 23 Old Norcross Lane, Michael Jesanis, Case #16-31, Parcel ID: 0126-
635 0023-0000. Vice Chair Schneider said that they should note that there was no patio with the plan
636 submitted for the building permit. Mr. Simpson said that the plan may have been included. Mr.
637 Neuwirt said that when the permit was calculated it was not calculated with the square footage of the
638 patio.

639 Mr. Simpson made a motion to approve the Administrative Appeal appealing the Town of Sunapee's
640 approval of Building Permit #3516, 23 Old Norcross Lane, Michael Jesanis, Case #16-31, Parcel ID: 0126-
641 0023-0000; noting that the plans submitted with the building permit did not include the landscaping
642 plan. Mr. Neuwirt seconded the motion. Mr. Larrow asked if Mr. Landry was going to check with the
643 Town's Attorney about the patio. Mr. Simpson said that he believes that they already have an
644 interpretation regarding that issue and called the Motion. The motion failed unanimously.

645 Vice Chair Schneider asked Mr. Landry to talk with the Town's attorney to determine if a pervious patio
646 is or is not a structure and therefore part of the footprint. Mr. Simpson said that wants to know how
647 this might differ from the Attorney's previous opinion. Vice Chair Schneider said that he believes that
648 the last thing that the Board heard was that a patio is a structure. The Board discussed this further as
649 well as an appeal that Mr. Jesanis could make.

650 **ELECTION OF OFFICERS**

651 Mr. Platt left so the Board discussed continuing the election of officers to the next meeting.

652 **MINUTES**

653 Changes to the minutes from the October 13, 2016 Zoning Board Meeting: Change Line 37 to read
654 "...the property is 7.1 acres in size..." Change Line 124 to read "...said that he would submit the..."
655 Change Lines 285 to 286 to read "...the side, front, road, and waterfront..." Change Line 318 to read
656 "...that they have decided..." Change Lines 478 to 479 to read "...about the wall and Mr. Seidel called an
657 engineer." Change Line 532 to read "...not officially continued to November 10th as the Board..."

658 Mr. Larrow made a motion to approve the minutes as amended. Mr. Neuwirt seconded and the motion
659 was approved with three in favor and one abstention.

660 **MISCELLANEOUS**

661 There was a discussion about putting the corrected minutes on the website.

662 Vice Chair Larrow adjourned the meeting at 9:26 pm.

663

664

665 Daniel Schneider

Aaron Simpson

666 _____

667 Clayton Platt

William Larrow

668 _____

669 George Neuwirt