

1 **TOWN OF SUNAPEE**

2 **ZONING BOARD**

3 **DECEMBER 8, 2016**

4 **PRESENT:** Daniel Schneider; Clayton Platt; George Neuwirt; Aaron Simpson;

5 **ABSENT:** William Larrow; Roger Landry, Zoning Administrator

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

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

8 **MINUTES**

9 Changes to the minutes from the November 10, 2016 Zoning Board Meeting: Change Line 52 to read
10 "Chairman Schneider said that..." Change Line 93-94 to read "...the Town gives 18 inches..." Change
11 Line 134 to read "...helps him visualize the lot." Change Line 163 to read "...that the replaced
12 structure..." Change line 185 to read "...a letter to verify after..." Change Line 239 to read "...proposed
13 cottage is 27 ft high..." Change Line 369 to read "...more included to approve..." Change Line 441 to
14 read "Vice Chair Platt said that he did..."

15 Vice Chair Platt made a motion to approve the minutes as amended for November 10, 2016. Mr.
16 Neuwirt seconded the motion. The motion passed unanimously.

17 **MISCELLANEOUS**

18 Chairman Schneider called Mr. Simpson and he was about five minutes away.

19 There was a brief discussion regarding whether a property should require a Variance if the structure on
20 the lot is being pulled further away from a Shoreline but out of the footprint.

21 There was a discussion about some of the proposed Zoning Amendments.

22 Mr. Simpson arrived for the meeting.

23 **CONTINUATION: CASE #16-36: PARCEL ID: 0128-0054-0000: SEEKING APPROVAL OF A VARIANCE AS**
24 **PER ARTICLE III, SECTION 3.10 TO REDUCE ROAD FRONT SETBACK FROM 50 FT TO 26 FT ALLOWING**
25 **CONSTRUCTION OF A NEW HOME ON A PRE-EXISTING, NON-CONFORMING LOT. RUDNICK ASSET**
26 **TRUST, LAKE AVENUE.**

27 Chairman Schneider informed the applicant that there are only four voting members for the meeting
28 and they need three votes in favor of the application for it to be approved. The applicant can choose to
29 continue the case until the next meeting if they would like to have all five Board members present. The
30 applicant decided to go ahead with the hearing.

31 Chairman Schneider said that there is a letter from Rudnick Asset Trust authorizing CLD Engineers to
32 speak on their behalf.

33 Charlie Hirshberg of CLD Engineers presented the merits of the case.

34 Mr. Hirshberg explained that the lot is .225 acres and was originally surveyed by Vice Chair Platt in 2001.
35 The lot is one of the few undeveloped lots left on Lake Ave.

36 Mr. Hirshberg said that the Board should have an existing conditions plan and he has bigger plans if they
37 would like to look at them. Mr. Hirshberg explained from the existing conditions plan the location of the
38 50 ft setback from the centerline of the road and the 50 ft setback from the lake. The lot is not deep
39 enough to meet all the setbacks.

40 Mr. Hirshberg said that he counted eleven properties on both sides of the property that all have
41 structures within the road setback and most of those also have structures within the 50 ft Shoreland
42 setback.

43 Mr. Hirshberg said that they are proposing a small, 1,620 square foot house and garage.

44 Chairman Schneider said that Mr. Hirshberg mentioned the structures within the setback and asked why
45 they were not asking for a Special Exception under Article III, Section 3.50(b). Mr. Hirshberg said that
46 they are not asking for a Special Exception because there is not a current structure on the lot and his
47 understanding from Mr. Landry is that he needs to ask for a Variance of the Dimensional Controls under
48 Article III, Section 3.10. They had submitted an application to Mr. Landry with other items on it but
49 were told that this is what they needed so they changed the application. Mr. Neuwirt said that Mr.
50 Hirshberg would have to prove that more than half of the structures within 500 ft are non-conforming if
51 he was asking for a Special Exception. Mr. Simpson said that they did not apply for a Special Exception
52 so it doesn't matter.

53 Mr. Hirshberg said that they are proposing a house with a garage and two decks. Everything will be
54 behind the 50 ft Shoreland setback. It will be 28 ft from the nearest point of the structure to the
55 centerline of the road and just over 12 ft from the edge of the right of way. There is adequate space in
56 the driveway to have parking so that they will not have parking in the road.

57 Mr. Hirshberg said that they will be meeting the side setbacks, even with stairways from the decks.

58 Mr. Hirshberg said that there are two culverts that feed onto the lot, one that feeds directly onto the lot.
59 They have avoided placing the house into the area where they think that the water runs. Over the last
60 couple of years it has not been as defined as they have not had as much run off as they did in the past.
61 The other culvert drains onto another lot and as the water runs down it comes onto this lot. They have
62 avoided the water from that as well.

63 Mr. Hirshberg said that the proposed house will have a walk out on the lake side. Mr. Simpson asked
64 and Mr. Hirshberg said that they did submit plans to Mr. Landry and he was worried when he saw that

65 he was not at the meeting but brought extra copies for the Board. The Board determined that they do
66 have the right plans.

67 Vice Chair Platt asked if they are doing anything with the road drainage as part of the drainage plan. Mr.
68 Hirshberg said that they are not because it does not appear as though it runs into the lake, it appears to
69 be draining into the ground. Mr. Simpson asked and Mr. Hirshberg confirmed that the lot does flatten
70 out towards the lake.

71 Mr. Hirshberg said that there was a structure on this property years ago and there are remnants of the
72 structure still on the site. The State looks at this as unaltered land.

73 Mr. Hirshberg said that the house will be on Town Water and Sewer.

74 Mr. Hirshberg said that they will be managing storm water and said that details are on the submitted
75 plan. It will be a drip edge with some storage capacity that will allow water to go down the perimeter
76 drain and discharged into dry wells on both sides. If the dry wells overflow they will discharge towards
77 the lake.

78 Vice Chair Platt asked and Mr. Hirshberg explained that the house will have two levels as well as a
79 walkout basement, which could be finished for a third level. The house is just over 32 ft high at the
80 highest side. They did get a house design and the Board should have plans that show house elevations.

81 Mr. Simpson asked and Mr. Hirshberg explained that they are applying for a Variance of the road
82 setback. Mr. Hirshberg said that it is his understanding from Mr. Landry that the 25 ft height restriction
83 doesn't come into play here because those are about sideline impacts.

84 Mr. Hirshberg said that the rear elevation shows the garage. The garage will have a concrete wall that
85 drops down to the grade where the house is shown.

86 Chairman Schneider said that it seems as they did not change the entire submitted application as the
87 answer to question seven on the Variance application, "Reason the Variance is necessary," says
88 "construct a new house on an existing non-conforming lot that exceeds maximum height and front
89 setback requirements. Mr. Hirshberg said that they are not exceeding the maximum height so the Board
90 must have the old application. The Board determined that the Variance is for the front setback only.

91 Mr. Simpson asked if this will violate Section 3.40(i) and Mr. Hirshberg said that it will not because the
92 maximum height of the structure will be 32 ft high.

93 Mr. Simpson asked about the slope and Mr. Hirshberg said that at the house area it is 11.02 to 11.14.
94 Vice Chair Platt said that it is probably 11.10 in front of the house. Mr. Hirshberg said that over the
95 disturbance area, including the driveway, is where it will probably go to 11.14 but it is not 20 ft.

96 Mr. Hirshberg said that they will be at 21% impervious and combined impervious and pervious will be
97 27%. They meet the Town's requirements on those items and will be able to meet the State's
98 requirements for unaltered area.

99 Chairman Schneider said that the Board can make the requirements under Section 3.40(i) a condition of
100 an approval.

101 Mr. Simpson asked and Mr. Hirshberg said that there is not currently a dock on the property.

102 Chairman Schneider asked and there was no one in the audience with any comments on the case.

103 Mr. Hirshberg said that he does have photographs and tax maps of all the houses along the road that do
104 not meet the setback.

105 Vice Chair Platt said that this seems like a good plan as the structure is not within the lake setback. Mr.
106 Hirshberg said that they felt that staying out of that setback was important.

107 Vice Chair Platt said that there is a hardship issue with the pre-existing lot size.

108 Chairman Schneider said that he thinks that this application should have been for a Special Exception
109 rather than a Variance. He suspects that the application would have met the criteria for a Special
110 Exception with the exception of criterion five "the portion of the proposed structure encroaching on the
111 front setback shall be no higher than 25 ft. Mr. Hirshberg said that criterion would have been an issue.

112 Mr. Simpson asked how long the lot has been pre-existing and John Chiarella gave a brief description of
113 the history as it has been at least 40 – 50 years.

114 Chairman Schneider asked and the Board did not have any further questions for Mr. Hirshberg.
115 Chairman Schneider closed the meeting to public input.

116 Chairman Schneider said that an approval will need to be subject to Shoreland Permit approval.
117 Chairman Schneider asked and Mr. Hirshberg confirmed that he has not applied to DES yet.

118 Chairman Schneider said that an approval should also be made conditional on Section 3.40(i).

119 Mr. Simpson asked where the Ordinance talks about measuring from the lowest point of the grade to
120 the highest peak. Vice Chair Platt said that he thinks that there was an amendment that made this
121 change a few years ago. Mr. Simpson read the definition of "Height" which says "the vertical distance
122 measured from the lowest ground elevation around the structure to the highest level of the roof
123 (excluding cupolas, weathervanes, etc.)."

124 Vice Chair Platt said that he is hesitant to make a condition that the structure meet another Zoning
125 condition as it will have to anyway. As presented, the height of the structure is 32 ft and will comply.
126 Chairman Schneider said that there is a potential concern with the windows and eaves.

127 Vice Chair Platt made a motion to approve Case #16-36: Parcel ID: 0128-0054-0000: seeking approval
128 of a Variance as per Article III, Section 3.10 to reduce the road front setback from 50 ft to 26 ft allowing
129 construction of a new home on a pre-existing, non-conforming lot, Rudnick Asset Trust, Lake Avenue; a
130 Shoreland Permit is required and all construction will comply with that permit; additionally, all

131 construction will comply with Article III, Section 3.40(i) of the Zoning Ordinance, regarding window sills
132 and roof eaves. Mr. Neuwirt seconded the motion.

133 Mr. Simpson asked if there will be any retaining walls. Chairman Schneider reopened the meeting to the
134 public. Mr. Hirshberg said that there are two step retaining walls along the driveway that meet the
135 Zoning requirements. Mr. Simpson asked and Mr. Neuwirt said that the decks are shown as "X's" on the
136 plan. Mr. Hirshberg said that these were counted as impervious.

137 Chairman Schneider closed the meeting to public input and asked if the Board has any additional
138 questions or comments.

139 Mr. Simpson said that he thinks the fact that this lot is pre-existing and non-conforming is what he sees
140 as the hardship for allowing the structure. Effort was made to stay out of the setbacks. Chairman
141 Schneider said that the proposed structure is consistent with the neighborhood. Vice Chair Platt said
142 that he thinks that the application is consistent with the Ordinance as it is a reasonably sized house and
143 reasonable use of the property. Mr. Neuwirt said that he is always surprised at the amount of house
144 people try to fit on the smaller lots. The Board could ask for something smaller, however, it probably
145 would still not fit with the setback. He thinks that the proposed project fits in with the neighborhood
146 and the layout is good as the parking is off the street. Mr. Neuwirt asked and Mr. Hirshberg said that
147 they do not have a driveway permit yet. Mr. Neuwirt asked if the approval should be conditional upon a
148 driveway permit approval. Vice Chair Platt said that a building permit will be conditional on a driveway
149 permit approval. Mr. Hirshberg said that they were careful to slope off the road so that water did not
150 run onto the street. Mr. Neuwirt said that the proposal fits in well. Chairman Schneider said that the
151 house and garage are 1,620 sq ft and the garage is 22 x 25 ft so the footprint of the house is not very big.

152 The motion passed unanimously.

153 **MISCELLANEOUS**

154 Mr. Neuwirt gave the Board a document regarding Zoning Amendments.

155 Mr. Simpson said that before a Town can adopt Planning and Zoning there must be a Master Plan. A
156 Master Plan is a vision for the community that must be rewritten every ten years. It has some merit as a
157 Statement of Intent but the Supreme Court has said that it is not something to be used as grounds to
158 make a decision in its own right. Mr. Neuwirt said that if the Master Plan was followed then the Library
159 would be in the Harbor as the Master Plan states that the center of business should be the Harbor.

160 Mr. Neuwirt said that he is tired of listening to the same conflicts over and over again and no one seems
161 to want to make things easier and less confusing. It should be simple, however, it requires working with
162 the Planning Board. Mr. Simpson asked and Mr. Neuwirt said that he has spoken to Mr. Landry about
163 this issue.

164 Mr. Simpson said that Mr. Landry wants the Board to be more in conformity with him. Mr. Neuwirt said
165 that he is not taking sides of whose argument deserves favorability. Mr. Simpson said that Mr. Landry
166 constantly tells the Board how they should be voting based on past votes. Mr. Neuwirt said that the

167 steeps slopes issue is an example as Mr. Landry is not interpreting steep slopes correctly. Vice Chair
168 Platt said that he thought that this was an issue for the Board of Selectmen and the Town Manager as
169 the administration of the Zoning Ordinance is up to them.

170 Mr. Neuwirt said that he thinks that the Planning and Zoning Boards need to have a joint meeting to
171 discuss things that the Zoning Board deals with at every meeting that should be easy and everyone
172 should be on the same page. Mr. Simpson said that he thinks a problem is that that Mr. Landry wants to
173 be the person to make the recommendations for Zoning Amendments and last year the Board made a
174 lot of recommendations and none were adopted. Mr. Neuwirt said that the Boards are not working
175 together. The argument with Peter White, who basically scolded the Board regarding responsibilities
176 regarding Albee Automotive, was completely uncalled for and he questioned what would have
177 happened if the Board had passed that Variance. Mr. Simpson said that everyone knows that was a
178 problem. Mr. Neuwirt said that the Boards are not working together. Mr. Simpson said that some of
179 the issues are interpersonal issues and others are failures to communicate.

180 Mr. Neuwirt said that the document he gave to the Board is what he feels represents holes in the Zoning
181 Ordinances for issues that are not clear. For example, the case regarding the construction project that
182 was shut down for months and the argument was whether or not a patio is a structure that is expanding
183 the footprint. Chairman Schneider said that is not why the project was shut down. Vice Chair Platt said
184 that he thinks that there is a State law that allows for someone to appeal the issuance of a Building
185 Permit. Mr. Neuwirt said that the neighbor felt that the property was becoming more non-conforming
186 as the result of the building of a patio. Chairman Schneider said that the neighbor did not say anything
187 about the patio. Mr. Simpson said that the patio was one of the arguments. Mr. Neuwirt said that the
188 more ammunition that the Board gives to people should make it so that the Board looks closer at the
189 Ordinances so they are clear. Mr. Simpson said that the neighbor did have a right to an appeal. Mr.
190 Neuwirt said that the neighbor had a right to appeal because the Zoning Ordinances are not clear.

191 Mr. Simpson said that there does need to be more definitions. Mr. Neuwirt said that the Town of New
192 London has 170 definitions and the Town of Sunapee has 70. Mr. Simpson said that the Town's Zoning
193 Ordinances were written in 1987 and have not been rewritten, which he thinks is a significant problem.
194 He does not think that the Town is interested hiring an attorney to write a comprehensive and cohesive
195 Zoning Ordinance. This would have to go through the Planning Board and the Town would have to fund
196 it.

197 Mr. Neuwirt said that if no one else is interested in resolving conflict he does not have a reason to be a
198 member of the Board. The Board deals with the same issues over and over and there is redundancy that
199 does not need to be there. Mr. Simpson said that he would like to meet with the Planning Board to
200 make suggestions. Vice Chair Platt said that nothing can be done this year unless it is via a petitioned
201 Warrant Article.

202 Mr. Neuwirt said that he is requesting a joint Planning and Zoning Board meeting to try to resolve the
203 issues with things the Planning Board is asking the Zoning Board to administer. Mr. Simpson asked if the
204 issues are with the people or with the changes that the Zoning Board recognize should be made that are

205 not done. Mr. Neuwirt said that it doesn't have anything to do with people, it has to do with the
206 Ordinances. He would like to stick to the issues, be unbiased, and figure out how Mr. Landry can
207 administer in a more effective way so that the Board does not have to deal with the same issues over
208 and over again.

209 Mr. Neuwirt said that he does not have all the issues documented but he does think that every case the
210 Board hears brings up weaknesses with the Ordinances. Mr. Simpson said that some cases are people
211 who are applying for a Variance for a condition of a Special Exception.

212 Mr. Neuwirt asked if the Board is interest in making their lives easier as well as the applicants and Mr.
213 Landry's lives easier. Mr. Simpson said that Vice Chair Platt said that he wanted to see things rewritten
214 last year.

215 Vice Chair Platt said that he does not think that the Board should be granting a large number of
216 Variances a night. Most of the time they grant them because people are asking for things that are more
217 conforming. Tonight's case was a good example of the need for a Variance but someone who is tearing
218 down his house and moving it back 3 ft shouldn't require a Variance. Mr. Simpson said that he is the
219 only person who voted against the application for the new house on Garnet St as a structure could have
220 been built in the same footprint. Vice Chair Platt said that the structure would have been 3 ft from the
221 road so he thinks moving it back was better. There was further discussion regarding this case.

222 There was further discussion regarding the changes that the Board feels need to be made and how the
223 Board can talk to the Planning Board about the issues and move forward so that things are easier so
224 there are less conflictions.

225 There was a discussion about steep slopes as well as hardships.

226 Chairman Schneider said that he will call Mr. White and will talk to him about setting up a joint meeting
227 in January. Mr. Simpson asked if the Board wanted to include Administrators. Mr. Neuwirt said that he
228 does not see a reason not to include them. He does not believe that Mr. Landry would be opposed to
229 many of the changes.

230 Mr. Neuwirt asked what steps need to be taken in this matter. Mr. Simpson said that it is the Planning
231 Board's role to determine what is submitted to the voters unless a petitioned Warrant Article is
232 submitted.

233 Chairman Schneider said that he was previously on the Planning Board and the majority of their time is
234 not spent on Zoning cases it is spent on Site Plans.

235 Vice Chair Platt said that he was surprised when he got onto the Zoning Board the laissez-faire way that
236 Zoning applications are done. Many times there are hand drawn plans submitted and the applications
237 are just done in Mr. Landry's office. Mr. Neuwirt said that the screening process should be done better.
238 Mr. Simpson said that the Zoning Board does not need the Planning Board's approval to establish
239 procedures.

240 Mr. Neuwirt asked and Chairman Schneider said that he will contact Mr. White to schedule a meeting.
241 Mr. Simpson said that he thinks that Mr. Neuwirt's list is a good starting point and he has notes as well.
242 Vice Chair Platt said that he thinks that the two Boards should have an initial meeting to talk about the
243 issues. Mr. Simpson said that the Board should present a list of items that are not clear that need to be
244 revised. If an applicant has a good argument to interpret something different then the Board should
245 listen to the argument.

246 Mr. Neuwirt said that Mr. Landry is not a member of the Zoning Board. Mr. Simpson said that Mr.
247 Landry is like a legacy player as he has been doing things longer than the Board members. There are
248 things that are written that he questioned until he sat down with Mr. Landry and Mr. Marquise and got
249 explanations.

250 Mr. Neuwirt asked if the Board should create a master list to present to the Planning Board or if
251 everyone should present their own thoughts. He is worried about redundancy and wants to present a
252 convincing argument that the Board has thought about the issues and they want to make sure that
253 things are better for everyone involved. Chairman Schneider asked for the Board members to send him
254 their ideas and thoughts and he will try to put them together. Mr. Simpson cautioned the Board from
255 having a discourse. Chairman Schneider said that it should be one way communication and then he will
256 put the list together.

257 Vice Chair Platt made a motion to adjourn the meeting at 8:19 pm. Mr. Neuwirt seconded the motion.
258 The motion passed unanimously.

259 _____

260 Daniel Schneider Aaron Simpson

261 _____

262 Clayton Platt William Larrow

263 _____

264 George Neuwirt