

1 **TOWN OF SUNAPEE**

2 **ZONING BOARD**

3 **FEBRUARY 12, 2015**

4 **PRESENT:** Edward Frothingham, Chair; Aaron Simpson; Clayton Platt; William Larrow; Roger Landry,
5 Zoning Administrator

6 **ABSENT:** Daniel Schneider, Vice-chair; George Neuwirt, Alternate

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

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

9 **MINUTES**

10 Changes to the minutes from the January 8, 2015 Zoning Board Meeting: Change line 94 - 95 to read
11 "Mr. Platt said that he does not see the 5' of fill..." Change line 104 to read "Mr. Platt said that he thinks
12 that the lower grade..." Change line 106 to read "Mr. Platt said that it is not clear on the Site Plan..."
13 Change line 126 to read "Mr. Platt said that it could affect him if the case..." Change line 144 to read
14 "Mr. Platt said that he did not think that the Board can approve the Variance conditional on the work
15 meeting the Shoreland Permit if the proposed grading is not on the permit plan."

16 Aaron Simpson made a motion to approve the minutes of January 8, 2015 as amended. William Larrow
17 seconded the motion. The motion passed unanimously.

18 **CASE #15-02: PARCEL ID: 0218-0061-0000: REHEARING ON ZONING BOARD OF ADJUSTMENT DENIAL**
19 **OF APPEAL ON CASE #14-13. DUSTIN ALDRICH, 112A SARGENT RD.**

20 Mr. Simpson recused himself from the case. Mr. Platt asked if there is a quorum without Mr. Simpson
21 and Mr. Landry explained that there are five Board Members so three is a quorum.

22 Mr. Landry explained that he was not scheduled to be at this meeting and, after a discussion with the
23 Town's and Mr. Aldrich's attorneys, it was decided to postpone this hearing to Tuesday, February 24th
24 when there will be no other cases on the agenda.

25 Clayton Platt made a motion to continue to the hearing until February 24th at 7:00. William Larrow
26 seconded the motion. The motion passed unanimously.

27 **CASE #15-03: PARCEL ID: 0107-0024-0000: SEEKING A VARIANCE OF ARTICLE III, SECTION 3.50-I-4 TO**
28 **ALLOW CONSTRUCTION OF A REPLACEMENT BUILDING HIGHER THAN THE 10 FT ALLOWED. JAMES &**
29 **JANICE HARRISON, 1114 LAKE AVE.**

30 James and Janice Harrison and Charlie Hirshberg of CLD Engineering presented the case.

31 Mr. Simpson said that he believes that this is a hearing for a Variance of one of the Special Exception
32 criteria and he questions whether it can be considered something that the Board can grant a Variance
33 on. He does not know of any provisions of the Ordinance that incorporates this as something that the
34 Board can grant a Variance for. Mr. Landry said that it was his understanding that someone could
35 request a Variance on anything. Mr. Hirshberg said that he believes he has previously requested a
36 Variance on something that does not meet the criteria of a Special Exception. Mr. Landry said that the
37 applicants are asking for a Variance to waive all of the criteria under 3.50-i. Mr. Simpson said that this
38 request replaces the eight points to not be considered. Mr. Landry explained that a Variance is different
39 than a Special Exception and that the applicant is asking for a Variance because he cannot meet the 10 ft
40 criterion. Mr. Platt said that he thinks that a Special Exception allows someone to proceed without
41 proving hardship and such and in this case he has to meet the criteria of a Variance. Mr. Simpson said
42 that he does not think that the Board should be addressing 3.50-i-4, they should be addressing 3.50-i as
43 they are dealing with a pre-existing, non-conforming structure. They are acting under the provision of
44 the Ordinance that regards Special Exceptions, not Variances. Mr. Platt said that he thinks that what Mr.
45 Simpson is saying is that it is listed wrong, it should be something else. Mr. Landry said that the
46 applicant is asking for a Variance of that specific article because they do not meet the criteria of that
47 section. Mr. Platt said that the section is not an Ordinance, it is the criteria of a Special Exception.

48 Mr. Platt said that somewhere in the Ordinances they should have a height requirement. Mr. Platt's
49 continued that Article 3.40-h says "dormers, gables, skylights, and other roof changes shall be allowed
50 on nonconforming structures provided that such additions are no higher than the existing predominant
51 roof lines of the subject structure and do not extend beyond the horizontal footprint". Mr. Hirshberg
52 explained that they meet the maximum height of a structure so they would not be requesting a Variance
53 for that and questions how he would make the request. Mr. Simpson said that Mr. Platt suggested that
54 3.40-h might be more appropriate. Mr. Simpson said that it was not noticed as 3.40-h. Mr. Platt said
55 that he believes that the notices that were done are adequate and that anyone who had concerns about
56 the case, whether it was noticed as 3.40-h or 3.50-i-8, would have come to the meeting to express their
57 concerns. Mr. Hirshberg said that he thought that 3.40-h was for a pre-existing structure, while 3.50-i is
58 for a pre-existing structure that is being enlarged or replaced.

59 Mr. Platt said that Article 6.12 fits better as it says that "a non-conforming structure existing at the time
60 of the passage of this Ordinance may be replaced on the same or a smaller footprint and having the
61 same or lower height by a new structure having the same purpose and use provided that the non-
62 conformity to this Ordinance is not increased thereby. The replacement of a non-conforming structure
63 with a structure that increases the horizontal or vertical dimension or one which increases the non-
64 conformity to this Ordinance, shall only be permitted by variance or, if permitted hereby, by Special
65 Exception." Mr. Hirshberg said that this structure will not be on the same or smaller footprint. Mr. Platt
66 said that a Variance may be required for that part too. Mr. Landry said that the applicant is seeking a
67 Variance for replacing a structure in a different location, which is 13.5 ft away from the lake.

68 Mr. Platt asked if there is a certified survey of the property. Mr. Hirshberg said that he has a certified
69 survey of the line near the adjacent property where they are asking to move outside the side setback.
70 Mr. Hirshberg showed the Board a copy of the plan showing the line. Mr. Platt said that he does not

71 think that this meets the criteria of a boundary survey that is required for the Board's procedures. The
72 plans submitted say "approximate property line". Mr. Simpson asked if Mr. Platt wants to have a survey
73 to show the setbacks. Mr. Platt said that the Board has Rules and Procedures that says that, for all
74 properties where a Special Exception or Variance is required, a certified survey is needed. Mr. Landry
75 said that most of the time a survey will be requested when there are issues with the setback or an
76 abutter, however, he has not heard any issues for this case. Mr. Hirshberg said that the abutter was at
77 the Zoning Board with a plan showing the same common line and that they have also written a letter
78 supporting the application. Mr. Platt said that the problem he has is that some people come in with a
79 survey and others do not. Mr. Landry said that the requirement has been left to the Board. Mr. Larrow
80 said that if the Board had updated surveys that they would be more ahead of the game, however,
81 people need to be notified that the Board will be requiring them. Mr. Platt said that the requirement is
82 in the checklist for the application and that they have required it before. Mr. Landry said that the Board
83 cannot be selective. Mr. Platt said that he is talking about tear downs and replacements. Mr. Landry
84 said that he thinks that if there was someone representing the applicant other than an engineering
85 company that has done business in the Town and State for many years it might be a different issue. Mr.
86 Hirshberg said that the Board granted a Variance to the abutter based on the same survey. Mr. Simpson
87 said that the Variance was actually denied. Mr. Platt said that the rules say that a survey is required if
88 the structure is being torn down. Mr. Hirshberg explained that they are moving the house 4' from the
89 side setback and asked if the approval can be conditioned on a survey. Mr. Larrow asked when the
90 construction will take place and Mr. Hirshberg said it will begin in August. Mr. Larrow said that the
91 Board could request the survey to be presented to the Board before a permit is issued. Mr. Harrison
92 said that he finds this proposal agreeable.

93 Mr. Simpson said that he still has an issue with the Variance request. Mr. Larrow said that he thought
94 they were going to hear it under 6.12. Mr. Simpson said that he did not believe that Mr. Hirshberg
95 thought it was applicable. Mr. Hirshberg said that 6.12 does seem to say that the replacement structure
96 can go larger. Mr. Hirshberg said that this sounds like a dimensional Variance. Mr. Landry explained
97 that the applicants are also asking for a Variance on the lakefront setback and a Special Exception on the
98 road front setback. Mr. Simpson said that he thinks that 6.12 fits.

99 Mr. Landry said that the Board could address the other requests and after the applicant has a survey he
100 can address that issue. Mr. Simpson said that he feels that a survey is more needed to address the
101 setback criteria. Mr. Landry said that he does not think that there is a question on it, however, if the
102 Board is going to require a survey for every waterfront parcel from now on it will need to become part
103 of the Regulations. Mr. Platt said that it is part of the checklist. Mr. Landry said that the Board has
104 never practiced that and they cannot start being selective, otherwise the Town will be sued. Mr. Larrow
105 said that he thought that they solved this issue by conditioning approvals to require a boundary survey
106 before receiving a building permit. Mr. Simpson said that he thought that they can only condition an
107 approval on receiving a DES permit, not on receiving something like a survey. Mr. Larrow said that he
108 does not believe there is a problem giving approval subject to a survey being completed, however, if the
109 applicant has an issue with this then there could be an issue.

110 Mr. Landry said that he thinks that Section 6.12 does fit this applicant better than 3.50-i-8. He thinks
111 that the Board should vote on this change. Mr. Simpson asked about any neighbor complaints. Mr.
112 Landry said that he has one letter in favor and all the green cards are in and he did not hear from
113 anyone else. Mr. Simpson asked if there was anyone in the audience for or against the application and
114 there were none. Mr. Simpson said that he does not have a problem with it.

115 Aaron Simpson made a motion to amend the applicant's petition on Case #15-03 to reflect Article VI,
116 Section 6.12 and strike out Section 3.50-i-8. William Larrow seconded the motion. The motion passed
117 unanimously.

118 Mr. Hirshberg explained to the Board that all of the applications are interconnected and asked to give an
119 overview of the project. Mr. Simpson said that he does not have a problem hearing about the whole
120 project and then voting on them one by one.

121 Mr. Larrow said that he would like to know about the Shoreland Permit. Mr. Hirshberg said that he does
122 have the Shoreland Permit and gave a copy to the Board. Mr. Landry asked and Mr. Hirshberg
123 confirmed that he did not need to make any changes to the plan submitted to the Board based on
124 conditions from the Shoreland Permit.

125 Mr. Harrison explained that they purchased the house about 8 years ago and it is a one story structure
126 with a crawl space. They now have kids living in the area and a couple of grandchildren and need a
127 bigger house. The current structure is non-compliant to the side setback and the driveway is very steep
128 with a grade of about 24%. The current property also does not have a runoff collection system, it runs
129 off the property into the lake through a pipe. Mr. Harrison continued that they are proposing building a
130 new house. They are planning on shifting it out of the neighbor's setback and moving it away from the
131 lakefront setback a little bit. The house gets a little deeper, but that part is more than 50' away from the
132 lake.

133 Mr. Harrison said that they do have an approved Shoreline plan that shows the water runoff and
134 collection. They need a Variance for the height, though after the new house is built it will still be the
135 shortest out of all four neighbors. They would like to have a basement and two floors.

136 Mr. Harrison said that they have received a letter of support from one of their neighbors and the other
137 abutter is here to listen to the hearing.

138 Mr. Hirshberg explained the existing conditions plan showing the existing house to the Board. Mr.
139 Simpson asked if everything on the plan is existing, including the driveway. Mr. Hirshberg confirmed
140 and said that the driveway is easy to slide off as it is 23 – 24%. One thing that they wanted to do was
141 improve the drive and ease the grade. If the slide the house back and create a foundation wall they can
142 grade against it and push the drive into the hill a little more.

143 Mr. Hirshberg said that the existing house is primarily within the 50' setback, but there is a portion of it
144 that is not. Currently the driveway is paved and the parking is gravel. There is a fairly sizeable retaining
145 wall and an impervious patio and walkway.

146 Mr. Hirshberg explained the proposed condition plan. The new house extends beyond the 50 ft
147 lakefront setback as well but it is being pushed back to build a taller foundation wall. The end result is a
148 14% grade driveway with the house supporting the driveway.

149 Mr. Simpson asked if there is a difference between the Shoreland plan submitted to the State and the
150 plan submitted to the Board. Mr. Hirshberg said that there are no differences in terms of footprint or
151 anything like that, there are additional storm water stuff on one plan and additional plantings on
152 another.

153 Mr. Hirshberg said that the proposed footprint is bigger than the existing footprint and it does impact
154 within the 50' setback of the lake. Mr. Hirshberg showed the Board on the plan the changes. Mr.
155 Hirshberg said that they are asking for a Variance to be within the 50' setback and then increasing the
156 square footage within the setback.

157 Mr. Hirshberg said that the proposed total impervious is 29.2% and the allowance is 30%. The current
158 impervious is 25.3%. However, they have created a variety of pervious surfaces and will have a storm
159 water management plan, which did not exist before. Mr. Hirshberg explained the storm water
160 management plan to the Board. Mr. Simpson asked about an erosion control plan and asked if the
161 project complies with Section 4.33. Mr. Hirshberg explained that the erosion control plan, which is on
162 the Shoreland plan and is part of the Shoreland permit. Mr. Hirshberg said that what is currently an
163 impervious walkway and patio down by the water will be changed to pervious to reduce the amount of
164 runoff into the lake.

165 Mr. Hirshberg said that the proposed garage is within the road setback. They will be 43 ft from the
166 centerline and the setback is 50 ft. Height wise, they are 14.6 ft above the existing roof of the one story
167 house, which is 4.6 ft above the 10 ft allowed. A second story is allowed and is what is being proposed.
168 They are not going any lower than the lower level that currently exists. Mr. Hirshberg said that the
169 existing house has a crawl space, not a full basement, and they are proposing a full basement but they
170 are starting at the same grade as the bottom of the crawl space.

171 Mr. Simpson questioned about the horizontal increase and wanted to know if this requires a Variance as
172 well. Mr. Simpson said that he thinks that there should be another Variance of 6.12 as they are
173 increasing the dimensions of the building. Mr. Hirshberg asked if this could be handled as one Variance,
174 Case 15-03, with the way that it is worded. Mr. Simpson said that the application is an issue as the only
175 thing written is that it is above 10 ft and it may need to be revised to say 14.6 ft tall and 72 sq ft more;
176 also, he wonders if it was properly noticed. Mrs. Harrison said that she thought that Case 15-04 handled
177 the footprint change. Mr. Simpson said that it only addresses the setback issue, not making the house
178 bigger within the 50 ft setback.

179 Mr. Landry asked how long and wide the new building will be. Mr. Harrison said that it is the same
180 length of the existing building and the width is 24 to 30 ft and the majority of the 30 ft is in the back.
181 The building will be 4 sq ft bigger, most of the 72 ft increase is in the walkway. Mr. Larrow said that if
182 there is an issue the Board may want to amend things to include the square footage increase. Mr.
183 Simpson said that he does not really have any objections to the whole proposal, he just has an issue with

184 what was applied for and what was noticed. Mr. Larrow said that he thinks the Board could revise the
185 application to include the square footage increase to be more in compliance with what the applicant is
186 asking for. Mr. Platt said that the Board allows a nonconforming structure to be changed, provided that
187 it is not more non-conforming than it was before. Mr. Platt asked and Mr. Hirshberg said that the new
188 footprint is as conforming as the old footprint within 4 sq ft. Mr. Platt said that he is fine with accepting
189 that it is as conforming as the old footprint. Mr. Platt asked about the stairway and Mr. Hirshberg
190 explained that they have it as part of the footprint because it is new and is raised. The steps are 66 sq ft
191 and Mr. Harrison asked if that included the landing and Mr. Hirshberg said that he does not know. Mr.
192 Landry said that they are allowed a 32 sq ft landing without a building permit. Mr. Simpson suggested
193 making another amendment to allow the increase in the dimensions. Mr. Platt said that he thinks that
194 this could be done in a motion to approve the application.

195 Mr. Platt asked why the house cannot be moved out of the 50 ft setback. Mr. Hirshberg explained that
196 it would then be in the road setback as the lot is very narrow. The slope is steeper near the road and in
197 order to drive onto the lot they could not build within that area.

198 Mr. Platt asked why it is necessary to raise the roofline of the house. Mr. Hirshberg explained that by
199 raising the entire structure they are creating a concrete wall that goes above the first floor and they
200 can support the drive. On the second level, the roof structure is integral with the second level. Mr.
201 Harrison showed the plan showing the cape with dormers to the Board. Mr. Hirshberg said that they are
202 still shorter than the nearest four houses.

203 Mr. Platt asked and Mr. Hirshberg explained that a lot of the impervious gravel parking areas have been
204 removed and pushed out of the 50' setback.

205 Mr. Hirshberg said that in regards to the footprint size of the house it is not huge and compared to the
206 houses along the street, the footprint is most likely smaller than them.

207 Clayton Platt made a motion to approve Case #15-03: Parcel ID: 0107-0024-0000, to allow a Variance of
208 Article 6.12 of the Zoning Ordinance to allow a pre-existing, non-conforming structure to be replaced
209 with a structure that is no more than 32.5 ft higher than the adjacent grade of the new house and all
210 construction is to conform with the approved Shoreland Permit #2015-00221. Aaron Simpson seconded
211 the motion. Mr. Larrow asked if the approval was going to be conditional on a survey. The Board
212 discussed whether it was appropriate for all approvals or for the two cases regarding the setbacks. The
213 motion passed unanimously.

214 **CASE #15-04: PARCEL ID: 0107-0024-0000: SEEKING A VARIANCE OF ARTICLE III, SECTION 3.40-C**
215 **REDUCING THE LAKEFRONT SETBACK FROM 50 FT TO 13.5 FT TO ALLOW CONSTRUCTION OF A**
216 **REPLACEMENT RESIDENTIAL STRUCTURE. JAMES & JANICE HARRISON, 1114 LAKE AVE.**

217 Mr. and Mrs. Harrison and Mr. Hirshberg presented the case.

218 Chairman Frothingham read a letter from Lawrence and Diane Keane, abutters to the applicants, into
219 the record (SEE ATTACHED).

220 Mr. Platt said that number seven of the application does cover the increase in the square footage as part
221 of the application.

222 Mr. Hirshberg said that this proposed new construction will comply with the 10 ft side setback and
223 improves the quality of the property. It makes it more consistent with the surrounding lakefront homes.
224 The proposal moves the majority of the new construction further back from the lakefront. The
225 proposed situation increases the safety of access to the site and does not threaten public health or
226 welfare.

227 Mr. Simpson asked how the proposal is more consistent with lakefront homes. Mr. Hirshberg explained
228 that the majority of homes in this area are multilevel. Mr. Simpson asked if the proposal is consistent
229 with the other houses and their distances to the lake. Mr. Landry said that the existing structure is 13 ft
230 from the lake and the proposed structure is 13.5 ft from the lake so this is an improvement in the
231 lakefront setback. Mr. Simpson said that he is curious what the distance is from the lakefront for the
232 other houses. Mr. Hirshberg said that in terms of proximity to the water, the homes that are as close or
233 closer are further down the street, not the ones that are immediately near this property. Mr. Hirshberg
234 showed the Board a picture showing the houses going down the road. Mr. Hirshberg said that they do
235 not have the flexibility with this property to not be in a setback.

236 Mr. Hirshberg said that the hardship with this property is that you really can't expand without being in
237 one of the Variance components due to the nature of the lot and the slope.

238 Mr. Platt noted that the proposal is more conforming than it currently is.

239 Aaron Simpson made a motion to approve Case #15-04: Parcel ID: 0107-0024-0000, seeking a Variance
240 of Article III, Section 3.40-c reducing the lakefront setback from 50 ft to 13.5 ft to allow construction of a
241 replacement residential structure, James & Janice Harrison, 1114 Lake Ave on the condition that it
242 complies with the conditions established by the State under Shoreland Permit #2015-00221 and that the
243 setbacks are confirmed to be as represented, or greater, once the property is surveyed and prior to the
244 issuance of a building permit. William Larrow seconded the motion. The motion passed unanimously.

245 **CASE #15-05: PARCEL ID: 0107-0024-0000: SEEKING A SPECIAL EXCEPTION AS PROVIDED FOR IN**
246 **ARTICLE III, SECTION 3.50-B REDUCING ROAD FRONT SETBACK FROM 50' TO 43' ALLOWING**
247 **CONSTRUCTION OF A NEW GARAGE. JAMES & JANICE HARRISON, 1114 LAKE AVE**

248 Mr. and Mrs. Harrison and Mr. Hirshberg presented the case.

249 Mr. Hirshberg explained that with the garage they have maintained the 50 ft setback from the water. In
250 order to do this and build a two bay garage, because of the shallow depth of the lot, they are into the
251 road setback. Zoning allows for a Special Exception if they are less than 10 ft from the right of way and
252 properties within 500 ft have a similar situation. Mr. Hirshberg showed the Board on a plan 500' down
253 the road and the other properties that are as close or closer to the road as the proposed structure. Mr.
254 Hirshberg said that the proposed structure will be 43.5 ft from the centerline of the road so it more than
255 meets the 10 ft requirement.

256 Mr. Simpson asked if the lot is non-conforming as the first criterion is that the lot is a preexisting,
257 nonconforming lot. Mr. Hirshberg said that it is.

258 Mr. Larrow asked how Mr. Hirshberg came up with the density of the lot coverage as he cannot see that
259 on any of the plans. Mr. Hirshberg said that the lot coverage is 29.2% impervious surface. Mr. Landry
260 said that the total allowed manmade pervious and impervious is 50%. Mr. Hirshberg said that he is
261 under the limit but needs to calculate the total coverage. Mr. Harrison asked and Mr. Landry explained
262 that they are trying to determine the manmade pervious surfaces such as the walkways. Mr. Hirshberg
263 said that they are under 35%.

264 Mr. Hirshberg said that the proposed structure encroaching on the front setback is less than 25 ft high as
265 they are at 24 ft.

266 Mr. Simpson said that number three of the Special Exception criteria says that the proposed structure
267 can't be closer to the centerline than any other structure of equal or greater type and that there is a
268 hierarchy starting with a house, then a garage, etc. Mr. Hirshberg said that the other structures within
269 the 500 ft are houses and garages.

270 Mr. Hirshberg was asked and said that the house will be 43' from the centerline.

271 Mr. Simpson said that the criteria says that the property will not be closer than any other structure
272 within the 500 ft and it seems like it might be closer than the neighbor's house. Mr. Platt said that they
273 do not need to worry about whether or not the neighbor's house is closer because the majority of the
274 six properties within the 500 ft are closer. Mr. Simpson said that criterion number three does not say
275 the majority, it says any of them. Mr. Hirshberg said that the neighbor's house appears to be 40 ft or
276 less from the center line.

277 Clayton Platt made a motion to approve Case #15-05: Parcel ID: 0107-0024-0000, seeking a Special
278 Exception on Article III, Section 3.50-b to allow a garage to be built 43 ft or further from the centerline of
279 the road right of way, on the condition that all construction proceed according to the Shoreland Permit
280 #2015-00221, and that a property survey be submitted being submitted to the Zoning Board prior to
281 permits being issued showing that the dimensions of the garage from the sideline, lake, and centerline
282 of the road are as presented on the plan and that evidence be submitted that the new garage meet the
283 criteria of Section 3.50-b-3 that the proposed structure is no closer to the centerline of road right-of-way
284 than any other structure of equal or greater type used in the comparison in Paragraph (2), above. Aaron
285 Simpson seconded the motion. Mr. Hirshberg asked if this meant that the Board would like a survey to
286 show the neighbor's structure. Mr. Simpson said that he would like something to show the centerline of
287 the road and the neighbor's preexisting building to be closer or equal to the road as the proposed
288 structure. The motion passed unanimously.

289 Aaron Simpson made a motion to adjourn at 8:59 pm. William Larrow seconded the motion. The
290 motion passed unanimously.

291 Respectfully submitted,

292 Melissa Pollari

293

294

295 Edward Frothingham

Aaron Simpson

296

297 Clayton Platt

Daniel Schneider

298

299 William Larrow

George Neuwirt, Alternate