

1 **TOWN OF SUNAPEE**

2 **ZONING BOARD**

3 **APRIL 9, 2015**

4 **PRESENT:** Edward Frothingham, Chair; Daniel Schneider, Vice-chair; Aaron Simpson; Clayton Platt;
5 William Larrow; George Neuwirt, Alternate; Roger Landry, Zoning Administrator

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

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

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

10 Aaron Simpson recused himself from the case.

11 Clayton Platt made a motion to have George Neuwirt be a voting member for the hearing. William
12 Larrow seconded the motion. The motion passed unanimously.

13 Derek Durbin, an attorney for Dustin Aldrich out of Portsmouth, NH.

14 Attorney Durbin passed out some reference materials to the Board. Vice Chair Schneider asked if it is
15 additional materials that the Board has not previously seen. Attorney Durbin said that some of it is
16 additional materials and some is communications between the Town and himself and his client that
17 happened after the appeal was initially filed. The case has a long history and it is hard to keep track of
18 what the Board has and does not have. The documents that Attorney Durbin gave the Board were
19 things that he noted in his records that the Board did not have.

20 Attorney Durbin continued that one of the things that he noticed after reading the meeting minutes
21 since they filed the appeal and that he is concerned about is that there is misinformation relative to the
22 basis of the appeal, his client's requests for postponement, and the Superior Court case that is currently
23 pending that has some relationship to this but is not necessarily relevant to this hearing. Attorney
24 Durbin said that in August 2011, Mr. Aldrich applied for a building permit and received a denial letter
25 from Mr. Landry. The building permit was denied for several reasons and Mr. Aldrich never appealed
26 that decision. In 2013, Mr. Aldrich went to Attorney Durbin for counsel and he advised him to refile the
27 building permit application and provide some supplemental materials to address the concerns that were
28 raised in the initial denial letter. Mr. Aldrich did that and was subsequently denied again which brought
29 them to appeal to the Zoning Board in May 2014. They requested that the Board overturn Mr. Landry's
30 decision to reject Mr. Aldrich's building permit decision. The Board did grant the Administrative Appeal
31 and it was their impression that all they had to do was send in the building permit application and fee
32 and it would be referred to the Board of Selectmen for approval. They received a denial letter in the
33 mail, this time raising new issues being one Zoning issue and one building related issue. The Zoning
34 specific issue is that Mr. Aldrich needs to comply with Article 7.10 of the Zoning Ordinance and the

35 building related issue being relative to the amount of the fee that he was paying as part of his
36 application. The determination that was made by Mr. Landry at the time was that Mr. Aldrich had not
37 accounted for alleged improvements that had been made to the property and they needed to be
38 calculated as part of the building permit fee. Neither of those issues had been raised in either of the
39 previous two denial letters. Attorney Durbin continued that after some unsuccessful attempts to
40 resolve the issue with the Town Mr. Aldrich filed the Administrative Appeal that is before the Board
41 today.

42 Attorney Durbin said that right after the Administrative Appeal was filed a Superior Court complaint was
43 filed pertaining to Mr. Landry's conduct. They were requesting that the Court declare that Mr. Landry
44 did not have the authority to reject the building permit application that was sent in after the May 2014
45 Zoning Board approval. Therefore, the Zoning Board would not have jurisdiction to act on this
46 Administrative Appeal. Vice Chair Schneider said that he wanted to correct Attorney Durbin as the
47 Board did not approve a building permit, what they did was make the determination that the property
48 was not in noncompliance with the road frontage requirements. Attorney Durbin said that he does
49 agree with Vice Chair Schneider and he is not making the assertion that the Board approved the building
50 permit; what he is stating is that the relief that they sought in their Administrative Appeal was as he
51 quoted "to overturn Zoning Administrative Landry's decision to reject Mr. Aldrich's building permit
52 application." The Board made a blanket approval of the Administrative Appeal and he is not claiming
53 that the Board approved the building permit, he is saying that the Board approved that action which
54 means that Mr. Landry had to refer it to the Board of Selectmen as it resolved the Zoning issues at that
55 time.

56 Mr. Larrow said that he understands what the Board did and the way that Attorney Durbin has it written
57 is that he believes that the building permit should have been able to go forward to the Selectmen,
58 without any other objection. Attorney Durbin said that this is correct. Mr. Larrow continued that
59 because no other objections were brought up and the permit was resubmitted what Attorney Durbin is
60 saying is that, carte blanche, it moves forward without any other discretion. Attorney Durbin agreed
61 that this is what he is saying though he understands that some people on the Board may not agree with
62 that.

63 Attorney Durbin said that the reason for the requests for the postponements was to avoid the situation
64 of having the Board exercising jurisdiction over the matter and getting involved in the matter before the
65 Superior Court acted. It was not because they were unprepared to present to the Board. They filed a
66 detailed complaint with the Superior Court and they addressed a lot of the issues that have been
67 addressed before this Board. They wanted to try and separate the two. Chairman Frothingham asked if
68 they have been to Court. Attorney Durbin said that they have not had a hearing because when they
69 served the Town the Sheriff never served a member of the Board of Selectmen and they had to go back
70 and extend the deadline on service and re-affect the service and have a member of the Board of
71 Selectmen served. There has been no action taken and nothing has been filed except for the complaint
72 with the Court. Attorney Durbin said that in October 2014, this Board did vote to deny the continuance
73 that they sought and ultimately did exercise jurisdiction over the matter. He was away at that time and
74 the Town was aware of this but it was not communicated to the Board. He believes that there was an

75 appearance that they simply did not show up or were not prepared. Attorney Durbin said that he
76 subsequently filed a motion for a rehearing with the Board with a detailed memorandum and evidence
77 to support it, in addition to the supplemental details that were provided to the Board at this meeting.

78 Attorney Durbin said that because this is a rehearing it is considered to be a de novo hearing and the
79 Board needs to act as though they are looking at the issues for the first time.

80 Attorney Durbin said that the first issue is Mr. Landry's interpretation of Article 7.10 and he thinks that it
81 is clear from what they filed that it is their contention that the language in Article 7.10 only applies to
82 seasonal conversions to permanent use rather than a single family to two family use. Vice Chair
83 Schneider asked Attorney Durbin for clarification on what led him to believe this because it is not in the
84 Zoning language, nor is it in the Town Warrant that approved this language. Attorney Durbin said that
85 the Ordinance does not express any intent as to how the use of the term is to be used but can go back
86 beyond the Town Warrant Article to the Planning Board minutes, which are attached as an exhibit.
87 Those say that "the Amendment helps the Town better align to the State's regulations." From there he
88 went back to the State's subsurface regulations where the use of the term conversion appears and in
89 the context of changes of use, the term conversion appears in seasonal to full time occupancy and does
90 not appear in changes of use from single to two family use. In other contexts seems clear that the focus
91 is on increasing the number of bedrooms and not in changes of single to two family. Attorney Durbin
92 continued that Mr. Aldrich is not adding additional bedrooms or making significant changes to the
93 property. He already has a five bedroom septic system, which the DES has confirmed is adequate. In
94 the supplemental materials provided to the Board there is an email exchange with Dick Deserve, an
95 employee of the DES Subsurface Division, that confirms that Mr. Aldrich's septic system is adequate and
96 up to date. Attorney Durbin said that what is also important is that Article 7.10 seems to inadvertently
97 require something that the DES doesn't even do, which is provide the approval that the Ordinance
98 requires. You do not have to go to DES if you are changing from a single family to a two family and is
99 evident in the email conversation. Attorney Durbin continued that going back to the intent behind the
100 Ordinance he comes to the conclusion that a conversion is seasonal to permanent occupancy. The other
101 evidence that he has to support it is another document that was submitted that is a letter from Town
102 counsel dated August 5, 2014 that discusses the Burma Rd property and was the only evidence the Town
103 could produce to support the interpretation of the Ordinance. The Ordinance was applied to this
104 property, which was being converted from a seasonal to a permanent use. Attorney Durbin said that he
105 would submit to the Board that Mr. Landry's determination was selective and arbitrary in reply to Mr.
106 Aldrich's building permit application and he would hope that the Board would grant that part of the
107 relief being sought.

108 Mr. Platt said that the Ordinance says "converted in any manner" and asked if Attorney Durbin's
109 position is that "any manner" is just superfluous language as conversion in any manner, to him, implies
110 any kind of conversion of a property. Attorney Durbin said that he thinks that it is ambiguous and that
111 it leads to looking to behind the intent as to why the Ordinance was put in place. What is stated in the
112 minutes is not conclusive and it led him to find what the DES regulations say and that is what he believes
113 supports their position.

114 Vice Chair Schneider asked, under the assumption that it is necessary and desirable to have septic
115 system that is adequate for the use, why it would be onerous for the client to verify that the septic
116 system is adequate for a two family. Attorney Durbin said that the answer for that is that it is not
117 necessary onerous and he thinks that they have done this, the problem is that the way the Ordinance
118 reads, it requires an approval that the DES does not give you. They will tell you that the system is
119 adequate and up to date but they do not have any type of process in place where they issue this type of
120 certification. Vice Chair Schneider said that he believes that request was certification from a licensed
121 septic designer. Attorney Durbin said that this raises another good issue as this was not something that
122 was in the denial letter but that was raised subsequently in communications between the Town and
123 himself. That request was made and ignored because the Ordinance does not state that it is required
124 because now they are getting into a whole different thing of hiring a septic system designer to go and
125 asses the system.

126 Mr. Larrow said that usually something as simple to resolve as in this request for a building permit, is
127 that in many cases people come in with a design, whether adding bedrooms, garages, etc., which
128 generates a discussion so it doesn't really peak to this point and it is much easier to figure out. Mr.
129 Larrow asked why this did not happen. Attorney Durbin said that it is now beyond that, but for expense
130 reasons and the fact that since 2011, Mr. Aldrich has been trying to have his property legally designated
131 as a two family dwelling, which is permitted by right as the Board already found, and when in fact it
132 already exists physically and he acquired it as a two family dwelling. Mr. Larrow said that he is not
133 arguing that, he is saying something to simplify the process to begin with; to make it into a two family
134 dwelling it needed a simple diagram and asked if that would not clarify it. Attorney Durbin said that he
135 does not think so as they have tried to provide all the information possible to Mr. Landry to try and get it
136 approved and have had arbitrary determinations made that go outside the context of the Zoning
137 Ordinance such as applying covenants and restrictions that didn't even apply to the property and
138 denying the building permit. Attorney Durbin continued that this has gotten so out of hand since 2011,
139 that it is a snowball that has rolled down hill. Mr. Larrow said that he will ask Mr. Landry when he
140 returns why this was never talked about. Attorney Durbin said that is a good question as to why this
141 issue was never raised. Article 7.10 is slightly less onerous now with the amendment than it was
142 previously when the initial applications were filed, but in essence it is the same regulation, so why was
143 this issue never brought forward as Mr. Aldrich has always had a five bedroom septic system and has
144 proven that in the past with his submissions to the Town. Mr. Aldrich already had to deal with the belief
145 that there were restrictions on the property and had to hire a surveyor because he didn't know that it
146 was not a Zoning issue.

147 Mr. Platt asked if Exhibit D is the original letter that Mr. Landry sent when he denied the application the
148 second time. Attorney Durbin said that he believes it is. Mr. Platt said that the letter asks for an
149 acknowledgement letter from a licensed septic designer and he reads it as more informative than asking
150 for a septic inspection and is not asking for someone to go out and scope the field. He is saying that he
151 would like confirmation from a licensed septic designer that a two kitchen, five bedroom house is the
152 same as a five bedroom house with one kitchen, which he thinks that they have learned is the same.
153 Mr. Platt continued that it doesn't seem to him that this is something that is common knowledge and

154 that he spoke with someone who said that he was not 100 percent sure and suggested talking to DESIt
155 would seem acceptable to contact a septic designer who is knowledgeable about it to write a letter to
156 the Town that it is only bedrooms. Attorney Durbin said that he believes that the call was made and he
157 was led to believe that it might be something more extensive. The more important revelation made in
158 the letter is that Article 7.10 does not ask for what Mr. Landry is asking Mr. Aldrich to provide. The
159 language reads that Mr. Aldrich has to provide a certificate of approval from DES and he hopes that
160 what they provided tonight takes care of that. DES does not consider it a conversion and there is no
161 approval for this. Mr. Platt said that he sees a request for information as to whether the change is going
162 to increase the septic flow and if it doesn't increase the septic flow then 7.10 doesn't apply but if it does
163 then it would. They should not have to hand tie the Zoning Administrator and tell him that he cannot
164 ask for more information because he is supposed to know these things already. Mr. Platt asked if what
165 they are saying that it is the Town's responsibility to know all of these technical things such as sewage
166 flow, septic and such; Mr. Aldrich hired his attorney to write a letter but could not hire a septic designer
167 to clarify the situation as it would be overly onerous. Attorney Durbin said that he feels as though the
168 situation has become a contentious situation at this point and he believes that some subjectivity has
169 gone into the process. Attorney Durbin continued that if this was coming from another applicant for the
170 first time he does not think that they would be seeing a reference to Article 7.10. Mr. Larrow said that
171 Attorney Durbin is not in a position to address if it was a different applicant what would happen and
172 what would not happen. Attorney Durbin said that Mr. Aldrich just told him that there have been a lot
173 of other cases like this but Article 7.10 has never been raised. Mr. Larrow said that he does not want to
174 get into a discussion as to whether it has been raised or not raised as they would have to pull out all of
175 the cases and Mr. Aldrich would have to address the ones that have not been addressed from that kind
176 of view and that is not what they are there for. Attorney Durbin said that his argument is based on the
177 law, and putting any other cases aside, the reason that he brought up the Burma Rd case is because the
178 Town used that case. Attorney Durbin continued that they tried to resolve this and he understands that
179 they appear as though Mr. Aldrich is spending legal fees for something that could have easily been
180 provided, but if you look at the packet of information provided, they tried to resolve the issue with the
181 Town. They were willing to resolve the building permit fee issue and were willing to try to resolve this
182 and a very uncompromising approach was taken by the Town, which has led to people digging their
183 heels in and battling it out. Attorney Aldrich continued that in response to the comment that Mr. Landry
184 was not requiring compliance with 7.10 in his denial letter he says that "the application requires the
185 following information: an acknowledgement letter from a licensed septic designer...that five bedrooms
186 are still an acceptable load" and he references Section 7.10. Attorney Durbin said that he thinks that it
187 would be hard to reach the conclusion that he was not requiring compliance with 7.10 or he would not
188 have referenced it. It is their assertion that Article 7.10 is inapplicable and an acknowledgement letter
189 cannot be required under the Zoning Ordinance, and to the extent that the Board does find it is
190 required, they have the DES saying that it is an acceptable system.

191 Mr. Platt said that it is a little confusing because he is not sure if the Board is voting as to whether the
192 house has five bedrooms and the same sewage load or if they are voting on whether Mr. Landry had the
193 right to request the information. Chairman Frothingham said that he thinks Mr. Landry had the right to
194 request the information, especially just a letter from someone who is licensed to give an opinion. Mr.

195 Platt said that there seems to be two arguments, one is that there is no change in the sewage loading
196 and that should be stuck from the building permit as it has been confirmed by DES; the second question
197 is whether Mr. Landry had the right to request the information in his initial letter and he is not sure what
198 they are ruling on. Attorney Durbin said, to clarify their position, Article 7.10 and the requirement of the
199 letter are inapplicable. Attorney Steven Whitley, counsel for the Town of Sunapee, said that those types
200 of questions are within the Boards review of the application and that he recommends the Chair and
201 Board solicit input from Mr. Landry and any other concerns from abutters before reaching a decision.

202 Mr. Landry said that he is prepared to answer anything that is alleged and discuss any of the situations.
203 Mr. Larrow said that what he had asked was, right when the building permit was submitted they could
204 have submitted information relative to what was going on if there was a reason that he did not request
205 that or that he felt it was one way or the other. Mr. Landry said that he would address that question
206 when he is allowed to talk and he is asking for the same amount of time that Attorney Durbin has been
207 allowed to go through his scenario. Attorney Durbin said that Mr. Landry can answer the question now
208 or he can go on with his second part of the appeal. Mr. Larrow indicated that this question can wait
209 until it is Mr. Landry's turn.

210 Attorney Durbin said that the second issue before the Board, which is more confusing than the first, is
211 that they are challenging Mr. Landry's decision to require Mr. Aldrich to calculate the costs of alleged
212 improvements to the property into his building permit fee. The reason that it is relevant to the Board is
213 because Sunapee does not have a Board of Appeals so there is no separate entity for that. Therefore, by
214 Statute and by default the Zoning Board falls into this position.

215 Attorney Durbin explained that when Mr. Aldrich filed his building permit application he included a
216 \$50.00 fee, which is the minimum when you are changing the use but not making any physical changes
217 to the property. Mr. Aldrich was not proposing any physical changes to the property. Mr. Platt asked
218 and Attorney Durbin confirmed that there are already two kitchens and everything is in there. Attorney
219 Durbin continued that the belief is that a prior owner, Benson, constructed it as it is now because in
220 between it went through a foreclosure process and it is unlikely that the bank did anything to it. The
221 building permit that was filed was for a single family home and what was ultimately built was a two
222 family home. There was no inspection ever done so there was no documentation to show and the floor
223 plans submitted showed a single family and there is nothing in the file on it other than the application
224 that was filed and the approval by the Board of Selectmen. Mr. Landry rendered his determination but
225 acknowledged in his denial letter that no inspection had ever been conducted on the property which led
226 Mr. Aldrich to attempt to resolve the matter and calculate the fee for the original building permit
227 application and the floor plans by requesting the original building permit application which he did get
228 back but without the floor plans and there was nothing else associated with the property. Attorney
229 Durbin continued that he submitted a letter from Town Counsel dated July 30, 2014 that states "Floor
230 plans for the predecessor and title are not in the file for this property, when floor plans are submitted as
231 part of the application process they are kept in the Town Office. Once the application has been
232 approved and substantially completed, permit applications are moved to archived storage and the floor
233 plans are thrown out." The implication is that, potentially, if they are not in the archives they have been
234 thrown out. This led to the quandary that Mr. Landry is asking Mr. Aldrich to pay for improvements that

235 were made by the prior owner but they don't know what the improvements were and there is nothing
236 to use as a baseline and to just send a check for some amount. Attorney Durbin continued that Mr.
237 Aldrich has no knowledge of what occurred under the prior owner and he thinks that he was agreeable
238 to paying for the improvements made but the burden was put on him to figure out the amount. This
239 has gone on forever and Mr. Aldrich cannot get a building permit for something that should be very
240 simple at this point. Mr. Larrow asked and Attorney Durbin agreed that Mr. Landry did not give the
241 amount that needed to be paid. Attorney Durbin continued that Mr. Landry also did not list the
242 improvements that the Town has noted and ask Mr. Aldrich to pay for them; there was no
243 substantiation behind it.

244 Chairman Frothingham said that the Board does not determine the fees so he does not think that they
245 can make these decisions. Attorney Durbin said that he respectfully disagrees because the Board is
246 sitting in the place of the Building Board of Appeals in the Town of Sunapee and they exercise
247 jurisdiction over fees. Mr. Platt asked if there is an RSA that designates the Zoning Board and Attorney
248 Durbin interjected that it does not say anything about fees but that there is an RSA. Mr. Larrow said
249 that they have never done anything about fees. Vice Chair Schneider said that the fees are set by the
250 Selectboard and there are times that people have requested that Mr. Landry has the fees be waived or
251 reduced and they make the requests to the Selectboard. He would suggest to his colleges that they do
252 not have jurisdiction over fees. Attorney Durbin said that jurisdiction has been exercised at this point as
253 this Board decided to deny the appeal on both the grounds brought forward. Chairman Frothingham
254 said that he believes it was because the application for the building permit did not come back completed
255 to the Zoning Administrator's satisfaction and he made a request. If Mr. Aldrich had fulfilled that
256 agenda he does not think they would be sitting there. Attorney Durbin asked how it is appropriate for
257 the Town to shift the burden to the applicant when it is the Town who keeps the files of the
258 predecessors and is there responsibility. How is it the person who acquires the property with alleged
259 physical changes that were made able to determine what the changes were and calculate fees based on
260 it? Chairman Frothingham said that he thinks that he would be going to the Selectmen and explaining
261 his quandary and asking them to address it. Mr. Platt asked if Attorney Durbin and Mr. Aldrich has been
262 to the Selectmen with a formal request. Attorney Durbin said that with the consent of Town Counsel
263 they would be happy to do that but he does not think that it should factor into this Board's decision and
264 he thinks that the Board needs to decide that it can accept or deny their argument that they can act on
265 the fee issue. Attorney Whitley said that Attorney Durbin has made his argument as to why he believes
266 the ZBA has jurisdiction to decide those issues and he suggests that the Board allow Mr. Landry or
267 anyone else present to respond to those allegations so they can put any conflicting arguments on the
268 record and at the end of the hearing, if the Board would like, they can recess and ask him legal questions
269 and deliberate with the hopes of reaching an answer to that question.

270 Attorney Durbin said that they are seeking the same type of decision they sought from the Board in May
271 2014 which is to overturn Zoning Administrator Landry's decision to reject the building permit.

272 Vice Chair Schneider asked about the email from Richard (Dick) Deseve on Monday, February 9th as he
273 believes it was information that Attorney Durbin gave them at this meeting and was not something
274 given to them before. Attorney Durbin confirmed this. Vice Chair Schneider asked if Mr. Landry has

275 seen the email and Mr. Landry said that he has not. The email is addressed to Attorney Durbin and says
276 "Derek you are correct, that approval [he is talking about the original septic approval] is for five
277 bedrooms. If that is what will be there when this is converted to a two family unit, there is no
278 requirement for your client to file any new plan with us [DES]. He has adequate capacity to support the
279 proposed use. He also has a construction / operational approval that is only nine years old, so RSA 485-
280 A:38 would allow for the change in use without filing for a new permit since there is no increase in
281 loading resulting from that change." Vice Chair Schneider asked Mr. Landry if that satisfies his problems.
282 Mr. Landry said that it does not because it is totally incorrect as Mr. Deseve was not given all of the
283 information and he will address that when it is his time.

284 Mr. Landry took his turn with the Board and first started with the notes that he took when Attorney
285 Durbin was presenting his side.

286 Mr. Landry said that he does not have copies of the new information that the Board was presented with
287 at this meeting. Mr. Landry said that there was an assertion made that he denied a building permit in
288 2011, which he did not as he does not have authorization from the Selectmen to approve or deny
289 building permits. In 2014, it was claimed that he denied it again and he did not, this was after the ZBA
290 found in favor of Mr. Aldrich in regards to the road frontage for a two family or two dwelling units. Mr.
291 Landry said that one of the problems was that he originally told Mr. Aldrich that his property was in
292 Rural Residential and he made a mistake and said that there was a 100' requirement because there
293 were problems with the Zoning maps and the coloration. Shortly after that the Town received the new
294 maps with the proper coloring on the various Zoning districts. It is in the Residential Zone, which does
295 require 75' of road frontage per dwelling unit, but the Zoning Board found in favor of Mr. Aldrich and
296 Attorney Durbin and said that it doesn't and to go ahead with the two family, which was when the
297 building permit was resubmitted.

298 Mr. Landry read to the Board from a letter that he received from Attorney Durbin dated May 13, 2014
299 where he resubmitted the building permit along with a check for \$50.00. The last paragraph on the
300 letter says "Should any additional documentation be required from my client, please let me know.
301 Thank you for your time and consideration." He sent a letter back on May 21st saying that "I am
302 returning the Aldrich building permit with your check #530 for \$50.00. The application requires the
303 following information and a new check to make it complete for processing." Mr. Landry continued that
304 when he says complete he is referring to page 42 of the Zoning Regulations, Section 8.22 which says
305 "Application shall be filed with the Board of Selectmen. The application shall contain the full name of the
306 owner and/or his agent. It shall contain a certification that the property does not lie in an unapproved
307 subdivision. The application shall describe briefly the proposed work and give such other information as
308 may be required to determine whether the proposed work complies with the provisions of the
309 ordinance. The application must be signed by the land owner(s) or designated representative and
310 submitted complete with proper fees in order to be considered." Mr. Landry said that they did not have
311 the proper fees, nor did he have the total amount of information and he refers back to Article 7.10.

312 Mr. Landry asked Mr. Aldrich if he was the one who filled out the application for the building permit.
313 Attorney Durbin said that he does not think they should be getting crossed examined but if the Board

314 asks they are happy to answer. Mr. Landry said that at the top of every building permit application the
315 first page has a questionnaire to make it easy for the applicant to complete. Question A says “Does this
316 project involve renovations valued at more than \$3,000.00, which will not result in the enlargement of
317 the structure or living area?” and there is a \$50.00 fee. Question B says “Does this project involve new
318 construction, an addition, or enlargement of the external dimensions of an existing structure?” If yes
319 then you need to provide a Plot Plan, and so on and that is what Mr. Aldrich’s situation is. He needed a
320 plot plan, which he did not get.

321 Mr. Landry continued that at the very top, in the square, outlined, it says “All new dwellings, dwelling
322 units, and/or an increase in number of bedrooms require prior approval from the Water and Sewer
323 Department or the State of New Hampshire DES.” Mr. Aldrich is putting in a new dwelling unit and
324 increasing the number of bedrooms, which he is doing. Mr. Landry said that the reason that he says that
325 Mr. Aldrich is increasing the number of bedrooms because there are two copies of appraisals in the
326 property files, one that was made by the bank that foreclosed the property and the other was made by
327 Mr. Aldrich’s bank when he received his loan. Both appraisals clearly state that there are six bedrooms,
328 three on each floor. They also state that no permits were ever taken out for that additional construction
329 in the lower level. Mr. Landry continued that Mr. Aldrich knew all along that none of it was permitted
330 by the Town of Sunapee. All that he was looking for was a drawing from Mr. Aldrich showing that he
331 was changing one of the bedrooms so there would be five bedrooms, which would have been fine.
332 Because he is going to have two families living in the house, the State of New Hampshire requires an
333 additional 500 gallon system, or 1250 gallons capacity for each unit. Mr. Aldrich has a 2000 gallon
334 system and he needs an additional 500 gallon tank. Mr. Landry said that he has that in writing from
335 Doug Gamsby, the Town’s Health Officer, who is also a licensed septic designer. Mr. Landry said that
336 there is also a licensed septic designer in the audience if the Board would like to ask him. Vice Chair
337 Schneider asked if Mr. Landry has shared this information with Mr. Aldrich and Mr. Landry said that he
338 has not because he just received the letter today. But Mr. Aldrich should have known that if he had
339 spoken to a septic designer, which is required by Section 7.10. Section 7.10 says that you have to talk to
340 a septic designer and the septic designer says yes you do need additional information and have to file
341 with the State. The State does not require that you put the new system in but you do need a permit on
342 file. Mr. Landry said that one of the most recent ones is Mount Royal Academy; every single application
343 that goes before him, whether it is for additional bedrooms or additional dwelling units, whatever the
344 living conditions might be, he has to go and check the assessing file to see whether or not the septic
345 system is applicable and if it is not he has to tell the owner that it is not. Or he goes to the Water and
346 Sewer Department to see whether or not the applicant made a connection fee for a second dwelling
347 unit or for more than five bedrooms. Vice Chair Schneider asked how many bedrooms the assessing file
348 says the property has. Mr. Landry said that the assessing file says five bedrooms, single family. Vice
349 Chair Schneider said that there is a disagreement between the assessing file and the other information.
350 Mr. Landry agreed and said that it is because the Assessor’s never went into the house, they have a copy
351 of the appraisal but never went in because no one lived there. Mr. Larrow said that the applicant said
352 that the building was sold as a two family and built as a two family but they do not have that
353 information. Mr. Landry said that it was built as a single family with five bedrooms. Mr. Platt asked how
354 it got two kitchens. Mr. Landry said that the lower level was completed without the Town’s knowledge.

355 Mr. Platt said that it was approved as a single family house but it has two kitchens and two living spaces.
356 Mr. Landry agreed with Mr. Platt and said it was done illegally.

357 Mr. Platt said that Mr. Gamsby's letter is in direct conflict with the letter from DES. Mr. Landry said that
358 this is correct and Mr. Gamsby and himself spoke with Dawn Bucker. Mr. Landry said that according to
359 Mr. Gamsby, even if Mr. Aldrich gets rid of one the bedrooms it still would not meet the State
360 requirement because he would need the additional 500 gallon tank because you need 1250 gallons per
361 unit and anything 2500 gallons or more requires a separate tank. It would only be a design feature in
362 case it is needed but the design feature and approval number would need to go before Mr. Landry
363 before he submits it to the Selectboard because someone from the Selectboard will ask him why he is
364 recommending approval when he knows that it does not meet the requirements of a two family. Mr.
365 Platt said that he does now know if the Board should be talking about what is a bedroom and what isn't
366 a bedroom, are there five bedrooms or six bedrooms; they don't know. Mr. Neuwirt said that Mr. Platt
367 is right, it clears up one issue and clouds another issue. The first issue it clears up is that if it is true that
368 it requires 1250 gallons of capacity per unit that is one thing. Mr. Landry said that is a State law. Mr.
369 Neuwirt continued that Mr. Landry is also stating that there is going to be six bedrooms, which is in
370 direct conflict of what Attorney Durbin said. Mr. Platt said that he did not see anywhere that it is a
371 proposed six bedroom house. Mr. Landry said that is all he was getting at as all Mr. Aldrich had to do
372 was complete the building permit and tell him that there was going to be five bedrooms. There is still
373 going to be two families, which requires an additional 500 gallons in tank capacity. Chairman
374 Frothingham asked and Mr. Landry clarified is that he saying is that Mr. Aldrich has to have a design
375 which would show a new, separate 500 gallon tank and the State would give an approval number which
376 Mr. Aldrich would have to give to Mr. Landry and he would put it on the decision sheet that goes with
377 the building permit application to the Selectboard, but Mr. Aldrich has to have the design made. Mr.
378 Landry continued that if Mr. Aldrich is going to stay with the six bedrooms which are already framed,
379 then he also has to extend the leech field, which would increase the capacity by 150 gallons. Mr. Aldrich
380 would also have to look at the radius from the wetlands area on the lot and right now he just makes the
381 75' radius and it would automatically be increased to 100' but he could ask for a waiver from the State.
382 Vice Chair Schneider asked for clarification that in order for Mr. Aldrich to go from a one family to a two
383 family, he has to have his design in place but he does not actually have to put it in when he converts to a
384 two family. Mr. Landry confirmed that this is correct. Mr. Landry said that this is a State regulation and
385 that this was just done with Mount Royal Academy as they increased their load from 130 kids to 232. He
386 picked that up when they came in for a building permit and from a Site Plan Review that they had with
387 the Planning Board. They had to go and get a new design for a system for 240 people.

388 Mr. Platt said that the question seems to be does Mr. Landry have the right to request a letter from a
389 septic designer to prove the sewage loading is not going to be increasing by this change. The Ordinance
390 says that if it is increasing then you have to do certain things but if it is not increasing you don't have to
391 do anything. Mr. Larrow said that if they are increasing from a single family to a two family he is not
392 sure why Mr. Landry would not have the right. Mr. Landry said that he has to ask the question as per
393 Article 7.10. Mr. Larrow said that it just makes good sense. Chairman Frothingham said that he thinks
394 that Mr. Landry has the right.

395 Mr. Landry said that the Benson permit was made for a single family, all on one floor, and the total cost
396 of the building permit was \$267.44, which he can break down and show what the square footage was of
397 the decks, porches, house, garage, etc., there was no completion in the lower level. The lower level has
398 been completed and he knows this because there are pictures and comments in the appraisals that are
399 in the property files. Mr. Platt asked when the house was complete and Mr. Landry said the building
400 permit was from 2006. Vice Chair Schneider asked how much Mr. Landry estimates that the proper fee
401 should be. Mr. Landry said that, if Mr. Aldrich gets a letter from the State or a septic design approval
402 with the additional tank, a 30' x 60' conversion of the lower level at a cost of \$50.00 and \$.20 per square
403 foot would be a total of \$410.00. There is also an after the fact fee that Mr. Aldrich is responsible for, in
404 his opinion, and that is \$275.00. The total is \$685.00, in addition to a new plan submitted to the State
405 and the State approval number given to him.

406 Mr. Neuwirt said that he needs clarification on the septic system and if Mr. Aldrich had two one
407 bedroom apartments in the house how much septic capacity would it need. Mr. Landry said that he
408 would need two tanks at 1250 gallons per apartment. Mr. Landry said that this is per Mr. Gamsby who
409 had an emergency that he had to travel for which is why he is not at the meeting. Pierre Bedard, a
410 licensed septic system designer, said that there is a minimum of 300 gallons per day per bedroom, a
411 studio can be 225 gallons per day. The minimum single size system is 300 gallons per day, which is a two
412 bedroom system. A multi-unit can have a studio unit with 225 gallons per day. The minimum septic
413 tank size for a two bedroom minimum system is 1250 gallons. Mr. Neuwirt said that it is confusing
414 because on one hand they are debating whether it is five or six bedrooms and what Mr. Landry is saying
415 is in direct contradiction to what Attorney Durbin is saying, which is that there is going to be five
416 bedrooms and he is not adding bedrooms. Therefore, he does not understand why six bedrooms are
417 mentioned because the applicant has said that he is not increasing the number of bedrooms. Mr.
418 Bedard said that, though the State contradicts it in their email, with two units they each require 1250
419 gallons of septic tank capacity. The State's position seems to be that the design flow is adequate to
420 meet the bedroom capacity and, therefore, with an existing unit they seem to waive the septic tank
421 requirement but with two separate units there would be an increase in the septic tank capacity, even
422 though the leech field may be the same size. Mr. Neuwirt asked and Mr. Bedard confirmed that if it is
423 two two bedroom units it would be the same requirement of a 1250 gallons tank per unit. Septic tank
424 size has only recently been increased so it may be the State's position that they are going back to the
425 septic tank capacity at the time that the system was put in, which was less than 1250 gallons. Chairman
426 White asked if that is why they would settle for just a design, because of failure, and Mr. Bedard said
427 probably and that they do that all the time, the State tells them that they need to show that the
428 property can support an increase in load if the system should fail, if the system is functioning adequately
429 then there is no reason to replace it.

430 Chairman White asked if the Board would like to recess and speak to the Town Counsel. Attorney
431 Whitley said that the Board should ask Attorney Durbin if he has any rebuttal to the testimony of Mr.
432 Landry.

433 Attorney Durbin said that in regards to the letter from Mr. Gamsby, it is his first time seeing it as it is Mr.
434 Landry's first time seeing what they presented. He thinks that the letter is highly problematic as he does

435 not know how the question was raised to Mr. Gamsby. The Board can see how his questions were
436 phrased to Mr. Deseve at DES ,who is a very credible source as he has been in some capacity at DES for
437 over 20 years and is an attorney who has probably read the regulations a number of times. Attorney
438 Durbin continued that he is looking at the response from Mr. Gamsby and he has a feeling that the
439 question posed may not have been exactly as the situation is. It says "In reference to property owned
440 by Dustin Aldrich...Mr. Aldrich is proposing a two apartment building." Mr. Aldrich is not proposing two
441 condo units, they are talking about a two family dwelling. He has not seen the substantiation behind
442 Mr. Gamsby's position but it sounds as though if they are talking about units they are talking about
443 condo units or some other form of ownership than a two family dwelling. Attorney Durbin said that he
444 thinks it is highly problematic as well in that Mr. Gamsby states "from a change in use from a five
445 bedroom single dwelling to two, three bedroom apartments." They never claimed that they are creating
446 two, three bedroom apartments, they are creating a two family dwelling that, by legal status, is a five
447 bedroom dwelling. In that respect, he has a tough time looking at the letter and saying, against Mr.
448 Deseve's opinion at the DES, that this should have any bearing on the outcome of the Board's decision.

449 Attorney Durbin said that he would go back to Article 7.10, which he thinks has been miss-phrased to
450 the Board by saying that a letter is required by a licensed septic designer as the Article states "No
451 structure shall be converted in any manner resulting in increased septic flow or water utilization without
452 the approval of the New Hampshire Department of Environmental Services Water Division-Subsurface
453 Systems Bureau or approval from the Sunapee Water and Sewer Commission if on municipal sewer."
454 DES told them that no additional approval is needed.

455 Attorney Durbin said that they have done their due diligence and that he feels as though this is a last
456 ditch effort to justify the decision that was made. He thinks that it should be given its appropriate
457 weight when being considered by the Board.

458 Chairman Frothingham asked what Mr. Deseve's position at DES is and Attorney Durbin said that he
459 does not want to quote it because they have categories such as Environmental Specialist IV, so he does
460 not want to be on record with what he thinks as he has not verified it.

461 Attorney Durbin said that they did see appraisals that indicated different things, which was a problem.
462 The appraisals were done during the foreclosure process and contain conflicting information. The two
463 appraisals didn't confirm each other.

464 Attorney Durbin continued that when he uses the word "denial" when he is talking about the building
465 permit, he is talking about rejection. He is not trying to make the Board think that they believe that Mr.
466 Landry's approval is the final say. Mr. Landry said that all the way through these cases, including the
467 comments to the court, Attorney Durbin said that he denied and now he is saying that he did not mean
468 it like that, he meant that he rejected the applications. Attorney Whitley indicated that he does not
469 believe this is the time to discuss this issue and asked both Mr. Landry and Attorney Durbin to refrain
470 from making any further comments.

471 Mr. Landry said that the two appraisals do agree on six bedrooms and show pictures of the six
472 bedrooms.

473 Mr. Platt asked Attorney Durbin if the Town, whether it be Mr. Landry or someone else, has a question
474 about whether a conversion is increasing the septic flow, what the proper course of action would be for
475 the Town to take. Attorney Durbin said that he thinks that the Town's regulations should just reiterate
476 what the State says but in terms of process if someone is just looking at the Ordinance and can't figure
477 out what they are supposed to do then they go back to DES. He does not know what else they can do.
478 Attorney Durbin said that they are skeptical of Mr. Landry's opinion on it and it has become a Town
479 verses Aldrich issue so it is tough to go to the Town and ask about it.

480 Mr. Neuwirt asked for clarification as Mr. Landry has two appraisals in hand, done at the same time, that
481 both say that the house is a six bedroom. Mr. Landry confirmed this to be true and said that it all he has
482 to go by because he has nothing on the building permit application from Mr. Aldrich that says that they
483 want to go back to five bedrooms. Attorney Durbin said that there representation is and always has
484 been that there are five bedrooms. Mr. Neuwirt asked and Mr. Landry confirmed that the Town has it
485 as a single family five bedroom house. Mr. Landry went over the process that happens after a building
486 permit application is filed, he goes out for inspections and then the permit gets archived. Mr. Landry
487 said in this case that he never signed off that the permit was complete because he was never told that it
488 was completed. As a result, the drawings go to the Assessing Office and they go and check the property
489 every year until they are told that it is 100 percent complete. He thinks that in this instance they had it
490 at 90 percent complete because it was never completed and no one was living there.

491 Mr. Larrow asked Mr. Aldrich about the two appraisals that they have heard about from the banks that
492 were financing and / or appraising / foreclosing and was he not aware of any of the information, even
493 though he was dealing with the bank and has now decided that he has a five bedroom as opposed to an
494 appraised six bedroom, information that should have been well disclosed at the time of the information.
495 Attorney Durbin said that it was disclosed to the Town through counsel back in July or August. Mr.
496 Larrow said that he is talking about when the original transaction with Mr. Aldrich took place in securing
497 financing and buying, etc. as these are things you would normally know. Attorney Durbin agreed that
498 appraisal reports are normally submitted to the buyers and he is not sure how carefully people look at
499 them except to look at the top figure to ensure the value came in at what you are paying or above.
500 Attorney Durbin said that Mr. Aldrich believed that he was acquiring a five bedroom based on what he
501 saw and what was physically at the property. Mr. Neuwirt asked and Attorney Durbin confirmed that
502 going forward the property will have five bedrooms.

503 Mr. Landry said that if there are five bedrooms and two families Mr. Aldrich needs a septic plan and
504 approval for an additional tank. Once that design is approved and he has a design number he can come
505 in with the building permit costs and can get a building permit.

506 Chairman Frothingham asked and Mr. Landry explained that if Mr. Aldrich disagrees with the fee that
507 Mr. Landry says is for the building permit Mr. Aldrich can go to the Board of Selectmen and tell them
508 that he disagrees. Mr. Landry does not have anything to do with that.

509 The Board recessed briefly to talk with Attorney Whitley.

510 Chairman Frothingham closed the meeting to the public so the Board could discuss the case.

511 Mr. Neuwirt said that he thinks that the basic crux of his problem is that there are two credible people
512 saying opposite things. He is a builder and deals with septic systems all the time and his conversations
513 with the State on this issue is that the basis is on the number of bedrooms. There is expert testimony
514 from Attorney Durbin collaborating Mr. Neuwirt's belief that it is based on bedrooms. There is also
515 seemingly expert testimony from Mr. Landry saying that it is not just about the number of bedrooms but
516 is about number of dwelling units. Everything becomes cloudy because when you look at Article 7.10 it
517 says that "No structure shall be converted in any manner resulting in increased septic flow" so he does
518 not know what to believe at this point. Mr. Neuwirt continued that, to him, there is a basis to ask for
519 information but there is also a basis to say that the Town says that there is a five bedroom unit, which
520 will be kept as a five bedroom unit, therefore there is no increased septic flow and 7.10 might not apply.

521 Mr. Larrow said that he thinks that it also comes cloudy that the file has information saying that it is a six
522 bedroom unit.

523 Vice Chair Schneider said that he thinks that, in the absence of knowledge, it is reasonable to ask for the
524 information that the septic is adequate. Chairman Frothingham agreed that he thinks that it is
525 reasonable. Mr. Platt said that he thinks that the information that is being asked for is if there is an
526 increase in the septic flow and it is not a determination that Mr. Landry should probably make or a
527 determination that anyone on the Board should make but a licensed septic designer or someone
528 qualified to do that. Mr. Platt continued that if he reads the original letter right then basically what it
529 says is a licensed septic designer or DES, someone who is qualified to do it. If there is a question about a
530 property line the Board asks to have a surveyor verify it before they get a building permit. Mr. Platt said
531 that this particular thing does not seem onerous to him, or expensive.

532 Mr. Neuwirt said that it seems like the issue is does Mr. Landry have the right to ask for additional
533 information. If Mr. Landry has information or knowledge that Mr. Aldrich has had appraisals that the
534 building is a six bedroom and not a five bedroom, as the Town says, to him there is merit to the
535 argument. If the determination on septic flow is based on dwelling units, which is fairly specific based
536 on the letter that Mr. Landry produced, then he thinks that Mr. Landry has merit to ask for the
537 information. Mr. Neuwirt continued that Attorney Durbin says that we are on the honor system, the
538 Town says that it is a five bedroom unit and the number of bedrooms is increasing, using that argument
539 it is a yes or no question; Mr. Landry asks Mr. Aldrich if he is increasing the number of bedrooms and
540 Mr. Aldrich says no then the case is over. Mr. Platt said that the Ordinance says increase in septic flow,
541 not bedrooms and there may be a question if two units increases the septic flow. Mr. Neuwirt said that
542 it is the honor system, if Mr. Aldrich wants to put in three more bedrooms five months from now then
543 how is the Board to know. Mr. Platt said that it would help if the Town had a letter from a licensed
544 septic designer that says that there are five bedrooms and the design meets the septic flow. Mr.
545 Neuwirt asked why there needs to be a letter that states that if there is a septic design on file with the
546 Town. The design would be on file to answer the question, they don't need a third party septic designer
547 to verify if it is five bedrooms or not. Mr. Platt said that there are two kitchens, one put in illegally.
548 Chairman Frothingham said that now there is a two family dwelling and he questions how the law treats
549 that. Mr. Neuwirt said that according to Mr. Landry and the expert that he has produced, it says that
550 there needs to be two tanks. Mr. Platt asked why back in May when Mr. Landry wrote the letter why it

551 is inappropriate to ask the question of the applicant because it is not that clear or cut and dried. A
552 kitchen was added without permission of the Town. It is going to be approved forever as a two family.
553 Mr. Larrow said that he thinks if Mr. Landry is going to enforce 7.10 then he has to ask. Chairman
554 Frothingham agreed and said that it is not a huge hardship to have a designer come out and make a
555 statement to give to Mr. Landry. If he was forced to put in a whole new system and it was going to cost
556 thousands of dollars then it might be different. Mr. Neuwirt said that he does not know why that step is
557 necessary when there is a septic plan on file that is approved by the State for five bedrooms and there is
558 an applicant that says that he is not adding any bedrooms. Mr. Platt said that it is for a single family
559 house. Chairman Frothingham said that it is going from a single family to a two family. Mr. Neuwirt said
560 that is where Mr. Landry's argument is coming from and he has produced a witness who says that it is by
561 dwelling unit and not necessarily the number of bedrooms. Chairman Frothingham said that the septic
562 designer would come back with a yes or no. Vice Chair Schneider said that there have been two
563 separate designers that have said it, Mr. Gamsby and Mr. Bedard. Mr. Larrow said that he is going back
564 to what 7.10 says.

565 Vice Chair Schneider said that moving on to the fees, he feels that the Board does not set fees, they
566 never discuss the fees and in the past if a fee abatement has been appropriate it has been brought to
567 the Selectboard. It does seem a bit onerous that Mr. Landry said that he would charge an after the fact
568 fee for fees that were owed by the previous owner as it doesn't seem fair. Chairman Frothingham said
569 that the applicant has a recourse to go to the Board of Selectmen and get that addressed by them.
570 Chairman Frothingham continued that the Board does not set fees and asked if they have the right to
571 change them. Mr. Larrow agreed and said that it should not be a secret as to how the fee gets from
572 \$50.00 to something else as it is cut and dry. Chairman Frothingham said that there is a fee schedule.
573 Mr. Larrow continued that it is not the Board's decision one way or another and is not Mr. Landry's.

574 Mr. Neuwirt asked Vice Chair Stanley if his position is that it is not fair to ask Mr. Aldrich to pay for
575 improvements that he had no control over. Vice Chair Stanley said that he is saying that as a personal
576 opinion but he does not think that the Board should address that. There is an appeal process with the
577 Board of Selectmen. Mr. Platt said that it is almost universal around here that if a Board wants to waive
578 a fee it has to be approved by the Board of Selectmen, though the Board can make a recommendation
579 to the Board of Selectmen.

580 Mr. Platt made a motion to approve the request for the waiver of the fees by the applicant.

581 Vice Chair Schneider made a motion to approve the rehearing of the administrative appeal for Case #14-
582 13, Dustin Aldrich, 112A Sargent Rd. Attorney Whitley clarified a vote in favor of this motion would
583 overturn Mr. Landry's request that the applicant comply with Section 7.10. Vice Chair Stanley said that
584 it would overturn the denial of the appeal the Board acted upon at a previous meeting. Vice Chair
585 Stanley said that the effect of the motion would be to uphold Mr. Landry's request for further
586 information before issuing a building permit and also would not make judgement on the fees that he has
587 indicated to be paid. Attorney Whitley suggested an alternative motion as he thinks that the Board is
588 sitting in its capacity to rehear the application that was already before it and already decided. In that
589 capacity, the motion should focus on the underlying issue of, does Mr. Landry have the ability to require

590 compliance with Section 7.10 and to require additional fees from the applicant. Attorney Whitley
591 continued that a vote in favor of this motion would overturn Mr. Landry's decision and a vote against
592 the motion supports the interpretation that Mr. Landry arrived at. Vice Chair Schneider said that this
593 rehearing also has a separate case number and is Case #15-02, Parcel ID: 0218-0061-0000.

594 Vice Chair Schneider said that he makes a motion to approve the administrative appeal on Case #14-13,
595 thus overturning Mr. Landry's requirement for compliance with Section 7.10 of the Zoning Ordinance
596 and overturning Mr. Landry's requirement that the applicant pay additional permit fees for the
597 improvements at the property for Case #15-02, Parcel ID: 0218-0061-0000. Mr. Larrow seconded the
598 motion. The motion failed unanimously.

599 **CASE #15-06: PARCEL ID: 0118-0019-0000: SEEKING A VARIANCE OF ARTICLE III, SECTION 3.40-C TO**
600 **REDUCE LAKEFRONT SETBACK FROM 50' TO 14' TO REPLACE A PRE-EXISTING, NON-CONFORMING**
601 **HOME (PRESENTLY 12' FROM LAKE), NO CHANGE IN SIZE OF FOOTPRINT. 28 MARYS ROAD, GILBERT &**
602 **ANNE WATKINS.**

603 Mr. Platt recused himself because he has done some surveying of the property.

604 Vice Chair Schneider made a motion to appoint George Neuwirt as a voting member. Mr. Larrow
605 seconded the motion. The motion passed unanimously.

606 Mr. Landry said that he did receive all of the green cards back.

607 Pierre Bedard presented the case on behalf of the applicants.

608 Mr. Simpson asked and Mr. Bedard confirmed that it would be easier to hear the evidence on both cases
609 at the same time and then the Board will vote on both separately.

610 Mr. Bedard explained that the existing dwelling is being replaced and moved 2' back further from the
611 pond so it will not be in the same footprint. The part that is being extended is outside the 50'
612 waterfront buffer. All the decks will remain over existing impermeable surfaces. Mr. Larrow asked and
613 Mr. Bedard confirmed that the part that is being extended is going towards Marys Road. The building is
614 a little longer but that part is beyond the waterfront buffer and the front of the building closest to the
615 pond is being move back 2'.

616 Vice Chair Schneider said that the notice of the case says that there is no change in footprint and asked
617 if this is incorrect. Mr. Landry said that there is no change in footprint that is within the 50' setback.
618 Vice Chair Schneider said that it does not say that.

619 Mr. Simpson asked and Mr. Bedard confirmed that there is a preexisting deck. Mr. Simpson asked if the
620 deck is shown on the proposed drawing.

621 Mr. Larrow said that when he read the application he thought that it was right on the original footprint
622 but there were no changes and what is meant is that they will still be using the footprint by the pond so
623 there will be 2' in the front that will not be used. Mr. Simpson asked and Mr. Bedard confirmed that

624 everything will be moved back 2'. Chairman Frothingham asked and Mr. Bedard explained that it is
625 being moved back but the part in the back beyond the 50' is being extended. Vice Chair Schneider said
626 that the request is incorrect because it says no change in size of footprint and should say no change in
627 size of footprint within the 50' buffer. Mr. Simpson said that if he is only doing the lakefront setback
628 that it is all that the Board asks for.

629 Vice Chair Schneider asked Mr. Bedard why they are moving the house back as there is quite a ledge
630 there and there is a slope and the house is wedged against it. The ground abuts the house above the
631 foundation. Mr. Bedard said that with the design they want to move it back, partly to keep the access
632 stairs that will come off the over existing impermeable surfaces. Otherwise, it would have been closer
633 to the lake or over permeable surfaces. Vice Chair Schneider asked what will be done about the slope
634 and Mr. Bedard said that it will be cut back and trees outside the 50' will be cut. Mr. Simpson asked if it
635 is the north side against the house. Mr. Neuwirt asked if the house is getting wider and it was explained
636 that it is not getting wider, but it is getting deeper and going more into the slope. Mr. Neuwirt asked
637 how much deeper the house is getting and Mr. Bedard said 2'. Mr. Simpson noted that the house is
638 getting 4' longer in the back and 2' shorter in the front. Mr. Landry asked what the length of the new
639 house is. Mr. Neuwirt said that the length of the house is 36' and the deck is 9' 8". Mr. Landry said that
640 the assessing file shows the house at 34' and the deck at 9'. Mr. Landry said that the part that is not in
641 the original footprint is outside the 50' setback.

642 Mr. Bedard said that there are letters from two abutters. Chairman Frothingham read the letter of
643 support from Christopher and Holly Leonard of 26 Marys Rd into the record (see attached). Chairman
644 Frothingham read the letter of support from Peter and Sean Platt into the record (see attached).

645 Vice Chair Stanley asked about a DES Shoreland Permit and Mr. Bedard said that it has been granted and
646 he submitted it as part of the application.

647 Mr. Simpson said that the application says that moving the structure 2' from the waterfront is the least
648 impact for all purposes and moving the structure further back was not practical as there would have
649 been more disturbance in the Shoreland Zone. Mr. Bedard explained he thinks this creates less impact
650 as with the amount of impact that there would have been by moving the house back closer to the road
651 to try and meet the setback requirements or building it in kind over the same footprint. Mr. Simpson
652 asked why that would have had impact. Mr. Bedard said that he thinks it is better moving it away from
653 the pond and part is the existing grades that they would have had to deal with. Mr. Neuwirt said that it
654 is really kind of subjective when you look at the grades because whether they move the house back 2' or
655 6', if they move it back more the house will have to be higher. Mr. Simpson asked if they will be
656 increasing the grade that the house sits on or putting fill in and Mr. Bedard said that they are not, it is
657 going to start at the existing low point. Mr. Neuwirt said that the plans show the same grade for existing
658 and proposed.

659 Mr. Simpson asked how the storm water runoff is being improved. Mr. Bedard explained that they are
660 putting infiltration trenches along the eaves of the building. Mr. Simpson asked and Mr. Bedard
661 confirmed that currently there are no gutters or infiltration trenches. Mr. Simpson asked if this will be

662 like a French drain system. Mr. Bedard said that it is one of the ways that the State allows; in order to
663 mitigate the impermeable surfaces from a building, you either put gutters in and bring that to a dry well
664 or you put the infiltration trenches in that are more sophisticated than regular crushed stone. Mr.
665 Bedard explained the process of creating the infiltration trenches to the Board. There was further
666 discussion regarding this issue.

667 Vice Chair Schneider asked and Mr. Simpson confirmed that moving the house back does not require a
668 front setback variance.

669 Mr. Simpson asked and Mr. Bedard confirmed that they will be maintaining the existing driveway.

670 The Board asked Mr. Bedard to go through the criteria for a Variance.

671 Mr. Bedard said that the proposed use would not diminish surrounding property values because a new
672 structure will only enhance the value of surrounding properties.

673 Mr. Bedard said that granting the Variance would not be contrary to the public interest because the
674 existing, nonconforming structure, built in the 1940's, is approximately 12' from the reference line at its
675 closest point. It will be replaced and moved back away from the reference line to be approximately 14'
676 from the reference line within the existing impermeable footprint. Denial of the Variance would result
677 in unnecessary hardship per the following: the zoning restriction as applied to the property interferes
678 with the reasonable use of the property, considering the unique setting of the property in its
679 environment because the existing structure is within the waterfront buffer and is in need of repair or
680 replacement. Moving the structure 2' away from the waterfront buffer is the least impacting alternative
681 for this site. Moving the structure further back to meet the rule is not practical and would lead to more
682 disturbance within the Shoreland Zone. No fair and substantial relationship exists between the general
683 purposes of the zoning ordinance and the specific restrictions on the property because the existing,
684 nonconforming structure is allowed to be replaced in the same footprint. Moving the proposed
685 structure back makes it less nonconforming. The Variance would not injure the public or private rights
686 of others because the condition of the property will be improved, which will have a positive effect on
687 the neighborhood.

688 Mr. Bedard said that granting the Variance would do substantial justice because the existing cottage is
689 over 60 years old, some form of work needs to be done to it and replacing it with modern construction
690 materials and methods would reduce the need for more frequent maintenance and disturbance within
691 the waterfront buffer.

692 Mr. Bedard said that the use is not contrary to the spirit of the ordinance because replacing this
693 nonconforming structure will make the proposed structure less nonconforming, improve storm water
694 runoff and contribute to the improvement of the neighborhood.

695 Mr. Simpson made a motion to approve Case #15-06, Parcel ID: 0118-0019-0000, seeking a Variance of
696 Article III, Section 3.40-c to reduce lakefront setback from 50' to 14' to replace a pre-existing, non-
697 conforming home (presently 12' from lake), no change in size of footprint within the 50' Shoreland

698 buffer at 28 Marys Road, Gilbert and Anne Watkins, subject to the DES Permit #2015-00262. Mr.
699 Neuwirt seconded the motion. The motion passed unanimously.

700 **CASE #15-07: PARCEL ID: 0118-0019-0000: SEEKING A VARIANCE OF ARTICLE VI, SECTION 6.12 TO**
701 **REDUCE A PRE-EXISTING, NON-CONFORMING HOME AND INCREASING HEIGHT FROM 24' TO 30'. 28**
702 **MARYS ROAD, GILBERT & ANNE WATKINS.**

703 Vice Chair Schneider asked why this needs a Variance. Mr. Simpson explained it is because the
704 applicants are seeking to modify a preexisting, nonconforming structure. Vice Chair Schneider said that
705 he is looking at Section 3.50-I on page 11. Mr. Landry said that the structure cannot be higher than 24'
706 and they are going higher than 24'. Vice Chair Schneider said that it says that the existing structure
707 cannot be higher than 24'. Mr. Simpson said that he brought this up a couple of meetings ago that they
708 cannot grant a Variance on Special Exception criteria because it is the criteria used to grant the Special
709 Exception. Vice Chair Schneider said that he knows that and asked why this should not be a Special
710 Exception rather than a Variance. Mr. Bedard said that he is asking for a Variance of Article VI, Section
711 6.12 – Restoration and Reconstruction. Mr. Landry said that he and Mr. Bedard talked and Mr. Landry
712 recommended Mr. Bedard come in for a Variance because it says that restoration or reconstruction of a
713 nonconforming structure, which this is “existing at the time of the passage of this Ordinance may be
714 replaced on the same or a smaller footprint and having the same or lower height by a new structure”. In
715 this case, they are going to a higher unit so, as a result, he has to get a Variance of Article VI, Section
716 6.12.

717 Mr. Simpson said that Mr. Landry just raised an issue with the same or smaller footprint. Mr. Landry
718 said that it is the same within the lakefront setback. Vice Chair Schneider and Mr. Simpson said that it is
719 a larger footprint. Mr. Landry said that the applicant can go as big as he wants outside the 50' as long as
720 he does not exceed the density of the lot. Vice Chair Schneider said that the Article does not say that.
721 Mr. Landry said that this Article is talking about a nonconforming structure, which this is, but outside the
722 50' it is not nonconforming.

723 Mr. Landry said that on Page 7 it says that if a structure is allowed a reduced side or rear setback due to
724 inadequate lot size, the portion of the structure in the area of reduced setback shall have a maximum
725 height of 25'. If the Board does not like to give a Variance on Article VI, Section 6.12, they could change
726 it to Article III, Section 3.10. Mr. Simpson said that they could grant a Variance on both the footprint
727 and the height. Mr. Landry said that the last time this came up Mr. Platt suggested and the Board
728 agreed to grant a Variance on 6.12. Mr. Simpson said that if you read the whole definition of 6.12,
729 essentially you are asking for a Variance on both criteria in 6.12, the footprint and the height. Mr.
730 Simpson asked and Mr. Landry confirmed that it is a nonconforming lot and a nonconforming structure.
731 Mr. Landry said that he disagrees with Mr. Simpson on the footprint because he does not believe that he
732 is increasing the footprint within the setback. The increase is beyond the 50' and has nothing to do with
733 this Article which has to do with nonconforming, preexisting structures in the 50' because that is the
734 only setback they are dealing with. Vice Chair Schneider said that it does not say that. There was
735 further discussion regarding this matter.

736 Mr. Simpson asked Mr. Bedard where the four places regarding height are in the Zoning Ordinances.
737 Mr. Bedard said that there is a place mentioning eaves will be no higher than 30', which he believes is
738 for a conforming structure. There is the 10' in the Special Exceptions. There is another reference to 25'
739 and then a 24' reference.

740 Vice Chair Schneider said that he still thinks that this falls under Section 3.50-i. Mr. Landry said that if
741 the Board would like to hear it as a Special Exception they can because it has a lesser impact than a
742 Variance.

743 Vice Chair Schneider said that page 7 does not apply because it says if a structure is allowed a reduced
744 side or rear setback and this is not being allowed a reduced side or rear setback. Mr. Landry said that
745 waterfront is considered a rear setback.

746 Mr. Simpson said that the problem with the Special Exception is that it says that "such enlargement or
747 replacement will not increase the horizontal dimensions unless such horizontal increase would ordinarily
748 be permitted" and he thinks that they could have gone towards the road.

749 Mr. Larrow said that he would not have a problem changing it to the Special Exception if that better
750 applies.

751 Mr. Simpson said that it is a bigger footprint and does not think it is something that can be ignored.

752 Mr. Simpson said that the Board should see if it qualifies for a Special Exception.

753 Mr. Simpson asked and Mr. Bedard said that the existing height is 20'. Chairman Frothingham said that
754 the application says that the structure is 24' high. Mr. Simpson asked how this qualifies the application
755 for a Special Exception as the criterion is that the existing structure is less than 24'. Mr. Bedard said that
756 the existing slab elevation is 1085 and the existing ridge is 1105, which is 20' so the application and
757 notice is incorrect as it says 24' to 30'. The finished grade in the back is going up. Mr. Landry said that
758 he can raise the grade in the back if he wants as they measure from the lowest grade, as of last year.
759 Mr. Neuwirt said that the lowest grade is 1083.9, which stays the same and then if you look at the plan it
760 shows the roof peak at 1115.6 which measures out to 31.7'. Mr. Neuwirt said that the house is being
761 raised exactly 10'. Mr. Bedard asked if he is measuring from the existing grade or the slab elevation and
762 Mr. Neuwirt said from the existing grade. Mr. Landry said that the Zoning Ordinance says from the
763 lowest finished grade. Mr. Simpson read the Ordinance that says "lowest ground elevation around the
764 structure to the highest level of the roof" and asked if the height is more than 30'. Mr. Neuwirt said that
765 he has the proposed finish at 31.7' and it is being raised exactly 10'. Mr. Simpson said that they meet
766 that criteria.

767 Mr. Simpson continued with the criteria for a Special Exception and asked if any roof changes are within
768 the height adjustments set forth in the Ordinance. Mr. Landry said that if they are within the 50'
769 setback they are limited to 25' according to page 7. Mr. Landry said that this is why he thought that 6.12
770 is the best one for this case. There was another discussion as to whether this is a bigger footprint or not
771 and that they are increasing the vertical non-conformity, not the horizontal.

772 Mr. Larrow made a motion that Case #15-07, Parcel ID: 0118-0019-0000, seeking a Variance of Article VI,
773 Section 6.12 to reduce a pre-existing, nonconforming home and increasing height from existing height to
774 30', 28 Marys Road, Gilbert and Anne Watkins per the Shoreland Permit #2015-00262, dated February
775 22, 2015. George Neuwirt seconded the motion. The motion passed with four in favor and one
776 opposed.

777 **MINUTES**

778 Changes to the minutes from the March 24, 2015 Zoning Board Meeting:

779 Mr. Larrow made a motion to approve the March 24th minutes as written. Mr. Neuwirt seconded the
780 motion. The motion passed with three in favor and two abstentions.

781 Mr. Larrow made a motion to adjourn at 9:39 pm. Mr. Simpson seconded the motion. The motion
782 passed unanimously.

783 Respectfully submitted,

784 Melissa Pollari

785

786 _____

787 Edward Frothingham

Aaron Simpson

788 _____

789 Clayton Platt

Daniel Schneider

790 _____

791 William Larrow

George Neuwirt, Alternate