

1 **TOWN OF SUNAPEE**

2 **ZONING BOARD**

3 **APRIL 9, 2015**

4 **PRESENT:** Edward Frothingham, Chair; Clayton Platt; Aaron Simpson; George Neuwirt, Alternate; Roger
5 Landry, Zoning Administrator

6 **ABSENT:** Daniel Schneider, Vice-chair; William Larrow

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

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

9 Aaron Simpson made a motion to appoint George Neuwirt as a voting member. Clayton Platt seconded
10 the motion. The motion passed unanimously.

11 Chairman Frothingham explained that they only have four voting members for the meeting so the
12 applicants have the opportunity to continue their cases for a month, however, if the applicants decide to
13 go forward, they will need three out of four votes.

14 **MINUTES**

15 Changes to the minutes from the April 9, 2015 Zoning Board Meeting: Change Line 70 to read
16 "...deadline on service in order to serve a member of..." Change Line 89 to read "...the context of change
17 of use..." Change Line 90 to read "In other contexts it seems..." Change Line 94 to read "...Dick De
18 Seve..." Change Line 98 to read "...to a two family and it is..." Change Line 101 to read "...evidence that
19 he has to support it is..." Change Line 111 to read "...leads to looking behind..." Change Line 114 to read
20 "...to have a septic..." Change Line 117 to read "...necessarily onerous and he thinks..." Change Line 120
21 to read "...the request was for a certification..." Change Line 140 to read "...said that that is a good
22 question..." Change Line 154 to read "...talking to DES. It..." Change Line 183 to read "Attorney Durbin
23 continued that..." Change Line 196 to read "...should be stricken from the building permit..." Change
24 Line 250 to 251 to read "...Mr. Landry waive the fees or reduce them..." Change Line 251 to read
25 "...suggest to his colleagues..." Change Line 255 to 256 to read "...had completed the application..."
26 Change Line 258 to read "...predecessors and it is their responsibility." Change Line 261 to read "...and
27 Mr. Aldrich have been..." Change Line 374 to read "...is that what he is saying..." Change Line 425 to 426
28 to read "Chairman Frothingham asked..." Change Line 430 to read "Chairman Frothingham asked..."
29 Change Line 574 to read "...Vice Chair Schneider if his..." Change Line 575 to read "Vice Chair Schneider
30 said that..." Change Line 583 to read "Vice Chair Schneider said that..." Change Line 584 to 585 to read
31 "Vice Chair Schneider said that..." Change Line 754 to read "...that the structure is..."

32 Clayton Platt made a motion to accept the minutes of April 9th as amended. Aaron Simpson seconded
33 the motion. The motion passed unanimously.

34 **CASE #15-08: PARCEL ID: 0117-0015-0000: SEEKING A VARIANCE OF ARTICLE III, SECTION 3.40-C TO**
35 **ALLOW A PRE-EXISTING, NON-CONFORMING STRUCTURE TO BE REBUILT IN THE SAME FOOTPRINT**
36 **WITH AN ADDITIONAL 118 SQ FT RAISED DECK. 116 MARYS RD, CATHERINE PRIEST.**

37 **CASE #15-09: PARCEL ID: 0117-0015-0000: SEEKING A VARIANCE AS PER ARTICLE VI, SECTION 6.12 TO**
38 **REPLACE A PRE-EXISTING, NON-CONFORMING STRUCTURE WITH A NEW STRUCTURE HAVING A**
39 **HIGHER ROOF LINE. 116 MARYS RD, CATHERINE PRIEST.**

40 **CASE #15-10: PARCEL ID: 0117-0015-0000: SEEKING A VARIANCE OF ARTICLE III, SECTION 3.10 TO**
41 **REDUCE A ROAD FRONT SETBACK FROM 50 FT TO 33 FT TO ALLOW CONSTRUCTION OF A GARAGE**
42 **AND HOME REPLACEMENT. 116 MARYS RD, CATHERINE PRIEST.**

43 Chairman Frothingham asked and the applicants agreed to continue with only four Board members.

44 Chairman Frothingham asked and the Board agreed to open all three cases and to hear them all at once
45 and then vote on each individual case.

46 Brian Vincent of CLD Engineers, Charlie Hirshberg of CLD Engineers, Doug Gamsby of CLD Engineers, and
47 Dave Sullivan, a builder, presented the case on behalf of the applicant. Mr. Vincent gave the Board
48 some handouts for their review.

49 Mr. Vincent explained that this lot was in existence before the current Zoning regulations, including the
50 waterfront setback requirement of 50 ft as well as the 50 ft front setback. The existing house is in
51 compliance with the side setbacks that are in place.

52 Mr. Vincent said that the proposed house is trying to mimic the existing house as far as the lakefront
53 encroachment. There is an existing porch and the proposed house will extend into that area. On the
54 roadside, however, there is a proposed garage as well as an extension of the house into the roadside
55 setback.

56 Mr. Vincent said that the proposed garage is a 24 ft by 24 ft structure. The proposed house is a two
57 story, three bedroom structure with a shed roof on the lake side. The proposal also includes a porous
58 paved driveway that is dedicated to this lot as it was previously serviced by a shared driveway with the
59 abutter to the South. Mr. Hirshberg explained that the current driveway is quite steep and there is a lot
60 of runoff that goes down to the site and towards the pond. Mr. Vincent said that the proposed driveway
61 is coming off an existing turn around / loop off of Marys Rd. The driveway will be much higher than the
62 existing driveway to meet the proposed garage at that grade so it will be easier for vehicles to get onto
63 Marys Rd.

64 Mr. Vincent said that for drainage there are proposed drip edges around the majority of the garage and
65 the house which would go to drywells or stone reservoirs located on the east side of the building. Mr.
66 Hirshberg said that they do have a State Shoreland Permit and plan that shows the drainage features.
67 There was further explanation regarding the drainage.

68 Mr. Vincent said that the challenge with this is to try and build a house that is up to today's standards
69 and codes and to build a three bedroom house and not encroach on the boundaries. Their goal was to
70 minimize the encroachment on the pond side and they have not created any new living space within
71 that area, though they do have a proposed deck that wraps around into that area, which is also the
72 second egress.

73 Mr. Vincent said that with the garage they had to expand more onto the road front setback. Marys Rd is
74 a private road and is on the property, it actually bisects the property. Mr. Simpson asked if the Town
75 required that owners sign over an easement to the Town in order to maintain the sewer line. Mr. Platt
76 said that it is still considered an emergency lane and the Town's only requirement is to maintain it in a
77 passable condition. Mr. Hirshberg said that he does not know if it even has a defined width to the road.
78 Mr. Vincent continued that there is more land on the west side of Marys Rd and that was calculated in
79 the lot calculations.

80 Mr. Vincent said that in reviewing the neighborhood they recognize that what they are proposing is
81 consistent in terms of height and footprint as to other the houses around there. Mr. Hirshberg said that
82 what they have found is that the houses are either right on the water or right on the road and none of
83 the lots are huge. If you look at the buildable area between the road setback and the lake setback then
84 it is not a lot of area.

85 Mr. Vincent said that there is a 30 ft 2 in elevation difference between the lowest level on the pond side
86 and the roof height. The land slopes down towards the pond and they are trying to have a relatively
87 level driveway coming to the garage and then tie into the first floor. They will also have a basement and
88 a second floor and by the time that they get to the east side of the house it reaches the 30 ft. Mr.
89 Simpson asked and it was explained that they will be going from two bedrooms to three and that they
90 currently have a fieldstone foundation and they will be going to a walkout basement. Mr. Hirshberg said
91 that right now if you drive up to the house the roof sits almost below the road and from the road side it
92 will not be sticking up that much; from the pond side is where you have the highest projection. If you
93 look at the house next door it is more on a flatter section and is a very tall house all the way around.

94 Mr. Sullivan explained that by putting in the foundation and the grade it helps the runoff from the road
95 and the land across the street. Mr. Platt said that if it was 10 ft change in elevation it would qualify for a
96 Special Exception. Mr. Hirshberg agreed that if it was just 10 ft and not the 12 ft then he believes that it
97 would.

98 Mr. Simpson asked what the change in grade is between the road elevation to the back of the house.
99 Mr. Hirshberg said that the road is fairly sloped from one side of the property to the other. Mr. Neuwirt
100 said that it looks to be about 15 ft. Mr. Hirshberg said that from one side of the property to the other it
101 is about a 10 ft change in elevation just along the road itself.

102 Mr. Hirshberg said that when you look at it on paper the lot looks big enough but when you get to the
103 lot you see that it is a lot smaller.

104 Mr. Simpson asked if they know what the ground slope is and it was explained that it is in the range of
105 about 20% if you look at the house from the road side. The left hand side is fairly steep but on the right
106 hand side it is a series of stone walls. Mr. Simpson said that the reason that he asks is because the
107 Town's regulations require an erosion control plan for anything over 15%. Mr. Hirshberg said that they
108 do have an erosion control plan on the State Shoreland Plan.

109 Mr. Simpson asked if they are putting stone walls in or if there are already stone walls on the property.
110 Mr. Vincent said that there are existing stone walls.

111 Mr. Platt asked about the stairs off the side of the proposed deck and it was explained that there is no
112 access from the deck to the ground. Mr. Simpson asked them to indicate on the submitted plans that
113 there will not be a staircase as drawn.

114 Mr. Neuwirt asked and Mr. Hirshberg confirmed that the State found the deck within the 50 ft setback
115 to be acceptable.

116 Mr. Simpson asked and it was explained that the height of 30 ft is measured from the lowest part of the
117 lot, which is on the pond edge. Mr. Platt asked and it was confirmed that the 30 ft was measured to the
118 peak.

119 Mr. Platt said that he is concerned about the deck, especially as with the sewer they are going to be
120 getting more requests. Mr. Platt said that he questions whether there is a hardship and if this lot is any
121 different from other lots in the area and he does not feel as though it is as many of the lots are the same
122 size and have slopes. Mr. Vincent said that they did look at the road edge verses the lake edge in the
123 area and this happens to be one lot where the distance between the road and the pond is narrow
124 compared to abutters. Mr. Gamsby showed the Board the tax map showing the area lots. Mr.
125 Hirshberg said that the other thing relative to the depth is that in this case they are not going any closer
126 to the pond than the current projection of the house. Mr. Simpson asked and Mr. Hirshberg agreed that
127 they will be making it more non-conforming within the 50 ft.

128 Mr. Simpson asked about the size of the lot and Mr. Hirshberg said that it is 0.34 acres, or about 19,000
129 sq ft, including the road.

130 Mr. Platt said that looking at the application it basically says that the unnecessary hardship is that
131 everything else they are doing complies with Zoning. Mr. Platt asked if this constitutes a hardship
132 because anyone could come in with the same argument and say that they mostly conforming to the
133 Zoning but that they are not. Dundee Nestler said that it is for a second egress from the second story.
134 Mr. Platt said that they do not have in the application that they need the deck for safety and egress from
135 the second story. Mr. Sullivan said that another reason they have the proposed deck is because the
136 owners would like to retire and live in the house and enjoy the pond. Mr. Simpson asked why they
137 could not put the deck back behind the garage. Mr. Sullivan said that they only have so much on the lot
138 where they can build and everything was cutting it close. Mr. Neuwirt said that they are now getting
139 into redesign elements and he is not sure that that is the Board's place. Mr. Simpson said that there is a
140 hardship issue and the owners want to enjoy their view outside the house and there are places on the

141 property that they could build on the property that are accessible and outside the 50 ft setback. Mr.
142 Neuwirt said that he does not believe the Board can get into design aspects about how something can
143 be more conforming than it has been presented. He thinks that it is the Board's responsibility to rule on
144 how it has been presented, not make suggestions about how to make it better. Mr. Simpson said that
145 he was looking for them to say that they can't build there because it is ledge or something, which would
146 mean that it would be a hardship. He is trying to understand why they are using space in the setback
147 when they could maybe use space outside the setback.

148 Mr. Neuwirt said that he thinks that it is strange that they have a project before them that requires
149 three Variances. Mr. Neuwirt continued by asking why the roof height can't be 2 ft lower to conform.
150 Mr. Platt agreed with Mr. Neuwirt and said that they could have designed it to be able to get a Special
151 Exception. Mr. Sullivan said that everything on the house is tight with a small lot and a small house and
152 was designed in order to get it to code with a nice set of stairs with the head room to get to the second
153 floor. Mr. Neuwirt said that he does not know why during the design process the roof could not have
154 been made two feet lower; there are a lot of different ways that this could have been cheated so that
155 they could have at least achieved something respectful of the Zoning Ordinance, which would mean no
156 more than 12 ft on a non-conforming structure. There was further discussion by the Board about this
157 issue.

158 Mr. Neuwirt said that looking at the project, it looks reasonable to him. They are only increasing the
159 pervious calculations by three to four percent. It just seems like the general air of the application is that
160 they designed what they wanted and want to try to get it through. Mr. Platt said that the deck could be
161 smaller to provide egress from the house. Mr. Sullivan said that to get the stairs in was not an easy
162 thing to do and to architecturally change it would be difficult. Mr. Sullivan gave more explanation about
163 this matter. Mr. Hirshberg said that the house is very narrow and that there is not a lot of depth to it.
164 Mr. Neuwirt said that the ridge doesn't have to be centered and there are ways to make this happen.
165 There was further discussion about the roof height and design of the house.

166 Mr. Vincent said that the lot was created prior to the Zoning Ordinance so trying to meet the Ordinances
167 is a challenge.

168 Mr. Platt said that with the definition of the road front setback, he does not know if they need a road
169 front setback. Mr. Hirshberg said that they questioned that as there isn't even a right of way but Mr.
170 Landry advised them to go with the standard setback off the centerline. Mr. Platt said that the setback
171 is for State and Town maintained roads and all roads meeting Town specifications. Mr. Hirshberg said
172 that it is a partially Town maintained road for winter emergencies.

173 Mr. Hirshberg asked and the Board confirmed that there have been people coming to the Town for road
174 front setbacks off Marys Rd.

175 Mr. Platt asked if there was a reason that the house could not have been pulled back a little bit to keep
176 the square footage the same. Mr. Sullivan explained that they tried to work with the same footprint,
177 especially as it is a small lot. They opted for a smaller sized, 24 ft x 24 ft, garage after discussion with
178 Mr. Landry.

179 Mr. Simpson asked and Mr. Hirshberg said that the minimum lot size in the Rural Residential Zone is 1.5
180 acres.

181 Mr. Neuwirt asked what the elevation is for the new proposed driveway compared to the road as it
182 appears as though the entrance to the garage is about 1.5 ft lower than the road. Mr. Hirshberg
183 confirmed this. Mr. Sullivan said that the big thing with that is trying to find the happy medium to
184 protect the pond and catch what is coming down from the road.

185 Mr. Sullivan said that another reason they are looking for the Variance is because according to the rules
186 they have to measure from the lowest point on the lot and that one area is low. Mr. Platt said that the
187 topo looks pretty consistent in the south side. Mr. Hirshberg said that the house is down in a hole and
188 the other end of the lot has quite an elevation difference.

189 Mr. Simpson asked if there was anyone in the audience with comments or questions. Chairman
190 Frothingham suggested talking about the third Variance before asking for comments or questions.

191 Mr. Platt said that he does not have an issue with the third request based on other lots and houses. Mr.
192 Neuwirt said that he does not either. Mr. Hirshberg said that being up closer to the road creates less
193 drainage issues and less erosion than the current driveway that is there. Mr. Sullivan said that he thinks
194 that this is a nice location as they can back out and see into the road before going into it.

195 Mr. Simpson asked if they will be adding a lot of fill and Mr. Vincent said that there will be fill for the
196 driveway and the garage.

197 Chairman Frothingham asked if there were any other comments before the Board closed the discussion
198 to public comments.

199 Tanner Royce of Ryder Corner Rd and a Planning Board member said that the 10 ft high restriction was
200 something that was recently voted in as it used to read "story" and they felt as though it should be
201 clarified with a specific height allowance on pre-existing, non-conforming structures. Mr. Simpson said
202 that he thinks that this change was made for Special Exceptions and is not binding on this.

203 Chairman Frothingham closed the meeting to public comments.

204 Mr. Simpson said that he looked at the non-conforming structures regulations and you can replace a
205 pre-existing structure with something that does not increase the horizontal or vertical dimensions and in
206 this case they are getting asked for Variances for both directions. The Board does have language that
207 suggests that 10 ft is what is granted with a Special Exception and he wonders why it could not have
208 been designed a little differently to be more in accordance with the Ordinance. There is already a deck
209 back by the garage that could have been a bigger deck and would be more conforming. Mr. Simpson
210 said that he is having a hard time deciding that these are hardship issues and not design issues. Mr.
211 Neuwirt said that none of these are deal breakers. Mr. Platt said that these arguments could be made
212 on every single lot on Perkins Pond and this is why they have the rules. He would rather see things
213 closer to the road than expanded towards the lake. Mr. Simpson said that nothing is becoming less non-
214 conforming.

215 Clayton Platt made a motion to approve Case #15-08: Parcel ID: 0117-0015-0000, seeking a Variance to
216 replace a pre-existing, non-conforming structure with a new non-conforming structure and deck as
217 presented, Article III, Section 3.40-c. George Neuwirt seconded the motion. The motion failed
218 unanimously.

219 Aaron Simpson made a motion to approve Case #15-09: Parcel ID: 0117-0015-0000, seeking a Variance
220 as per Article VI, Section 6.12 to replace a pre-existing, non-conforming structure with a new structure
221 having a 12 ft higher roof line, 116 Marys Rd, Catherine Priest. George Neuwirt seconded the motion.
222 The motion failed unanimously.

223 Aaron Simpson made a motion to approve Case #15-10: Parcel ID: 0117-0015-0000, seeking a Variance
224 of Article III, Section 3.10 to reduce road front setback from 50 ft to 33 ft to allow construction of a
225 garage and home replacement, 116 Marys Rd, Catherine Priest. Clayton Platt seconded the motion. The
226 motion passed with three in favor and one opposed.

227 Mr. Hirshberg asked for clarification if they come back to the Board and stay within the footprint on the
228 waterside, not having the deck, would they be coming back for Section 3.40-c. Mr. Simpson said that it
229 is up to them whether they come back for a Special Exception or another Variance. Mr. Hirshberg asked
230 if they can't get the house out of the 50 ft setback then do they need to come back for a Variance. Mr.
231 Simpson said not if it is in the same location but they cannot go horizontally or vertically up. Mr.
232 Hirshberg said that they would be going up. Mr. Simpson said that they would need a Variance or
233 Special Exception. Mr. Hirshberg asked and Mr. Platt said that he thinks that if the square footage
234 within the 50 ft is the same or less than what it is now they do not need a Variance as it is less non-
235 conforming. Mr. Royce said that any change in footprint within 50 ft requires a Variance. There was a
236 discussion about the driveway and the road and the height of the structure. Mr. Simpson said that he
237 wants the proposal to be less non-conforming. Mr. Simpson said that if they meet all of the criteria of a
238 Special Exception, the Board has to approve it. There was another discussion about the height of the
239 structure as they are only building the house 10 ft bigger and where to measure the height of the house.

240 **MISCELLANEOUS: PARCEL ID: 0218-0061-0000: REVIEW REQUEST FOR RECONSIDERATION OF THE**
241 **ZBA DECISION OF A REHEARING OF APRIL 9, 2015. DUSTIN ALDRICH, 112 A SARGENT RD.**

242 Mr. Simpson recused himself from the case.

243 Chairman Frothingham gave the Board a copy of an email from the person at DES, Dick De Seve, who
244 had written an email to Attorney Durbin. He also gave them a copy of an email with advice from Town
245 Counsel. There was a discussion whether the correspondence from Town Counsel falls under Attorney /
246 Client privilege or should be part of the record. The Board determined that they would make the
247 correspondence part of the record.

248 Clayton Platt made a motion to approve the request for appeal for Case #15-02, Parcel ID: 0218-0061-
249 0000, appeal to rehear the rehearing on the Zoning Board of Adjustment Denial on Case #14-13, Dustin
250 Aldrich, 112 A Sargent Rd. George Neuwirt seconded the motion. Mr. Platt said that he assumes that he
251 is asking for a rehearing of the rehearing. Chairman Frothingham said that Town Counsel has said to

252 vote to deny the request for a rehearing as Mr. Aldrich has not met his burden of showing that there is
253 good cause for such a rehearing. Mr. Neuwirt asked and Mr. Simpson explained that, procedurally,
254 making a motion to approve the rehearing is finding it appropriate and then the Board votes it up or
255 down. Mr. Platt asked what information Mr. Aldrich has for the Board that they have not heard before.
256 Mr. Neuwirt said and Chairman Frothingham agreed that the Board has no reason to sit and hear it
257 again. Mr. Platt asked if there is anything in Mr. Aldrich's letter that causes them to make a different
258 decision. Mr. Neuwirt said that the letter said that "the reason that there are grounds for a rehearing is
259 because the ZBA erred for the following reasons" and it is the same stuff; the Zoning Administrator
260 rejected the building permit and Mr. Landry's was estopped from subsequently rejecting it; by being
261 improperly influenced by the actions and representations of Mr. Landry and Attorney Spector; by failure
262 to give the plain meaning and intent of the language of Article 7.10 of the Zoning Ordinance; by failing to
263 interpret the word vonbrtdion consistently with DES Subsurface Regulations given the lack of definition
264 in the Zoning Ordinance, the ZBA was required as argued by Mr. Aldrich to look at the legislative history
265 behind the adoption of 7.10. Mr. Platt said that he does not see anything new. Mr. Neuwirt said that
266 two appraisals confirmed that there were six bedrooms and there is a State Statute on the amount of
267 septic flow per unit. Mr. Platt said that he has not been denied a building permit as all that they were
268 asked for was more information. The motion failed unanimously.

269 Clayton Platt made a motion to adjourn at 8:56 pm. George Neuwirt seconded the motion. The motion
270 passed unanimously.

271 Respectfully submitted,

272 Melissa Pollari

273

274 _____

275 Edward Frothingham

_____ Aaron Simpson

276 _____

277 Clayton Platt

_____ Daniel Schneider

278 _____

279 William Larrow

_____ George Neuwirt, Alternate