

1 **TOWN OF SUNAPEE**

2 **ZONING BOARD**

3 **OCTOBER 8, 2015**

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

6 **ABSENT:**

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

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

9 **CONTINUED: CASE #15-25: PARCEL ID: 0104-0001-0000: SEEKING A VARIANCE OF ARTICLE III**  
10 **SECTION 3.10 ALLOWING THE ADDITION OF ONE APARTMENT WHICH WOULD TOTAL THREE (3) UNITS**  
11 **ON A NON-CONFORMING LOT TOTALING APPROXIMATELY 13,000 SQ FT. 1040 MAIN ST, GEORGES**  
12 **MILLS, H. STETSON FLETCHER, III.**

13 Mr. Larrow recused himself as he did not hear the first part of the case.

14 Mr. Simpson made a motion to appoint Mr. Neuwirt as a voting member for this case. Chairman  
15 Frothingham seconded the motion. The motion passed unanimously.

16 Mr. H. Stetson Fletcher, III continued presenting the case.

17 Mr. Landry gave the Board copies of drawings that were recently submitted. Mr. Landry said that Mr.  
18 Fletcher purchased the property in 1999 and he checked the Zoning Regulations for that time and it was  
19 Zoned as District 1, which had been in existence since they adopted Zoning in 1987, with no changes  
20 during that time period. It did not define square footage per dwelling unit.

21 Mr. Simpson said that a question the Board had was whether the applicant was required to have a Site  
22 Plan Review for the office. Mr. Landry said that he went through the archives and there was never a Site  
23 Plan Review for the office. He spoke with Mr. Marquise who said that he thought the office went  
24 because there were two businesses conducted in the building before Mr. Fletcher purchased the  
25 building and they used the space as an office.

26 Mr. Simpson asked if they had a definition of a home business in 1999. Vice Chair Schneider said that he  
27 thought that they had established that this could not be a home business because the owner did not live  
28 on the property. Mr. Landry said that in 1999 there were regulations for home occupations but not  
29 home businesses.

30 Mr. Landry said that they did a subdivision two or three years ago, before the subdivision there was  
31 roughly .56 acres and after the subdivision the lots are roughly .25 acres each. Mr. Landry said that in  
32 regards to pre-existing, non-conformity, it is no longer pre-existing, it is just a non-conforming lot.

33 Mr. Landry said that Mr. Fletcher has changed his justification as far as the hardship and gave the Board  
34 copies of the new application.

35 Mr. Fletcher said that he was asked to get a plan to scale showing the parking spaces. He went to the  
36 Registry of Deeds and got a copy of the plan of the subdivision and then copied the portion that they are  
37 discussing and also added the scale from the plan.

38 Mr. Fletcher explained his reason that there is hardship in this case. He and his wife purchased the  
39 property in February of 1999. The regulations that they are talking about were put in place in March of  
40 1999 and when he was discussing the property with Mr. Marquise they discussed both regulations. Mr.  
41 Landry said that Mr. Fletcher is talking about the 1999 definition of District One, which is the same as  
42 from 1987. The property is now Zoned Village Commercial. Mr. Fletcher said that prior to signing the  
43 purchase and sales agreement he met with Mr. Marquise to explain the proposed uses of the building if  
44 their business needs changed. They discussed using the house in various combinations of office, retail,  
45 wholesale, and rental use, both residential and commercial. At the time the property was zoned District  
46 One and the purpose of District One was to “encourage concentrated areas of residential and  
47 commercial uses when public utilities and services are available and adequate. The area of Sunapee  
48 Harbor, Main St, Lower Village, and Georges Mills has historically been the primary high density areas of  
49 Sunapee. Dated March 1999.” Mr. Fletcher continued that at his meeting with Mr. Marquise he was  
50 told that all of the potential uses were approved. Over the years they have communicated with the  
51 Town whenever they were asked questions about their business. They have never lived at the property,  
52 they purchased it for its commercial benefits and have used it in numerous ways from office space with  
53 an apartment upstairs to the entire building being used as an office to a small office and residential  
54 rental of the remaining space. They would like to now have a residential rental upstairs, a residential  
55 rental downstairs, and the office space. This combination was approved in a meeting with Mr. Marquise  
56 in 1999. Mr. Simpson said that it was permitted under the Zoning Ordinance at the time. Mr. Landry  
57 said that it did not require Site Plan approval at the time, which is why they do not have anything in the  
58 archives. Mr. Fletcher said that the Zoning Board has caused them unnecessary hardship when the  
59 density requirement changed after they purchased the property. Now each dwelling unit must have the  
60 10,000 sq. ft. per unit as opposed to no requirement at all. This Zoning change causes him hardship  
61 because he is no longer able to rent three units as was initially the case when he purchased the District  
62 One property.

63 Vice Chair Schneider asked if, when Mr. Fletcher purchased the property in 1999, his intent was to have  
64 three rental units and he is just now getting around to do it. Mr. Fletcher said that he purchased the  
65 property with the intent that we was going to be the distributor of Blundstone Boots for the United  
66 States. He also knew he would have retail sales and that the business would either grow or reduce and  
67 he needed property within the commercial zone that would be able to expand and contract.

68 Vice Chair Schneider asked how, since Mr. Fletcher purchased the property in 1999, the Town of  
69 Sunapee has suddenly caused him hardship in 2015. Mr. Fletcher said that the changes have reduced  
70 the value and the use of the business, commercial, and rental income potential and / or resale value at  
71 1040 Main St. When he purchased the property he wanted to run a business in the community and did

72 due diligence in determining the Zoning. He tried to look at the different scenarios of the business being  
73 successful or not successful and explained all the options that he wanted to be able to do and based on  
74 the Zoning at that time he would have been able to do what he wanted. The reason for hardship is that  
75 when the Zoning changed to 10,000 sq. ft. per dwelling unit, the property is no longer able to do what it  
76 could do when he purchased it.

77 Mr. Neuwirt said that Mr. Fletcher's argument does not make sense because if there are changes to the  
78 Zoning Regulations that governs an expansion of a property, it means that the Townspeople are saying  
79 that they don't want to allow expansions in whatever fashion that people want. He does not think that  
80 it makes sense for Mr. Fletcher to use this argument as basically he is asking for another luxury. Mr.  
81 Neuwirt continued that he does not see how having three units instead of two is allowable based on the  
82 fact that the Town adopted a more stringent Ordinance in order to curb something that they saw did  
83 not have any boundaries. Mr. Fletcher said that he was originally told that he could expand and  
84 contract as he needed. Mr. Fletcher gave further explanation of what happened with his business and  
85 that he went to the Town with the different scenarios that he thought could happen before purchasing  
86 the property. The business has been bought out and he is no longer a distributor of the boots, however,  
87 they retained the website, catalog business, and tent sale, all of which are retail, and have contracted  
88 the space needed.

89 Mr. Platt said that when Mr. Fletcher spoke to Mr. Marquise in 1999 the property was roughly a half an  
90 acre and now it is a quarter of an acre. The property would have probably only supported two units  
91 with the current Zoning before the subdivision. The other lot has a business on it and now they are  
92 saying that they need to have another business as well as two residential units. Mr. Platt continued that  
93 the property has change and Mr. Fletcher talked to Mr. Marquise in 1999 and since then Zoning changed  
94 so the regulations and rules changed. Mr. Landry asked Mr. Platt if what he is saying that the  
95 subdivision negated everything. Chairman Frothingham said that he thinks that it did and he lost all  
96 grandfathering. Mr. Simpson said that he agrees with Mr. Platt. When Mr. Fletcher bought the property  
97 he had the ability to make certain uses of the property. The question that he had was if Mr. Fletcher  
98 was able to have an office without coming to the Board, and he believes the answer is yes. This is not  
99 the same property that Mr. Fletcher bought in 1999 as it was subdivided. Mr. Simpson continued that if  
100 they allow this argument then any property that has been owned since before 1987 could do this as  
101 well. Mr. Neuwirt said that changes to Zoning puts limits on things that were previously allowed.

102 Chairman Frothingham said that he thinks that the biggest thing is the subdivision that was granted a  
103 few years ago. He thinks that at that point Mr. Fletcher lost his grandfathering rights. Mr. Simpson said  
104 that Mr. Fletcher did not have three units in 1999. If he had three units at the time then that would  
105 have been grandfathered, the right to put in three units is not grandfathered.

106 Mr. Fletcher said that he did go to Mr. Marquise and explained the different scenarios. In order to keep  
107 the property he is trying to look at what is the best use of the property. He is not asking to do anything  
108 to the outside of the building, just to make changes to the inside. The property is on Town Water and  
109 Sewer and all of the neighbors have much less density than what he is proposing. Mr. Fletcher  
110 continued that he understands the argument that the Board is trying to do what the Town wants. He is

111 saying that he tried to do his homework for the long term and needed to count on the information. He  
112 is in a contracting mode now and is looking at what is the best use of the property and trying to get back  
113 to the original intent of the District One Zone.

114 Mr. Dana Fletcher said that if they looked at the properties combined then they did have three units and  
115 were told that they could actually have four. Mr. Fletcher wants to convert his building into three  
116 spaces and be able to have the upstairs and downstairs units and the small office, which is what they  
117 were told they would be able to do when they invested the money into the purchase of the property.

118 Chairman Frothingham asked about the square footage of the office space. Mr. Dana Fletcher said that  
119 it is about 348 sq. ft., which is about a third of the building not counting the second floor. Chairman  
120 Frothingham said that if that area was incorporated into the square footage of the first floor apartment  
121 it would increase the value of the apartment. Mr. Simpson asked if Mr. Fletcher would be willing to give  
122 up the office; there is a grandfathered office and a grandfathered house. Mr. Fletcher said that it would  
123 like to understand more about what Mr. Simpson is asking. Mr. Simpson said that it is currently not a  
124 conforming use. A hardship means that the property cannot be used because of a unique feature to the  
125 property and Mr. Fletcher is arguing that there is a hardship because of the way that Zoning is applied to  
126 the property.

127 Vice Chair Schneider said that the current use is pre-existing and non-conforming and they are asking for  
128 the Board to make it more non-conforming.

129 Mr. Dana Fletcher said that he thinks that it is a matter of opinion of what is grandfathered. Mr.  
130 Simpson said that in 1999 they could have an office without getting permission. Vice Chair Schneider  
131 said that he thinks that what is grandfathered is one office and one dwelling unit.

132 Mr. Platt asked when the last time they had the property as two rental units was. Mr. Dana Fletcher  
133 said that they rented the upstairs as a separate unit in 1999 and 2000 and then used the entire house as  
134 an office. They have now been using the office and renting the whole house so it has been the two  
135 units. Mr. Platt said that according to Zoning you lose your grandfathering status after two years of  
136 discontinued use. Mr. Dana Fletcher said that they have had the two units of the business and the  
137 residential units for many years.

138 Mr. Dana Fletcher asked if it was determined that an office is a dwelling unit. Mr. Landry said that an  
139 office is not a dwelling unit.

140 Mr. Fletcher asked Mr. Simpson to restate his question so that he can better understand it. Mr. Simpson  
141 said that he is assuming that the property is grandfathered for two uses. He does not know if they have  
142 maintained it without a two year break in the use for the last 15 years and wanted to know how long the  
143 whole house was used as an office. Mr. Dana Fletcher said that it was for three or four years. Mr.  
144 Fletcher said that they had expanded to the point where they needed the whole building for the  
145 business. Mr. Landry said that what Mr. Simpson is saying is that they may have lost the grandfathering  
146 on the apartment but it sounds like as the business contracted they began renting the house again. Mr.  
147 Dana Fletcher said that the Town would have known that they had tenants from them getting transfer

148 station permits. They were originally told that they could expand and contract as needed. There was  
149 further discussion regarding this matter.

150 Mr. Simpson asked how many square feet .29 acres is and Mr. Platt said that it is 12,500 sq. ft.

151 Chairman Frothingham asked if there are any more questions or comments before the hearing is closed  
152 to the public.

153 Mr. Dana Fletcher asked Mr. Simpson what he meant by asking them if they'd be willing to give up the  
154 office as he'd like to know what they would have to gain. Mr. Simpson said that he is not sure that it  
155 matters given that they potentially lost the grandfathering right. If there were two legal units there he'd  
156 find the request more palatable if there were only two units there when they left. Mr. Fletcher asked if  
157 he changed the downstairs office to be part of the residential portion if he could have the upstairs be an  
158 apartment. Mr. Simpson said that assuming the office is grandfathered the would be converting the  
159 office and residential units into two residential units. Mr. Fletcher said that he thinks that would be a  
160 good compromise. Vice Chair Schneider said that this still makes a non-conforming situation more non-  
161 conforming as it puts two dwelling units on a 12,500 sq. ft. area. Mr. Simpson said that he is not sure  
162 that Mr. Fletcher is grandfathered. Vice Chair Schneider said that he does not think that Mr. Fletcher  
163 has asked to do this and he thinks that it would be another hearing. Mr. Landry agreed with Vice Chair  
164 Schneider because the original application was to add another apartment resulting in two residences  
165 and one business on .29 acres. If they want to ask for just the two residential units there would need to  
166 be another Variance request. Mr. Platt said that at the previous meeting Mr. Landry said that the  
167 business could be converted to another residence without a Variance. Mr. Landry said that the Town  
168 does not have it in the Zoning Regulations that an office is considered a dwelling unit. Mr. Simpson  
169 asked and Mr. Landry confirmed that Water and Sewer does consider an office a dwelling unit.

170 Chairman Frothingham closed the meeting to the public.

171 Vice Chair Schneider said that he does not see a reason to make a non-conforming property more non-  
172 conforming. There was another discussion about the density and the subdivision.

173 Mr. Simpson made a motion to approve Case #15-25: Parcel ID: 0104-0001-0000: seeking a Variance of  
174 Article III Section 3.10 allowing the addition of one apartment which would total three units on a non-  
175 conforming lot totaling approximately 13,000 sq. ft., 1040 Main St, Georges Mills, H. Stetson Fletcher, III.  
176 Vice Chair Schneider seconded the motion. The motion failed unanimously due to the failure of the  
177 applicant to prove hardship.

178 **CASE #15-27: PARCEL ID: 0115-0053-0000: SEEKING A VARIANCE OF ARTICLE IV, SECTION 4.10 TO**  
179 **ALLOW A CONTRACTOR'S YARD IN RURAL RESIDENTIAL AREA. KEVIN BARTON, 94 PERKINS POND RD.**

180 Kevin Barton presented the merits of the case.

181 Vice Chair Schneider asked if this is an after the fact approval. Mr. Landry said that there was an after  
182 the fact building permit for the pole barn that Mr. Barton began to build, however, it is a request that  
183 Mr. Barton brought to him in order to store material and equipment. Vice Chair Schneider said that he

184 drove up to the site and it already looks like a contractor yard. Mr. Barton explained that all the rocks  
185 and materials from the house to the barn came from the road that he built.

186 Mr. Landry said that he has received a couple of letters from Dean Hanley who is an abutter to Mr.  
187 Barton.

188 Mr. Barton asked what the Board considers a contractor's yard. Vice Chair Schneider said that a  
189 Contractor's Yard is "an area used by builders, electricians, plumbers, excavators, roofers, yard  
190 maintenance, or other similar contracting service establishments for the storage of materials and  
191 equipment only. There shall be no service or sales on the site and any signs must be in accordance with  
192 Section 5.34 of this ordinance and specify for deliveries only. A Site Plan Review will be required. Any  
193 use of the Contractor's Yard beyond this definition will require a Variance from the Zoning Board of  
194 Adjustment." Mr. Barton said that he is not going to be selling products off the site, it is just for his use  
195 for his excavation business.

196 Mr. Simpson asked and Mr. Landry said that the property is in the Rural Residential District.

197 Mr. Barton said that he has owned the property for 15 years and does not know when the Ordinance  
198 was added. Mr. Simpson said that if Mr. Barton has been using the property since before the  
199 Contractor's Yard Ordinance then it might be a different argument. Mr. Barton said that he has been  
200 piling rocks and things for his business for a long time. Mr. Barton was asked and explained that he  
201 bought the property and started building in 1999 and moved into the house in 2000. Mr. Landry said  
202 that the property was used long before the definition of a Contractor's Yard was added. Mr. Barton said  
203 that there are 22 acres and he asking to use an acre and a quarter in the middle of the property. Mr.  
204 Landry said that they never had it approved as a Contractor's Yard. Mr. Simpson said that it was used  
205 before they had a definition.

206 Mr. Simpson asked if Mr. Barton's use is changing or increasing by more than 50%. Mr. Barton said that  
207 it could be close to that as the use increases and decreases with different jobs. Mr. Barton said that  
208 there is excess materials now because of the sewer project.

209 Mr. Landry asked if anyone else ever uses the yard. Mr. Barton said only if they are picking up or  
210 dropping off something for him such as stones or dirt.

211 There was a further discussion whether the property has been used as a Contractor's Yard as well as the  
212 growth of the business. There was also a discussion as to when a Contractor's Yard use was added to  
213 the Zoning Ordinance.

214 David Barnett, an abutter of Mr. Barton's, said that Mr. Barton started building in 1999, he was not  
215 storing on the property in 1999. Mr. Barton and Mr. Barnett had a brief discussion regarding when Mr.  
216 Barton began storing materials on his property.

217 Mr. Landry asked the Board and Mr. Barton if they would be opposed to continuing the hearing so Mr.  
218 Landry could research when a Contractor's Yard was added to the Ordinance.

219 Mr. Simpson made a motion to continue Case #15-27 until later in the meeting. Vice Chair Schneider  
220 seconded the motion. The motion passed unanimously.

221 **CASE #15-28: PARCEL ID: 0133-0087-0000: SEEKING A VARIANCE OF ARTICLE III, SECTION 3.10**  
222 **REDUCING DENSITY OF 10,000 SQ FT PER DWELLING UNIT TO 7,400 SQ FT ALLOWING ADDITION OF A**  
223 **RENTAL UNIT ON 2<sup>ND</sup> FLOOR. 72 MAIN ST, SUNAPEE HARBOR RIVERWAY.**

224 Peter Hill presented the case on behalf of Sunapee Harbor Riverway.

225 Mr. Hill explained that the building they are discussing is the Marzelli's Deli property. Mr. Hill gave the  
226 Board a brief the history of the property.

227 Mr. Hill said that they have worked with architects and engineers and should have a DES Shoreland  
228 Permit of Notification.

229 Mr. Hill said that the building will be torn down. Currently the upstairs is a big open room with five  
230 bedrooms, they are proposing dividing the upstairs of the new building in half and having two units each  
231 with two bedrooms. The density issue is triggered because the restaurant is considered a dwelling  
232 unit. Mr. Simpson said that the restaurant is not considered a dwelling unit.

233 Mr. Platt asked how many square feet the property is in order to determine if this case needs a  
234 Variance.

235 Mr. Larrow asked if they are tearing down the building and making a new structure. Mr. Hill said that  
236 they are tearing the building down and building in the same footprint, same height, etc. The existing  
237 restaurant footprint will remain and they are asking to take the existing apartment upstairs and make it  
238 into two apartments.

239 Chairman Frothingham asked and Mr. Hill said that they are grandfathered in terms of the setbacks.  
240 Chairman Frothingham said that he is looking at the porches and stairways on the plan, which is why he  
241 is asking. Mr. Hill said that the building is replicating what Pike's Bazaar looked like in the 1920's.  
242 Chairman Frothingham asked and Mr. Hill confirmed that everything is totally within the current  
243 footprint of the building.

244 Mr. Larrow asked if the Board has ever experienced having a business and a residence in the same  
245 building and if they were both considered dwelling units. He is looking at the total density even though  
246 the business is not considered a dwelling unit.

247 Mr. Larrow asked about the total square footage of the lot and Mr. Hill said that it is half an acre.

248 Vice Chair Schneider asked if there are any other structures on the lot. Mr. Hill said that the Quack  
249 Shack building is on the same lot but is not being torn down.

250 Mr. Simpson said that they have already determined that businesses are not dwelling units but that is  
251 not enough information because he Board does not know if it means that you can't use a lot that  
252 contains non-dwelling units as part of the density requirement.

253 Mr. Platt said that it is difficult to make a decision without a plan of the lot. Mr. Hill said that he thought  
254 that CLD submitted a plan.

255 There was another discussion about the density and dwelling units and if there is a plot plan of the  
256 property.

257 Mr. Landry gave the Board a copy of the tax map showing the property.

258 The Board discussed that as the lot is .51 acres, or 22,125 sq. ft., if a Variance would be required as there  
259 would be more than 10,000 sq. ft. per dwelling unit if the businesses are not considered to be dwelling  
260 units.

261 Vice Chair Schneider said that he would like a plot plan that he can read so he'd like to make a motion to  
262 continue the case to get determination from the Zoning Administrator if a Variance is needed. Mr.  
263 Landry said that he thinks that a Variance is needed because there will be a business and two dwelling  
264 units. The Board needs to consider what they would do if the Riverway had two dwelling units in the  
265 property and then wanted to add a business. Mr. Landry continued that he thinks that the proposed  
266 business would go to the Planning Board for a Site Plan and then be told that they needed a Variance  
267 from the Zoning Board for the density.

268 Mr. Landry was asked and said that the property is in the Village Commercial District, not Mixed Use as  
269 on the application. The density requirement in this Zone is 10,000 sq. ft. per dwelling unit. Mr. Simpson  
270 said that the property has enough square footage for two dwelling units and nothing in the regulations  
271 talk about a business needing a certain amount of square footage.

272 Vice Chair Schneider made a motion to dismiss Case #15-28: Parcel ID: 0133-0087-0000: seeking a  
273 Variance of Article III, Section 3.10 reducing density of 10,000 sq. ft. per dwelling unit allowing addition  
274 of a rental unit on second floor, 72 Main St, Sunapee Harbor Riverway as a Variance is not needed  
275 because density per dwelling unit is not below 10,000 sq. ft. Mr. Platt seconded the motion. There was  
276 a discussion about requiring the application to go to Site Plan Review. Mr. Larrow said that he wants to  
277 make it clear that because there is .51 acres with two separate business that they do not allocate square  
278 footage based on a percentage. Mr. Landry said that he thinks that the Planning Board will require a  
279 Variance. Mr. Simpson said that it is not in the regulations. The motion passed with four in favor and  
280 one opposed.

281 **CASE #15-27: PARCEL ID: 0115-0053-0000: SEEKING A VARIANCE OF ARTICLE IV, SECTION 4.10 TO**  
282 **ALLOW A CONTRACTOR'S YARD IN RURAL RESIDENTIAL AREA. KEVIN BARTON, 94 PERKINS POND RD.**

283 Chairman Frothingham reopened the case.

284 Mr. Simpson said that the Contractor's Yard definition from 2007 was completely different than it is now.  
285 The definition was adopted in 2004 and prior to that there were no Contractor's Yards; according to the  
286 2007 Zoning Book Contractor's Yards were not allowed in the Rural Residential Zone. Chairman  
287 Frothingham said that this use is grandfathered. Mr. Platt said that this was an accessory use.



288 Mr. Platt asked if Mr. Barton lives on the property. Mr. Barton said that he does, though it is a separate  
289 parcel, his house lot is 2.13 acres and this lot is approximately 22 acres and behind his house. He wants  
290 to use an acre to an acre and a quarter to have the Contractor's Yard in the middle of the 22 acres. He  
291 will eventually build a house on that lot. Mr. Larrow asked if Mr. Barton wants to establish a how much  
292 space he will use as a Contractor's Yard. Chairman Frothingham said that Mr. Barton may not require a  
293 Variance. Mr. Barton said that he is willing to say that he will not expand the Yard by more than an acre.  
294 Mr. Landry said that the question is whether what Mr. Barton was doing before 2004 was considered an  
295 accessory use.

296 Mr. Simpson said that in 2007 a Home Occupation was permitted as a right. The definition of a Home  
297 Occupation included wording that "heavy equipment and materials in Contractor's Yards shall be either  
298 screened or enclosed." Mr. Barton asked if it is considered to be screened as it is in the middle of 22  
299 acres.

300 Mr. Platt said that the Board is trying to determine if when Mr. Barton started to have his Contractor's  
301 Yard at the property if he was doing it legally or illegally. Mr. Landry read from the 2007 Ordinance that  
302 "the home occupation shall be subordinate and incidental to the primary residential use of the property  
303 and shall not change the residential character of the dwelling or the neighborhood. The home  
304 occupation shall not generate noise, odor, traffic, or any other negative influence on the community or  
305 neighboring properties. Heavy equipment and materials in Contractor's Yards shall either be screened  
306 or enclosed." They do not say what screened or enclosed means. Mr. Simpson said that he sees this as  
307 a two edge sword because the neighbor complains of noise but it may have been permitted as a  
308 Contractor's Yard.

309 Mr. Simpson asked and Mr. Barton confirmed that when he purchased the property it was one big lot  
310 and the subdivision was done in 2004.

311 Mr. Platt asked and Mr. Barton said that he has used the current area for about three years. Mr. Barton  
312 was asked and said that he currently has an excavator on the site. Mr. Landry said that a Contractor's  
313 Yard is only supposed to be to stockpile materials. Mr. Simpson said that he has an excavator in his  
314 yard. Vice Chair Schneider asked and Mr. Barton said that he uses the excavator to load materials for  
315 him to build retaining walls and such. They store stones from some projects to use on others.

316 Mr. Barton said that he does not see how having a Contractor's Yard will affect neighbors as they are far  
317 up on the lot. There may be some noise from a truck going in and out but he was just told by Mr.  
318 Barnett that the noisiest thing that he has is his street sweeper, which is a hand machine.

319 Vice Chair Schneider asked and Mr. Barnett said that he lives at 76 Perkins Pond Rd. Vice Chair  
320 Schneider asked and Mr. Barnett said that he does not have a problem with the proposal, however, his  
321 wife does because she thinks that it will decrease her property value.

322 Mr. Landry said that assuming a Home Occupation was an approved use in 2007, the Regulations say  
323 that "the Planning Board shall require a Site Plan to be submitted to it for any applicant seeking any new  
324 or altered non-residential use; whether or not such application is warned for Certificate of Compliance,

325 or Variance, or whatever. The Planning Board shall give special consideration for Home Occupations,  
326 waiving much of the review process if it is determined that such use does not significantly increase  
327 traffic, parking requirements, noise, waste, etc.” This is the same pre-requisite that the Town now has  
328 for a Site Plan. Mr. Simpson asked and Mr. Landry said that it sounds as though Mr. Barton should have  
329 gone through Site Plan Review. Mr. Simpson said that it was a permitted use. Mr. Landry said that it  
330 says that the Planning Board will give special consideration to Home Occupations.

331 Chairman Frothingham asked and Mr. Barton confirmed that he has been using the property as a  
332 Contractor’s Yard since 2001. Mr. Platt said that the area that he has been using has only been for the  
333 past three years.

334 Mr. Larrow said that he thinks that Mr. Barton is expanding his Contractor’s Yard and should to the  
335 Zoning Board for a Site Plan Review.

336 Vice Chair Schneider said that he is reluctant to approve a Variance for this as a Variance is permanent  
337 which means that someone could use the approval for something very different.

338 Mr. Barton asked and Mr. Simpson said that even if they do not say that a Variance is required he will  
339 still need to go for a Site Plan Review. Mr. Landry said that the Home Occupation definition was  
340 amended in 2000. Mr. Larrow said that he does not think that the application qualifies for a Variance,  
341 he thinks that it qualifies for a Site Plan Review, also because Mr. Barton is expanding. Mr. Landry said  
342 that Mr. Barton has been using the property as a Contractor’s Yard since before 2007 and the 2007  
343 definition allowed what he is doing but it was still subject to Site Plan Review.

344 Vice Chair Schneider asked Mr. Barton why he came before the Board. Mr. Landry said that Mr. Barton  
345 came to him requesting a Contractor’s Yard and he read today’s definition of a Contractor’s Yard and  
346 since it is not permitted in the Rural Residential District Mr. Landry told him he needed to get a  
347 Variance. There was further discussion regarding this matter including if there is screening of the  
348 Contractor’s Yard. Mr. Landry said that Mr. Barton will have to be open to the Planning Board putting  
349 restrictions on how much can be cut to allow for screening.

350 Mr. Platt said that the Zoning Regulations say that “existing Uses that are Non-Conforming with Section  
351 4.10 at the time of passage of this section, may expand in size up to 50% without variance or special  
352 exception, provided that Site Plan Review approval is obtained from the Planning Board and provided  
353 that such expansion is otherwise in full compliance with the remaining terms of this ordinance.”

354 Mr. Barnett asked if Mr. Barton goes to the Planning Board if he will then have to come back to the  
355 Zoning Board. Mr. Landry said that if the Planning Board approves the Site Plan Review then Mr. Barton  
356 will not have to come back to the Zoning Board. Mr. Platt explained that the Planning Board may set  
357 restrictions such as Mr. Barton can only operate five days a week.

358 Vice Chair Schneider asked and Mr. Barton confirmed that there are no lights or signs on the site.

359 Mr. Barnett asked and Mr. Simpson explained that a Contractor's Yard is permitted as a right in some  
360 districts. The Board explained that because Mr. Barton has had his Contractor's Yard for longer than the  
361 Ordinance it is grandfathered, however, it needs a Site Plan Review.

362 There was a discussion regarding another property in Sunapee and that there are certain uses permitted  
363 in certain zones.

364 There was a discussion regarding continuing the case so that if Mr. Barton gets told by the Planning  
365 Board that he needs the Variance then he doesn't have to pay to re-notice as well as if the Planning  
366 Board has the power to do that. Mr. Simpson said that he thinks that the decision as to whether a  
367 Variance is needed comes from Mr. Landry, not from the Zoning Board.

368 Mr. Platt made a motion to dismiss Case #15-27: Parcel ID: 0115-0053-0000: seeking a Variance of  
369 Article IV, Section 4.10 to allow a Contractor's Yard in rural residential area, 94 Perkins Pond Rd, as in  
370 the opinion of the Board due to evidence presented this is a legally grandfathered non-conforming use.  
371 Vice Chair Schneider said that he wanted the motion to include the conditions that the property  
372 complies with the definition of home occupation as written in the 2007 code, that the area in question is  
373 not expanded from what it is currently, and that the applicant appears before the Planning Board for  
374 Site Plan Review. Mr. Larrow seconded the motion. Mr. Simpson said that he thinks that this falls under  
375 the regulations before 2007. He also does not think that the Board should be dismissing the case  
376 because they are making the finding, he thinks that they are dismissing it because the Zoning  
377 Administrator has come to the decision that it does not need to be here, and otherwise they are going  
378 to hear an appeal of their decision. Mr. Landry said that someone would have to ask for a rehearing and  
379 submit new information and if the Board denies the rehearing it would then go to Superior Court. Mr.  
380 Larrow said that he does not see a problem. Mr. Platt said that if they are dismissing a case he is not  
381 sure the Board can add conditions. There was a discussion about procedure as the motion was not  
382 seconded before Vice Chair Schneider amended it. The amendment to the motion passed unanimously.  
383 The motion failed.

384 Mr. Platt made a motion to dismiss Case #15-27: Parcel ID: 0115-0053-0000: seeking a Variance of  
385 Article IV, Section 4.10 to allow a Contractor's Yard in rural residential area, because in the opinion of  
386 the Zoning Administrator this is a grandfathered use, existing since the early 2000's and that the Board  
387 recommends the applicant seeks Site Plan Review from the Planning Board as outlined in Article 6.30 of  
388 the Zoning Ordinance. Mr. Larrow seconded the motion. The motion passed with four in favor and one  
389 abstention.

390 Mr. Landry explained that he will be writing a letter to Mr. Barton telling him that he has to go to Site  
391 Plan Review based on the Zoning Ordinance in 2001 or 2002. The abutters will have the ability to appeal  
392 Mr. Landry's decision.

393 **PROPOSED ZONING ORDINANCE AMENDMENTS**

394 The Board discussed adding a definition of a patio. The proposed change is to add to the definition of a  
395 minor structure that a patio is “an area covered by stone or pavers, less than 12” above existing ground  
396 elevation, concrete pads excluded. Patios are limited to 150 square feet.”

397 The Board discussed adding the definition of an office. The proposed definition of and Office / Business  
398 is “an area which should not be considered under residential density.”

399 The Board discussed making a change to Article VIII, Section 8.21. The proposed change is “Article VIII  
400 Section 8.21 e-change major alterations interior or exterior are planned.”

401 The Board discussed changing Article VIII, Section 8.22 to add to the end of the paragraph “applications  
402 requiring DES approval shall be considered only with an approved DES permit.”

403 The Board discussed making a change to Article VII, Section 7.10. The proposed change is that: Article  
404 VII Section 7.10-No structure will be converted in any manner resulting in increased septic flow or water  
405 utilization without

- 406 1) The approval of the New Hampshire DES Water Division Subsurface Systems Bureau or
- 407 2) Certification from a New Hampshire licensed septic designer that the existing system will handle  
408 the additional septic flow or
- 409 3) Approval from the Sunapee Water & Sewer Commission if on municipal sewer

410 There was a discussion about the organization of the Zoning Ordinances.

411 The Board discussed that a Contractor’s Yard is still in the definition of a Home Occupation. The Board  
412 decided to recommend deleting the last sentence of a home occupation and including it in the  
413 Contractor’s Yard definition so that the definition of a Contractor’s Yard will include “heavy equipment  
414 and materials in Contractor’s Yards shall be either screened or enclosed.”

415 There was a discussion about if there is anything about a property or use being less non-conforming in  
416 the Zoning Ordinance. There was a discussion about if property owners want to make something less  
417 non-conforming if they need to come before the Board.

418 The Board discussed pervious and impervious definitions and the Board felt that this should be left to  
419 the State. They also discussed how people are paving driveways without considering lot coverage.

## 420 **MINUTES**

421 Changes to the minutes from the August 13, 2015 Zoning Board Meeting: Change Line 28 to read  
422 “...case was in litigation the Town’s attorney...” Change Line 30 to read “...anyone in the audience who  
423 wish to speak regarding the case...” Change Line 40 to read “The amendment passed...” Change Line 60  
424 to read “...for three Variances.” Change Line 66 to read “...trying to make it more accessible for  
425 Mildred.” Change Line 70 to read “The problem with a 24 ft. garage, however, is getting...” Change Line  
426 104 to read “...increase in impervious surface...” Change Line 106 to “...absorb water in front of the

427 garage.” Change Line 137 to read “...deck that overhangs...” Change Line 147 to read “...accessibility it  
428 has not been...” Change Line 158 to read “...outside path permeable and also take...” Change Line 162  
429 to read “...does not, but that is why...” Change Line 163 to read “...proper exits.” Change Line 178 to  
430 read “...Mr. Landry said that the...” Change Line 182 to read “Mr. Simpson asked if there was an area for  
431 the walkway.” Change Line 189 to read “...garage at its closest point...” Change Line 197 to read “what  
432 is the thing on the drawing...” Change line 201 to 202 to read “Mr. Anzalone said that if they left the  
433 building where it was they’d be asking for a Special Exception.” Change Line 209 to 210 to read  
434 “...wanted to allow them to be able to roll a wheelchair around...” Change Line 220 to read “...and they  
435 may be able to park there in the future.” Change Line 222 to read “...as minimal an impact as possible...”  
436 Change Line 225 to read “...within the 50 ft. lakefront setback...” Change Line 244 to read “...the only  
437 additional pervious surface is the driveway.” Change Line 264 to read “...and slope more than 25%...”  
438 Line 355 remove the second “The motion passed unanimously.”

439 Vice Chair Schneider made a motion to approve the minutes as amended. Mr. Simpson seconded the  
440 motion. The motion passed unanimously.

441 Changes to the minutes from the August 25, 2015 Zoning Board Meeting: Remove Roger Landry as  
442 being present

443 Mr. Simpson made a motion to approve the August 25<sup>th</sup> minutes as amended. Chairman Frothingham  
444 seconded the motion. The motion passed unanimously.

445 Changes to the minutes from September 10, 2015 Zoning Board Meeting: Change Line 84 to read  
446 “...setting is a lakeside dwelling...” Change Line 94 to read “...there is no steep slope, there...” Change  
447 Line 147 to read “...existing impervious area...” Change Line 168 to read “...adding the pervious area  
448 only...” Change Line 173 to read “...and brick pavers on a...” Change Line 176 to read “...get the sand out  
449 but it embedded...” Change Line 195 to read “...less than 36 inches...” Change Line 260 to read  
450 “...subdivision was pre-existing, non-conforming...” Change Line 271 to read “There are also parking  
451 spaces...” Change Line 293 to read “a copy of the sketch of what...” Change Line 403 to read “...they put  
452 the office into...” Change Line 506 to read “...no need to go any further.” Change Line 523 to read “Mr.  
453 Simpson noted that...” Change Line 533 to 534 to read “They had to put in one of the new special septic  
454 systems.”

455 Vice Chair Schneider made a motion to approve the September 10<sup>th</sup> minutes as amended. Mr. Simpson  
456 seconded the motion. The motion passed unanimously.

#### 457 **PROPOSED ZONING AMENDMENTS**

458 The Board read back through the proposed changes to the Zoning Amendments.

459 Mr. Platt made a motion to adjourn at 10:26 pm. Chairman Frothingham seconded the motion. The  
460 motion passed unanimously.

461

462 Respectfully submitted,

463 Melissa Pollari

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466 Edward Frothingham

Aaron Simpson

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468 Clayton Platt

Daniel Schneider

469

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470 William Larrow

George Neuwirt, Alternate