

1 **TOWN OF SUNAPEE**

2 **ZONING BOARD**

3 **NOVEMBER 12, 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 **CASE #15-29: PARCEL ID: 0225-0050-0000: SEEKING A VARIANCE OF ARTICLE III, SECTION 3.10 TO**  
10 **REDUCE ROADFRONT SETBACK FROM 40' TO 28' ALLOWING A RESIDENTIAL ADDITION TO HOME.**  
11 **JOHN & AUDREY PEASE, 7 ROLLINS RD.**

12 Harry Chesley, a builder, presented the case on behalf of Mr. & Mrs. Pease. Mr. Chesley explained that  
13 the applicants would like to build an addition that is completely handicap accessible.

14 Mr. Chesley said that there is one other land owner who uses the road, which is a right-of-way; they will  
15 be over 100' from the main road. The applicant's own both sides of the road as it goes through the  
16 middle of property.

17 Mr. Chesley said that they have given paperwork to the abutters and no one seems to have a problem  
18 with the plan.

19 Mr. Chelsey said that the proposed plan is to install an elevator lift, a wheelchair ramp in the back, and a  
20 bedroom and a bathroom off the front of the house. Chairman White asked if there is a plan of the  
21 proposal other than what was submitted. Mr. Chesley said that he does not have anything else. It is a  
22 18' x 14' wide addition that will come straight off of the house. They will demolition half the existing  
23 porch and the other half will become a sitting room. Mr. Larrow asked and Mr. Chesley confirmed that  
24 the existing porch is 36' from the road. Mr. Chesley continued that the corner of the building will be 28'  
25 from the center of the dirt road.

26 Mr. Landry explained that the road is a right-of-way so the building must be 40' from the centerline of  
27 the road. Mr. Platt asked how big the driveway is and Mr. Chesley said that it is a road / right of way.  
28 Mr. Chesley said that the right of road is 12' to 14' wide. The road is at an angle and the building is  
29 straight so they will be closer to the centerline. They also plan on putting a circular driveway in to make  
30 the accessibility easier.

31 Mr. Simpson asked and Mr. Landry said that the Zoning District is the Mixed Use District.

32 Mr. Landry asked if the applicants have applied to the State of NH Department of Environmental  
33 Services (DES) yet as they are within 250' of the river and will require a State permit. Mr. Chesley said  
34 that he did not know that a DES permit was required.

35 Mr. Neuwirt said that he does not feel as though the application is complete as the plan does not even  
36 have dimensions on it. Mr. Chesley said that he has maps. Vice Chair Schneider said that he thinks that  
37 there should be plans of what will be done to the building and a plan of how it sits on the lot. Mr.  
38 Landry said that the State will require more detailed drawings than what has been submitted. Mr. Platt  
39 said that the State may only require a Permit by Notification. Mr. Landry agreed and said that Mr.  
40 Chesley will need to talk to someone at the State to determine what is needed. Mr. Neuwirt said that if  
41 they have an impact of less than 1500 sq ft they can do an abbreviated Shoreland Permit, which is the  
42 Permit by Notification. Shoreland Permits are divided by size, scope, and severity of the project. Mr.  
43 Chesley asked who he contacts for this permit. Mr. Neuwirt said that the forms are online. Mr. Landry  
44 said that Mr. Chesley would need to talk to someone at the State and they would tell him what type of  
45 permit is required.

46 Mr. Platt said that the definition of a front setback says that the it applies to all State and Town  
47 maintained roads and also all private roads meeting Town specifications. Vice Chair Schneider asked  
48 what the definition means by Town specifications. Mr. Landry said that a developer does not have to  
49 build roads to Town specifications if they want to keep the road as a permanent private road, however,  
50 the Planning Board could deny the application if a road was not up to Town specifications. Mr. Platt said  
51 that they were trying to preclude the easements that went through people's properties from being road  
52 frontage. Mr. Landry said that this is a recognized private road, not an easement. Mr. Platt said that it is  
53 12' wide and is a driveway that passes through the property. Mr. Landry asked and Mr. Chesley said  
54 that he thinks that the road is 12' to 14' wide. Mr. Simpson asked and Mr. Landry confirmed that the  
55 road is on the Tax Map and the 911 map. Mr. Platt said that he thought that the Board's intent when  
56 they talked about this Ordinance in 2014 was to make it so that little things like this road that goes  
57 through people's properties would not need a 40' setback as that makes 80' of unusable space. Mr.  
58 Landry said that the Planning Board said that they did not change it because they want the setbacks to  
59 remain if the Town would ever accept the road as a Town road. Mr. Platt said that this is not built to  
60 Town specifications and is just an easement that someone gave to the property in the back. There was  
61 further discussion about this matter.

62 Mr. Chesley said that he has photographs for the Board showing the house from the road.

63 Chairman Frothingham said that he thinks that the Board needs to continue the hearing until the  
64 December meeting to give the applicant the opportunity to go to the State and get what is needed from  
65 them. Mr. Platt said that it is not a prerequisite for the applicants to get a State permit, but he does  
66 think that they need a detailed sketch of what they want to do. Chairman Frothingham said that they  
67 also need a plot plan showing the boundaries and setbacks. Vice Chair Schneider explained that they  
68 need more details to go in the file so that they have backup of what is approved.

69 Mr. Chesley said that he believes he has the drawings that the Board is looking for as this is a  
70 government funded project and he has had to deal with them.

71 Mr. Simpson asked if Rollins Rd is an easement through the property or if it is deeded to Mr. Rollins. Mr.  
72 Pease said that he owns both sides of the road.

73 Mr. Landry said that the Board needs a plan including an outline of the property showing where the  
74 road is located, where the addition is going to be, and the setbacks from the addition to the center of  
75 the road. Mr. Chesley said that he does have a plan showing these things, however, he does not believe  
76 that it is with him.

77 Mr. Neuwirt said that Mr. Platt and Mr. Simpson are saying that this road is actually an easement and  
78 the standards do not apply. Mr. Simpson said that easements can move and can be located anywhere  
79 on the property unless they are specifically surveyed. It just means that someone has the right to go  
80 through the property, not that it has to be in a specific spot. Mr. Landry said that the Board does not get  
81 involved with deeds. Mr. Simpson said that they can move the road so that it no longer affects the  
82 setback. Mr. Landry said that if the applicant wants to work that out with Mr. Rollins then he can do  
83 that. Mr. Platt said that when 911 came in they named every road / easement that went to two or more  
84 properties and it doesn't mean that it is a road. It is not a road maintained to Town standards.

85 Mr. Chesley said that he does have one layout plan and explained that the distance from the corner of  
86 the building to the center of the road is 28' and the distance from all the other portions is greater than  
87 28'. Mr. Landry said that the Board needs a drawing of the proposed construction.

88 Vice Chair Schneider asked and Mr. Chesley said that the addition is 18' x 14' and it comes off the corner  
89 of the building 3'. Vice Chair Schneider asked for a picture and Mr. Chesley showed the Board what he  
90 had.

91 Mr. Neuwirt asked and Mr. Landry confirmed that the property sits in the Shoreland.

92 The Board determined that they would continue hearing. Mr. Simpson asked if Mr. Chesley was working  
93 within a deadline and he said they were trying to work with the excavation and the concrete people.

94 Mr. Neuwirt gave the applicant information on who can help him with the DES permit. Mr. Landry said  
95 that there are other people available as well.

96 Chairman Frothingham made a motion to continue the hearing. Mr. Larrow seconded the motion. The  
97 motion passed unanimously.

98 **CASE #15-30: PARCEL ID: 0103-0024-0000: SEEKING A VARIANCE OF ARTICLE III, SECTION 3.10 TO**  
99 **REDUCE ROAD FRONTAGE REQUIREMENT FROM 100' TO 54' ALLOWING EXISTING PARCEL TO BECOME**  
100 **A BUILDABLE LOT. HEMINGWAY, OSGOOD, MCALLISTER, OAK RIDGE RD.**

101 This case was withdrawn by the applicants.

102 Mr. Platt made a motion to accept the withdrawal of the case. Mr. Simpson seconded the motion. The  
103 motion passed unanimously.

104 **MISCELLANEOUS**

105 Mr. Landry explained that the Board should not recommend professionals to applicants because it  
106 makes the Town liable.

107 **CASE #15-31: PARCEL ID: 0104-0084-0000: SEEKING A SPECIAL EXCEPTION AS PER ARTICLE III,**  
108 **SECTION 3.50-G ALLOWING A FENCE OVER 5' IN HEIGHT TO BE CONSTRUCTED WITHIN 2' OF THE**  
109 **PROPERTY LINE. MICHAEL & JOAN FOWLER, GEORGES MILLS BOAT CLUB, 1282 ROUTE 11, GM.**

110 Bob Stewart of RCS Designs presented the case on behalf of the applicants.

111 Mr. Stewart explained that part of the packet is a portion of the plan for the Variance hearing including  
112 the survey of the property line that this fence will be built near. They are asking for a Special Exception  
113 under Section 3.50-g, which states that if they are want to erect a fence within 2' of the property line  
114 over 5' tall then they need to ask for a Special Exception. Section 3.50-h requires if they want to put a  
115 fence on the property lines then they must contact the abutting property owners, which is the Georges  
116 Mills Boat Club, and they must be the co-applicants. This is not required in this case as they are keeping  
117 it 2' away from the property line. Mr. Stewart continued that they have done a survey to ensure that  
118 the fence is erected in the correct spot.

119 Mr. Stewart said that in the packet there is a letter from the Georges Mills Boat Club that says that they  
120 have no objection to the fence, however, they do have a condition that the finish side of it be directed  
121 towards their property.

122 Vice Chair Schneider asked if Georges Mills Boat Club is a co-applicant. Mr. Landry said that they are  
123 not, they were noticed as part of the hearing because they sent in the letter saying that they do not  
124 have a problem with the application. Vice Chair Schneider suggested striking the Georges Mills Boat  
125 Club from the application.

126 Mr. Platt asked and Mr. Stewart said that Georges Mills Boat Club does not access their property along  
127 this property line, they access off Lake Ave and this is an undeveloped strip down to Route 11.

128 Mr. Larrow asked why the fence will be 10' tall. Mr. Stewart said that the reason for the fence is both  
129 for privacy as well as for screening for the parking area that is behind the apartment building across the  
130 Georges Mills Boat Club strip. The headlights from this parking lot go into Mr. and Mrs. Fowler's yard.  
131 The height is because the apartment building has elevated balconies that look down onto the Fowler's  
132 property so they want privacy.

133 Mr. Stewart said that the criteria that he has given is from the Ordinance for a Special Exception but  
134 there is one criterion that was for dimensional Special Exceptions. Criterion one, that the selected site is  
135 an appropriate location for the proposed use. He did not use this criterion as the fence is not a

136 proposed use, it is basically to a structure. Mr. Landry said that the proposal will not be detrimental,  
137 hazardous, or injurious to the neighborhood as Georges Mills Boat Club signed off on it.

138 Mr. Steward said that the fence will not adversely affect neighboring properties because it will allow a  
139 level of privacy for both the applicant and the abutters. It has no effect on the view, sightline of traffic,  
140 health, safety, and general welfare of the public, nor will it be detrimental or out of character with the  
141 adjacent neighborhood as there are fences in the neighborhood.

142 Vice Chair Schneider asked and Mr. Steward confirmed that the apartment building owner, Jim Currier,  
143 has been notified. Mr. Steward said that he was on the abutters list. Mr. Neuwirt said that Mr. Currier  
144 was in the audience for the case that was withdrawn but left.

145 Mr. Steward said that the fence as proposed is specifically allowed by Special Exception in the  
146 Ordinance. It is necessary to add a level of privacy, considering the relation of the structures to the  
147 property line and therefore fair utilization of the lot. The structure referenced is the structure  
148 referenced in the next application.

149 Mr. Steward said that the proposed fence is consistent with the spirit of the Ordinance and the intent of  
150 the Master Plan considering the above statements.

151 Mr. Platt said that the Ordinance just says that you can put a fence within 2' of the property line as long  
152 as it does not adversely affect neighboring properties. This does not seem to affect neighboring  
153 properties.

154 Mr. Simpson asked if there was anyone in the audience with questions or comments.

155 Priscilla Sargent said that she did not have any comments on the case.

156 Mr. Simpson asked if the Board could put conditions on the approval of a fence. Mr. Landry said that  
157 the Board can put conditions on any approval. Mr. Simpson said that he thinks that the need for the  
158 fence to be so close to the property line is that the cottages are right on the property line. The cottages  
159 are not the main house and they could be torn down and the 10' high fence remains. Mr. Landry said  
160 that there are other 10' fences in Town. Mr. Platt said that you would not want to put a 10' high fence  
161 15' from the property line as that would leave land that would be unused. Mr. Steward said that,  
162 regardless if the cabins were removed, the parking lot for the apartment building is still there and there  
163 are still lights shining into the yard.

164 Mr. Platt made a motion to approve Case #15-31: Parcel ID: 0104-0084-0000: seeking a Special  
165 Exception as per Article III, Section 3.50-g allowing a fence over 5' in height to be constructed within 2'  
166 of the property line, Michael and Joan Fowler, Georges Mills Boat Club, 1282 Route 11, Georges Mills.  
167 Vice Chair Schneider seconded the motion. Mr. Simpson said that he knows that Georges Mills Boat  
168 Club is not an applicant. Mr. Platt said that he would strike Georges Mills Boat Club from his motion.  
169 The motion passed unanimously.

170 **CASE #15-32: PARCEL ID: 0104-0084-0000: SEEKING A VARIANCE OF ARTICLE III, SECTION 3.10 TO**  
171 **REDUCE SIDE SETBACK FROM 10' TO 5' 6" ALLOWING DEMOLISHING OF TWO (2) NON-CONFORMING**  
172 **BUILDINGS AND REPLACING THEM WITH ONE (1) NON-CONFORMING BUILDING. MICHAEL & JOAN**  
173 **FOWLER, 1282 ROUTE 11, GM.**

174 Mr. Steward presented the Variance case on behalf of Mr. and Mrs. Fowler.

175 Mr. Steward said that Mr. Fowler would like to raze two existing buildings that are on his property and  
176 construct a single building in their place, relatively in the same footprint. Mr. Larrow said that it is not  
177 the same footprint as they are using the land between the two cottages. Mr. Steward said that he  
178 misspoke as they are increasing the footprint.

179 Mr. Steward said that the bottom part of the plan shows the proposed non-conforming part that will be  
180 built is 45 sq ft. Vice Chair Schneider asked and it was explained that currently on the property is a  
181 single family house and two smaller outbuildings. Vice Chair Schneider asked and Mr. Landry said that  
182 the two smaller buildings were dwelling units at one time. Mr. Steward said that both buildings have  
183 bathrooms and kitchens and have water hooked up, though it is not presently on. They also have onsite  
184 septic. The proposal for the new building would be to hookup to the municipal services, both for water  
185 and sewer.

186 Vice Chair Schneider asked and Mr. Fowler confirmed that legally the property has three dwelling units  
187 and is assessed for that. Mr. Platt asked and it was confirmed that the proposed building will be a single  
188 dwelling unit; there would be two dwelling units on the site. Mr. Neuwirt asked how long the two  
189 dwelling units have been abandoned. Mr. Landry said that even if they were abandoned there can be  
190 another dwelling unit as this Zone requires 10,000 sq ft per dwelling unit and there is more than 20,000  
191 sq ft. If they were asking for three units they would need to go to Site Plan Review. Mr. Larrow asked  
192 and it was confirmed that the buildings are currently just being used for storage. Mr. Fowler said one  
193 building is worse than the other as a tree fell on it.

194 Mr. Larrow asked and Mr. Landry said that the proposed building will be the same size as the two  
195 buildings with an additional 45 sq ft. Mr. Neuwirt asked and Mr. Landry confirmed that if Mr. Fowler  
196 wanted to build two separate buildings in the same footprints then he would not need to ask for a  
197 Variance. Mr. Platt said that they could be connected outside the 10' setback and that would not  
198 require a Variance. Mr. Steward said that 3 dwelling units would require Site Plan Review. Mr. Landry  
199 said that the use of the 2 units has expired as they have not used the buildings as dwelling units for  
200 more than 2 years. Mr. Larrow said that expired to him means that it has gone away.

201 Mr. Platt asked why they could not move the new building closer to the house and maintain the same  
202 square footage within the setback. Mr. Steward explained they are trying to use the space that they  
203 can. In between the two cottages and the existing dwelling unit there is a driveway. One of the  
204 thoughts is to put a garage on the new unit and there is not enough room to have access and egress out  
205 of the garage if they were to move the building.

206 Mr. Simpson asked and Vice Chair Schneider said that the lot size is .908 acres. Mr. Simpson asked why  
207 this is non-conforming. Mr. Platt said that it is not the usage that is non-conforming it is the setback.  
208 Mr. Simpson asked why the use has expired. Mr. Landry said that there were 3 units and the 3rd unit  
209 requires a Site Plan Review. Mr. Neuwirt said that it is non-conforming because the structures are  
210 within the setback and is also non-conforming because they want to expand within the 10' setback.

211 Vice Chair Schneider asked and Mr. Landry confirmed that if the building was not going into the setback  
212 it would not require a Variance. Mr. Landry said that he did ask about moving the building over and it  
213 was explained that they want to be able to put a garage into the space between the buildings.

214 Vice Chair Schneider recommended putting a more visible number on the house.

215 Mr. Steward explained the location of the 2 cottages and the single family residence and the plan to  
216 expand. Chairman Frothingham asked the location of the garage and Mr. Steward showed him on the  
217 plan. The driveway will be widened.

218 Vice Chair Schneider asked and Mr. Steward explained that the new building will be a dwelling unit. Mr.  
219 Fowler said that it is going to be a mother-in-law apartment.

220 Mr. Steward said that they are looking for a Variance of the 45 sq ft non-conformity. The building would  
221 remain 5' 6" from the property line at its closest point as the two buildings are not parallel to each  
222 other.

223 Mr. Platt asked if it would be objectionable to rebuild the structure in a location that would keep the  
224 square footage within the 10' setback the same as now as it would require them moving the building  
225 about 1' from the proposed location. With 45 sq ft additional construction, if the building was moved  
226 back 1' to 1.5' then it would be the same square footage within the 10' setback without encroaching  
227 that much closer to the house. Mr. Simpson said that it would not be more non-conforming. Mr.  
228 Steward said that 1' is not going to make a lot of difference. Mr. Fowler said that the proposal sounds  
229 reasonable. Mr. Steward said that it would lessen the amount of impact.

230 Mr. Simpson asked if being along Otter Brook will require a DES Permit. Mr. Landry said that Otter  
231 Brook is not a Class IV waterbody.

232 Mr. Neuwirt said that a Variance requires proof of hardship and he does not think that they can use  
233 future use of the property with the possibility of building a garage as a hardship. Mr. Landry said that  
234 the hardship is that the buildings were there prior to Zoning and that created a hardship for the person  
235 who wants to replace them. Mr. Simpson said that the buildings can be replaced without coming to the  
236 Board. Mr. Neuwirt said that he thinks that Mr. Platt's suggestion is reasonable.

237 The Board asked if there were any comments or questions from the audience.

238 Mrs. Sargent said that she does not have any comments.

239 Mr. Platt made a motion to approve Case #15-32: Parcel ID: 0104-0084-0000: Seeking a Variance of  
240 Article III, Section 3.10 to reduce the side setback from 10' to 5' 6" allowing demolishing of two non-  
241 conforming buildings and replacing them with one non-conforming building, with the condition that the  
242 new construction will not increase the square footage of the footprint of the buildings within the 10'  
243 side setback. Mr. Simpson seconded the motion. The motion passed unanimously.

244 **MISCELLANEOUS**

245 There was a discussion regarding the Zoning map.

246 There was a discussion regarding the roads in Town.

247 Chairman Frothingham said that the Board would like the meeting minutes to be made a part of the  
248 Board packets.

249 Mrs. Sargent said that she was at the meeting because she thought they were going to discuss the  
250 property lines around the boathouse that they own at Sargent's Marina. Mrs. Sargent said that she  
251 thought it was a 9:30 appointment. Mr. Landry said that the Town does not have jurisdiction for things  
252 that are on the water and she may be thinking about the State. There was further discussion regarding  
253 this matter.

254 There was a discussion about the Riverway building that was before the Board at a previous meeting.

255 There was a discussion regarding the road definition and how it relates to the Official Map and that the  
256 two criteria differ and that less than half the private roads meet Town specifications.

257 **MINUTES**

258 Changes to the minutes from the October 8, 2015 Zoning Board Meeting: Change Lines 23 & 24 to read  
259 "...went through because there were two business..." Change Line 56 to read "Mr. Simpson asked if it  
260 was permitted..." Change Line 65 to read "...intent that he was going to be..." Change Line 78 to read  
261 "...means that the Towns people are saying..." Change Line 93 to read "...property has changed and..."  
262 Change Line 158 to read "...is grandfathered, then they would be..." Change Line 188 to read "Vice Chair  
263 Schneider read that a..." Change Line 271 to read "...talks about a business..." Change Line 274 to read  
264 "...a Variance is not needed..." Change Lines 334 & 335 to read "...and should go to the Planning  
265 Board..."

266 Mr. Platt made a motion to approve the October 8<sup>th</sup> minutes as amended. Mr. Simpson seconded the  
267 motion. The motion passed unanimously.

268 Mr. Simpson made a motion to adjourn at 8:36 pm. Mr. Platt seconded the motion. The motion passed  
269 unanimously.

270 Respectfully submitted,

271 Melissa Pollari



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274 Edward Frothingham

Aaron Simpson

275

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276 Clayton Platt

Daniel Schneider

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278 William Larrow

George Neuwirt, Alternate