

1 **TOWN OF SUNAPEE**

2 **ZONING BOARD**

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

12 Mr. Platt recused himself from the case and gave his official resignation to the Board.

13 Chairman Frothingham made a motion to appoint Mr. Neuwirt as a voting member for the meeting. Mr.
14 Simpson seconded the motion. The motion passes unanimously.

15 Harry Chesley, continued presenting the case on behalf of Mr. & Mrs. Pease along with Mr. Platt as the
16 surveyor of the property.

17 Mr. Chesley said that they had Mr. Platt do a plan of the property. They have also filed the paperwork
18 for and received the Shoreland Permit.

19 Mr. Platt said that they submitted a letter asking for a reconsideration of the requirement of a Variance
20 of the setback from Rollins Road.

21 Chairman Frothingham asked and Mr. Platt confirmed that the original notice was that the setback
22 would be reduced from 40 ft to 28 ft and yet the new plan shows that it is to be reduced to 26 ft.

23 Mr. Landry said that he has a copy of the Shoreland Permit by Notificaiton and that the building permit
24 has been filed if the application is approved.

25 Mr. Larrow said that he thought that the Board wanted to have a determination of what Rollins Rd is
26 and if it is owned by Rollins. Mr. Landry said that Rollins Rd is a private right of way; according to the
27 terms of the Town's regulations and official Zoning Map, Rollins Rd is considered to be a Town Rd, even
28 though the Town does not plow or maintain it. Vice Chair Schneider said that his in-laws have a
29 driveway, partially shared by other houses and it has always been considered a driveway. When 911
30 came in, the Town put a road sign on the driveway saying that emergency vehicles have to be able to
31 find the location. They gave the driveway a name and thenceforth it has become a private road, even

32 though it is really a driveway. Vice Chair Schneider continued that he suspects that this is the same
33 situation and he believes that the letter that Mr. Platt wrote makes that same argument.

34 Mr. Landry said that what is before the Board is a request for a Variance. There is no appeal to his
35 decision calling it a road. Vice Chair Schneider said that he understands.

36 Mr. Landry said that if the Board would like to have a discussion after the meeting then they can. Both
37 he and Mrs. Nashawaty have spoken to the Town's attorney and they are working on creating a plan for
38 next year to write a better definition of a road but they have to consider the impacts of things such as
39 maintenance. Vice Chair Schneider said that he does not understand Mr. Landry's point as the Town has
40 never maintained his in-law's road. Mr. Landry said that the problem is that they could as there are
41 roads in Town that were once maintained and now have been dropped and they do not know why.
42 Rollins Rd appears on the official Town Map and no one has ever questioned why they put this road or
43 other non-Town roads on the map as they didn't qualify. Vice Chair Schneider said that he assumes it
44 was done for emergency purposes. Mr. Landry said that 911 was not in effect at that time.

45 Mr. Neuwirt asked what the argument is about as there is an application before the Board and they
46 need to decide on it. Mr. Platt has presented an argument but it is either an up or down vote on the
47 Variance. Mr. Simpson said that he disagrees unless Town Counsel has given an opinion. The Board has
48 a letter that address Bartlett vs the City of Manchester, which the applicant has submitted. It says that
49 the Board can consider if the applicant needs to come before them for a Variance. Mr. Landry said that
50 cannot be done without an appeal of his opinion. Mr. Simpson said that he does not know if Mr. Landry
51 saw the letter. Mr. Landry said that he did see the letter and spoke with the Town's attorney. Mr.
52 Simpson asked and Mr. Landry said that he does not have a response from the Town's attorney
53 regarding the letter about Bartlett vs. the City of Manchester. Mr. Simpson read from the letter "We
54 cannot accept that a mere filing of an application limits the Zoning Board of Appeal's consideration of
55 whether the applicant's proposed use of a property requires a Variance in the first place." The Supreme
56 Court has determined this, unless Mr. Landry has a reason from Counsel that says that is invalid. Mr.
57 Landry says that the Town's attorney says that the interpretation of the Ordinance, where the
58 interpretation of the Ordinance differs from that prescribe by any other applicable Statute, Ordinance,
59 or Regulation, that provision that produces a great restriction, in this case being the 40 ft setback from
60 the centerline, shall govern. Mr. Simpson said that is not the issue, the issue is whether Mr. Pease needs
61 a Variance and the Board can consider that according to the case cited. If the Town's Counsel has
62 reviewed the letter, he should have given an opinion as to why that was not a valid issue. Mr. Simpson
63 continued that the issue is not which section of the Ordinance should be applied, it is whether Mr. Pease
64 needed to apply for a Variance. Vice Chair Schneider said that there has been another case where the
65 Board decided that a Variance was not needed.

66 Mr. Neuwirt asked if the applicant is prepared to present the case for the Variance to the Board. Mr.
67 Simpson said that he thinks that the applicant is questioning if he needs a Variance. Mr. Platt said that
68 the Variance has been applied for and Mr. Neuwirt asked if that is what the Board is going to hear. Mr.
69 Landry said that is what has been noticed. Vice Chair Schneider said that he thinks that the question Mr.
70 Platt brought to the Board is valid; what is the difference between a driveway and a private road. Mr.

71 Landry said that is what the Planning Board is going to address next year. Mr. Neuwirt asked where they
72 stand now as to the difference between a driveway and a private road and how many houses must be
73 on it to be considered a private road.

74 Mr. Simpson said that Rollins Road does not come up to Town standards. Mr. Neuwirt said that it is not
75 maintained by the Town. Mr. Landry said that there are almost 40 roads in the Town that do not come
76 up to Town standards. Mr. Simpson said some of those are maintained.

77 Mr. Larrow said that he thinks the Board has to decide if they are going to hear the Variance or not; one
78 case has been excused and the Board can do the same thing. Mr. Landry said what was posted in the
79 newspapers and on the agenda was the case for the Variance. Chairman Frothingham said that what
80 the Board should do is to deal with the case.

81 Mr. Simpson made a motion to find that the applicant did not need to apply for a Variance in the first
82 instance and the Board should not be hearing the case as he does not need a Variance. Mr. Neuwirt
83 asked why Mr. Simpson made the motion. Mr. Simpson explained that Rollins Rd it is an easement that
84 has shown up on a map that the Town maintains but it does not qualify as a Town road and is not Town
85 maintained.

86 Mr. Larrow asked and Mr. Simpson said that Rollins owns an easement over the Pease's property. Mr.
87 Chesley said that Mr. Pease owns the land and Mr. Rollins has an easement over the property.

88 Mr. Larrow said that he is trying to define who owns it and who gave the right of way. Mr. Platt said
89 that there is paperwork that the Board may not have. Liam Rollins said that his father gave the right of
90 way.

91 There was further discussion regarding the definition of roads.

92 Vice Chair Schneider seconded the motion.

93 Mr. Rollins said that his father originally owned the whole property and he gave Bill Gordon a road
94 through that property, and that is why it is called Rollins Rd. Mr. Larrow asked and Mr. Rollins
95 confirmed that when the properties were sold off there was language in the deed regarding the right of
96 way. Mr. Platt read the easement wording to the Board. Mr. Simpson said that it does not sound as
97 though its location is defined. Mr. Landry said that several roads in Town are like that today.

98 Mr. Neuwirt asked if it would be beneficial to the Board to listen to the case. Mr. Simpson said that the
99 applicant does not have to give his case if he does not need to be before the Board. Mr. Platt said that
100 two years ago the Board made changes to the definition of setback and added language as well. Vice
101 Chair Schneider asked if the road is not a road but a driveway, where does a property stand on things
102 such as road frontage. Mr. Platt said that the Rollin's property does not have any road frontage. The
103 Rollin's property is pre-existing, non-conforming but the property being discussed has plenty of road
104 frontage. One of the reasons this is important is because this is a government funded project and there
105 are some concerns that the dimensions changed a few feet. If they do not need a Variance they want to

106 know so if they ever want to do something in the future they can without coming back before the
107 Zoning Board.

108 Mr. Platt explained that the Pease's are looking to put in a looped driveway and a handicap lift. The
109 addition is for a bathroom and bedroom.

110 Mr. Larrow said that if the Board has had similar situations that they have decided that a Variance was
111 not required then he has a hard time saying that this one does. Mr. Landry said that each case has to be
112 decided on its own merits. Mr. Simpson said that in the other case, someone came with an application
113 to redo an apartment and not adding any more square footage, they wanted to make one apartment
114 into two apartments and the Board determined that the lot was big enough in that district so it did not
115 need a Variance so it is a little difference then this case. Mr. Simpson said that the Town does a lot of
116 things by fiat. He had subdivided his land and one day he found out that the lots had been merged and
117 he had one lot instead of five. He went in and spoke to the Town Manager and had it fixed; the people
118 doing the Assessing for the Town had done it but it didn't make it so. Mr. Simpson continued that this
119 would normally be considered a driveway accessing two lots, which is permissible. Mr. Landry said that
120 if the Board decides that a Variance is not needed he is going to need to get an opinion from the Town's
121 attorney as to whether he can recommend a building permit be issued. Mr. Simpson said that anyone
122 can appeal the Board's decision. This is not a Town road and should not require a Variance. Mr. Landry
123 said that he feels it would be cleaner to hear the Variance case as it is what was noticed. Vice Chair
124 Schneider said that he wants to know what happens if they decide to make this an actual road and then
125 this becomes non-conforming. Mr. Simpson said that there are many buildings close to roads. Mr.
126 Larrow said that if the Board approves the Variance it is cleaner for the applicant, Rollins Rd, etc.

127 The motion passed with three in favor and two opposed.

128 Mr. Landry explained to the applicant the fees that will be needed for the building permit and land
129 disturbance bond.

130 **CASE #15-33: PARCEL ID: 0148-0025-0000: SEEKING APPROVAL OF A VARIANCE OF ARTICLE III,**
131 **SECTION 3.10 TO ALLOW A PRE-EXISTING NON-CONFORMING LOT TO BE MORE NON-CONFORMING**
132 **FROM .56 ACRES TO .505 ACRES IN RURAL RESIDENTIAL DISTRICT. LANCE & CHRISTINA HARBOUR, 7**
133 **MORNINGSIDE DRIVE.**

134 Mr. Platt presented the case on behalf of the applicants.

135 Mr. Simpson asked and Mr. Landry confirmed that the subdivision application has been filed. Vice Chair
136 Schneider asked why this needs a subdivision approval. Mr. Simpson explained it is because they are
137 taking pieces of the larger lot and adding them to the two lots on the right side of the parcel. Mr. Landry
138 said that Article 6.40 of the Zoning Ordinance says that "the Planning Board may approve subdivision /
139 lot line adjustments on pre-existing, non-conforming lots without additional approval by the Zoning
140 Board of Adjustment provided that the new lot size(s) and dimension(s) are not more non-conforming
141 than what was existing." Because they are more non-conforming, a Variance is required. Mr. Simpson
142 said that only lot one is more non-conforming and they would actually have two more conforming lots.

143 Mr. Landry said that this will clean up the mess that is there with the right of way.

144 Mr. Platt explained the current lot layout to the Board and the plan to sell one piece from the Harbour's
145 bigger lot to the Lauricellas and another piece to the Hopkins. Mr. Landry said that the Harbour's lot
146 goes from .56 to .505 acres. Mr. Platt said that the other two lots gain road frontage.

147 Mr. Neuwirt asked and Mr. Simpson said that the land was once railroad land. Mrs. Harbour said that
148 her grandmother purchased the large triangular piece from the railroad in the 1970's and the other two
149 lots did not want it but were still using it for access.

150 Mr. Larrow said that it said in the application that all lots will have access to or frontage on Hamel Rd
151 but the Harbour's lot will not. Mr. Platt said that is true. Mr. Simpson asked if there is an easement
152 over the Andre's Restaurant property. Mr. Platt said that there is not. Mr. Landry asked if the driveway
153 that serves Harbour's lot can serve Hopkin's as well so there is some frontage. Mr. Landry said that
154 because they would not meet the frontage requirements, if they ever wanted to do anything they would
155 require a Variance. Mr. Simpson said that they may need to go talk with the new owner of the
156 restaurant property. Mr. Platt said that may be a possibility and they have talked about doing
157 something. Mr. Landry said that the Harbour lot has frontage now but the two other lots do not, but
158 after this subdivision the Harbour lot will not have any frontage.

159 Mr. Neuwirt said that he has done some work on the middle lot, the Hopkin's lot, and asked if the shed
160 is on the Harbour's property. Mrs. Harbour said that it is a little bit of the shed on their land. Mr. Landry
161 said that they showed a 50 ft setback for the plan of the shed on the Building Permit application. Mr.
162 Neuwirt asked if the land was considered to be part of the Hopkin's lot and not Mrs. Harbour's mother's
163 lot. Mr. Platt said that the previous owner of the Hopkin's property went to great lengths to make the
164 property look bigger than it is.

165 Mr. Landry said that this helps to clear up the other two lots but that work needs to be done to get
166 access to the Harbour lot. Mrs. Harbour said that she thought the use of the right of way was adverse
167 possession. Mr. Platt said that it used to be the through road to get to lots behind the Harbour's lot.

168 Vice Chair Schneider made a motion to approve Case #15-33: Parcel ID: 0148-0025-0000: seeking
169 approval of a Variance of Article III, Section 3.10 to allow a pre-existing, non-conforming lot to be more
170 non-conforming from .56 acres to .505 acres in a rural residential district; Lance and Christina Harbour, 7
171 Morningside Drive. Mr. Larrow seconded the motion.

172 Mr. Simpson said that he thinks that the plan is good but he is concerned that they are creating a more
173 non-conforming lot that no longer has road frontage and may lose whatever access they have. Mr.
174 Larrow said that he thinks something should be in the motion. Mr. Platt said that it may be impossible
175 to get permission to gain access but when you possess property for more than 50 years he does not
176 think that they can put a fence up or anything like that. Mr. Landry said that he does not see how the
177 Planning Board can approve a subdivision without any road frontage. Mr. Simpson said that the other
178 two lots may have already taken ownership of the property through adverse possession. Mr. Landry

179 asked if they can get something in writing that says that the Harbour's will maintain access to Hamel Rd.
180 There was further discussion regarding the possibility of an easement from the restaurant property.

181 Mr. Simpson said that the plan shows what looks to be a common entrance by the shed and that it
182 connects to another driveway. Mr. Landry asked if the Hopkins can give a right of way over their land to
183 the Harbours for a driveway. Mr. Platt said that they already have a paved driveway that has been there
184 for years. Vice Chair Schneider said that it is a matter of giving access, they are not asking to move the
185 driveway. Mr. Platt said that he thinks this can be addressed before the Planning Board meeting but it
186 might have been the old road. Mrs. Harbour said that Morningside Drive was a driveway that was given
187 a road name for 911 purposes. Mr. Neuwirt said that if the restaurant does not grant access over their
188 property then the Harbour lot becomes landlocked. Mr. Platt said that there are two pieces of
189 landlocked properties now and if approved there will only be one. Mrs. Harbour said that the driveway
190 meets Hamel Rd and has been there for as long as she can remember. Mr. Landry said that the
191 Harbour's may need a letter from an attorney as he is not sure the Planning Board will approve a
192 subdivision without legal access from Hamel Rd. Mr. Platt asked if this part can be left for the Planning
193 Board as they are asking for a Variance to become more non-conforming. Mr. Landry said that he does
194 not see how the Board can approve a lot that is going to be landlocked. Mr. Simpson said that the other
195 people has been occupying the other land which gives them road frontage, it is already landlocked if
196 they have used the land for 20 years for their own use. Just because you have a deed for a piece of
197 property it does not mean that you own it. Those two sections that Harbour is offering to give to the
198 neighbors may already legally belong to the neighbors. Mr. Neuwirt said that the Board cannot
199 speculate. Mr. Simpson said that it may have been landlocked to start with and at least with this
200 proposal two of the lots clearly have the road frontage.

201 Mr. Larrow asked and Mr. Platt explained the location of the Harbour's driveway.

202 Mr. Larrow asked if the Harbour's could get something from the neighbor. Mr. Platt said that they could
203 work on that. Mr. Landry said that he thinks that the Board needs to put a condition on approval to
204 make it easier for the Planning Board. Mr. Platt said that he thinks the Zoning Board can do what they
205 want and then let the Planning Board handle it. Mr. Larrow said that this is going to better the other
206 lots and to get a legal agreement that the driveway goes over that area makes sense. Mr. Platt said that
207 if you look at the tax map the Harbour's lot does not have footage shown and that is what the previous
208 owner of the Hopkin's lot asserted. Mr. Landry said that the tax map has 50% of the right of way not
209 being shown. Mr. Landry explained this to the Board and said that he thinks that this needs to be
210 cleared up before it goes to the Planning Board.

211 Mr. Neuwirt asked what happens if the owner of the restaurant property says that the Harbours can no
212 longer use that property to access their property. Mr. Simpson said that they will probably end up going
213 to court for an injunction. Mr. Neuwirt said that even though the whole thing is messed up, the lots are
214 achieving a certain validness by obtaining the parcels. He thinks it is a good idea but it makes him
215 nervous to create a landlocked lot. Mr. Simpson asked if the Board can make the approval conditional
216 on subdivision approval. Mr. Neuwirt said that he thinks the Board should make an approval conditional

217 on the Harbour's obtaining an easement agreement. Vice Chair Schneider said that he would like to
218 have the approval conditional that legal access is obtained to all involved properties.

219 Vice Chair Schneider amended his motion to make it conditioned that legal access is obtained to all
220 involved properties. Mr. Larrow seconded the amendment. Mr. Simpson said that the owners of the
221 lots could ask for a Variance to have all three lots share the driveway. The amended motion passed
222 unanimously.

223 **MINUTES**

224 Changes to the minutes from the November 12, 2015 Zoning Board Meeting: Change Line 15 to read
225 "The applicants own both sides..." Change Line 20 to read "Chairman Frothingham asked if there is a..."
226 Change Line 28 to read "Mr. Chesley said that the right of way..." Change Line 46 to read "...front
227 setback says that it applies..."

228 Vice Chair Schneider made a motion to accept the minutes as amended. Mr. Simpson seconded the
229 motion. The motion passed unanimously.

230 **MISCELLANEOUS**

231 Mr. Neuwirt asked if the Board can discuss Mr. Neuwirt's resignation.

232 Mr. Larrow asked why Mr. Platt wants to resign from the Board. Mr. Platt said that the thing with the
233 Pease's got him very upset. Mr. Neuwirt said that he did something about it and that is what the Board
234 needs and that is how things change. Mr. Platt said that he does not see much change happening.

235 Mr. Simpson said that he appreciates everything Mr. Landry says and wishes that Town Counsel would
236 have written something. Mr. Landry said that he is not sure how he will address the building permit for
237 Pease with the Selectboard.

238 Mr. Simpson said that Mr. Platt offers a view of what they are dealing with regarding regulations and
239 practical considerations that is helpful. Mr. Larrow said that Mr. Platt has an expertise that the other
240 Board members do not have. Mr. Neuwirt agreed with Mr. Simpson and Mr. Larrow.

241 Mr. Platt said that he is conflicted about going from working on the Pease's case to back to being on the
242 Board. Mr. Simpson said that is a problem as Mr. Platt started hearing a decision and then worked on it.

243 Mr. Neuwirt asked how much of Mr. Platt's resignation are personal issues that he has with Mr. Landry.
244 Mr. Platt said that he thinks it is more professional than personal. Mr. Larrow said that he thinks that
245 the question should be rephrased and things are not personal. Mr. Neuwirt said that eventually things
246 become personal. Mr. Platt said that he finds many of the cases that they hear frustrating it would be
247 nice to find a way for the Board to determine that if something is more conforming than it was before it
248 is good. There are cases that people are looking to move their house back from the lake within the
249 same footprint but need a Variance because the stairs are closer. Mr. Landry said that he has to follow

250 the rules, or make his own interpretation of the rules, which is why there is an appeal process of the
251 Zoning Administrator's decisions.

252 Mr. Neuwirt asked Mr. Platt what he would change. Mr. Platt said that he would like to change the
253 regulations to make it easier to not have to come before the Board so much. He has talked to Mr.
254 Marquise about having a more thorough review of Zoning Board and Planning Board applications to
255 maybe see if something has to come before the Board. Mr. Landry said that he and Chairman
256 Frothingham have discussed having one or two joint meetings with the Planning Board right after the
257 first of the year to try and get some of the complex definitions squared away and to try and get some of
258 the regulations cleaned up. The Regulations have not gone before an attorney for years and they are a
259 mess.

260 Mr. Neuwirt said that he has come to appreciate Mr. Platt's technical expertise and he thinks it will be
261 terrible to lose that. He is not saying that things are not frustrating but it requires someone like Mr.
262 Platt to bring these things to light and initiate change that way. Mr. Neuwirt said that he does not enjoy
263 sitting at the meetings and bickering about interpretations that should have been ironed out years ago
264 either. Chairman Frothingham said that the Zoning Ordinances are not clear and they wrestle with them
265 every year. They have to put forward what they think at the time and if there is no discussion to
266 straighten things out then nothing is going to happen. Mr. Neuwirt said that he thinks that. Mr. Platt's
267 continuance with the Board will lead to a more streamlined process that will benefit the Town and he
268 does not accept Mr. Platt's resignation. Mr. Landry said that he thinks that there is a good make up of
269 the Board and Mr. Platt offer's his expertise as do the other Board members.

270 Mr. Neuwirt said that he hopes that Mr. Platt reconsiders. Mr. Platt said that he will think about it for a
271 week or so and let Mr. Landry know; though there is a certain conflict with his business too.

272 There was a discussion regarding the Zoning Regulations and applications process and if the applicants
273 require surveys. Mr. Simpson asked if Mr. Landry can say that an application is incomplete if a survey is
274 not submitted and Mr. Landry said that he does not have that discretion. Mr. Landry said that they may
275 need to change the rules and procedures. Mr. Neuwirt said that he cannot ask for a survey for every
276 property. There was a discussion regarding if Mr. Landry can recommend criteria be waived and doing
277 things like on the Planning Board where the Board has to determine if an application is complete.

278 Mr. Platt said that things take too much time and applications can take three to four months and it does
279 not seem right to him.

280 The meeting adjourned at 8:36 pm.

281 Respectfully submitted,

282 Melissa Pollari

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285 Edward Frothingham

Aaron Simpson

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287 Clayton Platt

Daniel Schneider

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289 William Larrow

George Neuwirt, Alternate