

1 **TOWN OF SUNAPEE**

2 **ZONING BOARD**

3 **MAY 8, 2014**

4 **PRESENT:** Edward Frothingham, Chair, Daniel Schneider, Vice-chair, Aaron Simpson, Clayton Platt,  
5 William Larrow, 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 **MINUTES**

10 Changes to the minutes from the April 10, 2014 Zoning Board Meeting: The minutes were tabled until  
11 the next meeting.

12 **CASE # 14-04: PARCEL ID: 0218-0061-0000: ADMINISTRATIVE APPEAL: AN APPEAL OF THE ZONING**  
13 **ADMINISTRATOR'S DECISION TO DENY A BUILDING PERMIT FOR CONVERSION OF A SINGLE FAMILY**  
14 **RESIDENCE TO A TWO (2) FAMILY HOME DUE TO LACK OF PROPER ROAD FRONTAGE. 112 A SARGENT**  
15 **RD, DUSTIN ALDRICH.**

16 Aaron Simpson recused himself from the case.

17 Chairman Frothingham made a motion to appoint George Neuwirt to stand in for Aaron Simpson. The  
18 Board voted unanimously in favor of the motion.

19 Dustin Aldrich and Attorney Derek Durbin presented the case. Atty. Durbin gave the Board some  
20 supplemental material for their review and explained it to the Board. Atty. Durbin asked and Chairman  
21 Frothingham explained that for this Board three out of the five votes are required for a majority.

22 Atty. Durbin explained that Mr. Aldrich is seeking to convert his single family dwelling into a two family  
23 dwelling. He applied for a building permit in December of 2013 in order to do the conversion and  
24 received a letter of rejection from Mr. Landry along with the fee. Atty. Durbin continued that in the  
25 letter from Mr. Landry there were three findings that supported his reasoning for rejecting the building  
26 permit. The first was that the property was in the Rural Residential Zoning District verses the Residential  
27 Zoning District. The second was that Mr. Aldrich does not have adequate frontage as the ordinance  
28 requires 100' and Mr. Landry underlined in the letter "per dwelling unit". Third, that there were certain  
29 covenants and restrictions in Mr. Aldrich's deed that limited the use of the property to a single family  
30 use.

31 Mr. Schneider said that Atty. Durbin did a good job explaining the three different points and that they  
32 are all separate points as one does not really have anything to do with the other. Mr. Schneider

33 suggested the Board go over the points individually and vote on each one separately. The Board and  
34 Atty. Durbin agreed to do this.

35 Mr. Landry said that Atty. Durbin is correct that he said that the Zoning District was Rural Residential. At  
36 the time the colors on the Zoning Maps were not clear, however, he did make a mistake and it is  
37 Residential and 75' of road frontage is required, not 100'.

38 Daniel Schneider made a motion that the Board establish that the property is in the Residential Zoning  
39 District. William Larrow seconded the motion. The motion passed unanimously.

40 Mr. Landry said that he received a copy of a notice from a private surveyor when the applicant  
41 submitted his appeal. Mr. Landry went further back into the records at the Registry of Deeds and there  
42 is a 200' mark on Sargent Rd that has the restrictive covenant and beyond that there is no restriction.  
43 Mr. Aldrich's property is not within the 200' covenant. Atty. Durbin said that was what he was trying to  
44 clarify with the print out of the subdivision that he gave to the Board. There is a line that was  
45 highlighted across it showing the 200' as well as the subject lot which shows that it is not within the  
46 restricted land.

47 Mr. Landry said that the third item is that there needs to be 75' per dwelling unit, which he stands firm  
48 on. Atty. Durbin said Section 4.10 of the Zoning Ordinance says that in the Residential District two-  
49 family dwelling units are permitted by right as long as the other requirements of the Zoning Ordinances  
50 are met for the District. Looking at Section 3.10 of the Zoning Ordinance and the Table of Dimensional  
51 Controls, it does say that the minimum road frontage is 75'. Atty. Durbin said that they believe that it is  
52 75' total, not 75' per dwelling unit that is needed. He believes their argument has merit based on the  
53 fact that if you look a maximum residential density you see "du=dwelling unit". Atty. Durbin continued  
54 that nowhere else in the Table of Dimensional Controls nor in the Zoning Ordinances related to it  
55 indicate that the Zoning Ordinance be interpreted that 75' of road frontage is required per dwelling unit.  
56 Atty. Durbin said that it also does not make sense in trying to control density as this is a medium density  
57 district.

58 Atty. Durbin continued that they are dealing with a structure that already exists though there is some  
59 disagreement or lack of clarification on how it was originally built. He understands that the original  
60 building permit was filed for single family use. However, the person who constructed the house built it  
61 so that it could be used as a two family unit.

62 Mr. Schneider asked what the precedent is for using the road frontage minimum as per dwelling unit.  
63 Mr. Landry said that the Planning Board has practiced 75' of frontage per dwelling unit. Mr. Schneider  
64 asked when the Zoning Board has made that determination. There was a brief discussion regarding a  
65 recent case involving multi-family units and that part of what the Board looked for was the road  
66 frontage though the only thing lacking was density and lot size. There was another discussion about  
67 another case within the Mixed Use district and that also had proper road frontage. Mr. Landry said that  
68 he went back 7.5 years' worth of approvals and the Planning Board has practiced having 75' of frontage  
69 per dwelling unit for all of the multi-unit dwelling unit cases.

70 Mr. Landry said that he has spoken to the Town's attorney and the Planning Board should have included  
71 the "du" as part of the Ordinance but they didn't so it has been silent. Because it has been treated like it  
72 was silent and can be considered an Administrative Gloss. Mr. Landry gave a copy of the  
73 correspondence from the attorney to the Board and asked them to read specifically the sixth paragraph.  
74 Mr. Landry read the paragraph to the Board (see attached).

75 Mr. Schneider asked why this case was never brought before the Board and Mr. Landry said that he  
76 meets with applicants before they apply and there are often times that people decide not to try to  
77 proceed with a hearing for a Variance on road frontage.

78 Mr. Landry said that he went back 7.5 years and could not find any evidence of when the Planning Board  
79 varied from the road frontage per dwelling unit requirement. The Town's attorney said that the Zoning  
80 Board must determine if the 7.5 years is sufficient evidence that the Planning Board has been consistent  
81 in using the requirement of feet of frontage per dwelling unit.

82 Atty. Durbin said that it is his understanding that the Planning Board is not the municipal body  
83 responsible for adoption of the Ordinance. The intent, while it may go through various work sessions  
84 and meetings, is typically expressed by the municipal body that adopts the Ordinance. Atty. Durbin  
85 continued that, in respect to custom, precedential value when it comes to Variances has little weight  
86 when compared to a literal interpretation of the Ordinance which is what the Board is bound by. Atty.  
87 Durbin said that he feels as though they have presented their burden of proof. They submitted the  
88 application for the appeal well in advance and are only just hearing that there is 7.5 years of precedence  
89 which is hearsay as they do not have anyone who was able to verify that information nor any  
90 documentation before them to examine the evidence. Atty. Durbin continued that he did his research  
91 and there was nothing in public record that expressed the intent that the requirement is per dwelling  
92 unit. He has a feeling that no one has ever challenged the requirement. Mr. Landry said that part of the  
93 letter from the Town attorney said that the Board needs to determine if no one has challenged the  
94 requirement how far back is proof enough to say that the Planning Board has interpreted the way that  
95 they are doing it.

96 Mr. Landry explained that the Zoning Board makes recommendations to the Planning Board for changes  
97 to be made to the Zoning Regulations. It is the Planning Board that adopts and approves the changes in  
98 Sunapee. It goes through several public hearings, then goes to the Selectboard for approval and then  
99 goes to on the Town Warrant. Atty. Durbin said that the Zoning Board is simply the Board that makes  
100 the recommendation; they do not adopt the Ordinances. Atty. Durbin continued that it seems as  
101 though it was deliberately omitted as it was specifically put in the maximum residential density  
102 requirement.

103 Mr. Schneider said that he agrees with Atty. Durbin that there is nothing in the Zoning Ordinance that  
104 says minimum road frontage per dwelling unit. Mr. Landry said that the Board has to understand the  
105 determination of administrative gloss. Mr. Schneider said that he understands but does not believe it is  
106 relevant. Mr. Landry said that the fact is that this was never challenged, at least before the Planning  
107 Board. Also, in the years that he has been with the Town he does not believe there has ever been

108 anyone asking for a Variance on the road frontage which means that it was never challenged. Mr.  
109 Landry continued that had it been challenged he believes the Zoning Board would have recommended it  
110 being changed. Since this has been practiced by the Planning Board for more than seven years, the  
111 Town's attorney has said that it is an Administrative Gloss as they have used it consistently.

112 Mr. Schneider asked if this two family unit would have to go to the Planning Board for Site Plan  
113 approval. Mr. Landry said that Mr. Aldrich would not need to go to the Planning Board as a two-family is  
114 permitted by right.

115 Mr. Landry said that the Town's attorney has recommended that if the Board feels uneasy in his  
116 interpretation of Administrative Gloss that the Board can go into a Non-Member Session and they can  
117 go upstairs and call him. Mr. Platt said that he does not feel as though it is necessary and his thinking is  
118 that it does not seem that ambiguous to him. Mr. Platt continued that after reading the Zoning  
119 Ordinance he agrees with Mr. Schneider as it does not say per dwelling unit.

120 Mr. Landry said that the Town's attorney is insistent on calling it an Administrative Gloss because if the  
121 Board does not consider it that way and find in Mr. Aldrich's favor, it opens the door to other multi-  
122 family cases to be able to come before the Board which is not what the Planning Board wants. This sets  
123 a precedent at least for the rest of this year.

124 Atty. Durbin requested clarification that what the Board has before them from the Town's attorney is  
125 marked "Attorney / Client Privilege" and if it is than he won't inquire further but parts of it has been  
126 offered into the record as evidence. Atty. Durbin continued that he has not seen the correspondence  
127 though he requested the attorney's opinion and recommendation prior to the last scheduled meeting.  
128 He was not given the opportunity to know what it was and is now being told that the Town's attorney is  
129 insistent that the Board look at it as administrative precedent. Atty. Durbin said that he has a feeling  
130 that it does not simply state that. Mr. Schneider said that it does not say "precedent", it says "gloss".  
131 Atty. Durbin said that he would like clarification from the Board that it is marked "Attorney / Client  
132 Privilege", otherwise it is public information which he should have a copy of though he is not trying to be  
133 adversarial with the Board. Mr. Schneider said he does not see it so marked. Mr. Landry said that they  
134 cannot give it out. Atty. Durbin said that Mr. Landry is incorrect. Mr. Landry said that Atty. Durbin can  
135 argue with the Town's attorneys, Jae Whitelaw and Stephen Whitley. Mr. Platt said that he does not  
136 understand why the Board can't give it to them. Atty. Durbin said that Atty. Whitley should have  
137 marked it. Mr. Landry said that it does say it somewhere in the email. Mr. Schneider said that it does  
138 not say anywhere that it is subject to privilege and he does not see any reason why Atty. Durbin  
139 shouldn't have it and thinks that it is unfair that he doesn't have it. Mr. Landry read from an email from  
140 Atty. Whitley that he received right before the meeting "My email communication with you and the ZBA  
141 are protected under the attorney / client privilege and should not be provided to anyone else unless the  
142 ZBA affirmatively votes to waive the privilege."

143 Clayton Platt made a motion to waive the attorney / client privilege and provide a copy of the email  
144 dated Wednesday, March 12<sup>th</sup> to the applicant. Daniel Schneider seconded the motion. The motion  
145 passed with three in favor and two against.

146 Mr. Landry recommended that the Board go into a Non-member Session to talk with the Town's  
147 attorney. Mr. Schneider said that he does not feel as though it is necessary, he thinks that what is in the  
148 Zoning Ordinance is clear. Mr. Landry said that he fears the Board will make a decision that could haunt  
149 them for the rest of the year. Mr. Larrow said that he feels as though this is what the Town has  
150 attorneys for and if they have the opportunity to discuss something that may come up that they are not  
151 thinking about and that the Board would be turning a blind eye without doing it.

152 The Board asked if there were any other people in attendance for this case and there were none. Mr.  
153 Schneider suggested tabling the discussion to hear the other cases and then talk to the Town's attorney.  
154 Chairman Frothingham said that they could also continue the hearing until next month.

155 Mr. Platt asked Mr. Landry about the floodgates that would be opened up and if there are many people  
156 who want to put in multi-units. Mr. Landry said that it is something that could happen, though it may  
157 not. There was further discussion regarding the need for lot size and density requirements.

158 Atty. Durbin said that they do not want to postpone the hearing and would like to move forward as they  
159 feel that this has gotten dragged out at Mr. Aldrich's expense.

160 William Larrow made a motion to postpone the case until the end of the meeting. Clayton Platt  
161 seconded the motion. The motion passed unanimously.

162 Clayton Platt made a motion to reopen the Administrative Appeal Case #14-04. Daniel Schneider  
163 seconded the motion. The motion passed unanimously.

164 William Larrow made a motion to go into non-member session. George Neuwirt seconded the motion.  
165 The motion passed unanimously. The Board members adjourned to go speak with the Town's attorney.

166 Clayton Platt made a motion to come out of non-member session. William Larrow seconded the  
167 motion. The motion passed unanimously.

168 Atty. Durbin said that he had an opportunity to read the Town Attorney's email and he does mostly  
169 correctly site the Administrative Gloss standard but that the most recent Supreme Court Case that was  
170 decided in Portsmouth did not put a time limitation on Administrative Gloss. Mr. Landry said that he  
171 does not believe that the Town's Attorney put a time limit on it but it seems a little confusing how he  
172 wrote it. Mr. Landry said that the Town's attorney explained it to him that it is how long the Zoning  
173 Board is satisfied with and it could be any time period. Atty. Durbin continued that, whether or not they  
174 apply the Administrative Gloss standard and the rule of Statutory Construction, he does not see any  
175 ambiguity to which they can apply the standard even the email from the Town's attorney says that it is a  
176 close call.

177 Atty. Durbin said that he urges the Board not to take into consideration some of the comments from Mr.  
178 Landry as he views them to be crossing the line when it comes to due process. There were arguments  
179 and assertions made that the Town's Attorney said that the Board must do certain things and the email  
180 from the Town's Attorney does not say that. Atty. Durbin continued that he would caution the Board to  
181 apply the Administrative Gloss standard.

182 Mr. Landry explained to the Board that he did not deny the building permit. The permit was returned to  
183 the applicant.

184 Clayton Platt made a motion to approve the appeal to overturn the decision for Case # 14-04: Parcel ID:  
185 0218-0061-0000: An appeal of the Zoning Administrator's decision to deny a building permit for  
186 conversion of a single family residence to a two (2) family home due to lack of proper road frontage.  
187 Mr. Platt withdrew his motion.

188 Mr. Platt said that when there is an ambiguity in the Zoning Regulations or there is a way to interpret it  
189 that is not unreasonable they should err on the side of land owner. He does not feel as though it is  
190 unreasonable for the applicant to assume that the road frontage did not affect the number of dwelling  
191 units. There should be not be a requirement that someone discusses things with Mr. Landry in order to  
192 interpret the Ordinances.

193 William Larrow made a motion to approve Case # 14-04: Administrative Appeal: An appeal of the  
194 Zoning Administrator's decision to deny a building permit for conversion of a single family residence to a  
195 two (2) family home due to lack of proper road frontage, 112 A Sargent Rd, Dustin Aldrich. Clayton Platt  
196 seconded the motion. The motion passed with four in favor and one opposed.

197 **CASE # 14-05: PARCEL ID: 0107-0025-0000: SEEKING A VARIANCE OF ARTICLE III, SECTION 3.10 TO**  
198 **REDUCE ROAD FRONT SETBACK FROM 50' TO 17' FROM CENTER OF ROAD. LAWRENCE & DIANE**  
199 **KEANE, 1112 LAKE AVE, GM.**

200 Charlie Hirshberg of CLD Engineers and Diane Keane presented the case.

201 Mr. Hirshberg explained that this house does not have a garage though many of the houses along the  
202 road have two car garages. This property consists of a lakeside piece and a piece across the road. They  
203 are proposing to put a two car garage on the lakeside portion. Mr. Hirshberg showed the Board the plan  
204 for the garage.

205 Mr. Simpson asked and Mr. Hirshberg explained that there is one part of the property that is about  
206 7,000 square feet on the lake side of the road and then another 26,000 square feet which is across the  
207 road though not directly across.

208 Mr. Hirshberg said that they are seeking a Variance to place a garage on the road side of the lake side  
209 piece of the property. The existing house on the lot sits partially in the 50' setback off from the water  
210 and partially in the 50' setback from the centerline of the road. The lot is not very deep therefore it is  
211 hard to meet all of the setbacks. Mr. Hirshberg continued that they are proposing a garage placed on  
212 the existing drive. They are not increasing any of the impervious area as there is currently hard surface  
213 there. Mr. Hirshberg noted that the Town's Regulations recommend add-ons on the roadside, not the  
214 lakeside. Also, as they are adding on where there is already impervious surface they are minimizing the  
215 impact in terms of storm water runoff and any additional impact on the lot.

216 Mr. Hirshberg said that this addition would put them within 1.5 feet of the Right of Way at the closest  
217 corner of the garage. The corner would be 8' off of the pavement. Mr. Hirshberg continued by showing

218 the Board a section of the Tax Map and explaining that the 9 lots that are along the road west of the  
219 property cannot meet the 50' setback off of the road. With the 9 lots, 4 have structures that are as close  
220 as or closer than they will be to the road. Mr. Hirshberg said that all of the other dwelling units' garages  
221 require backing up onto the road. They are proposing placing the garage in such a way that they drive  
222 into the driveway and back out and then drive out onto the road. They are not impacting the road by  
223 adding someone backing out onto it.

224 Mr. Hirshberg said that the piece across the road is solid ledge and meets the steep slope criteria so they  
225 would require a Variance for steep slope. Also, they would require the same Variance for the front  
226 setback because they couldn't get it out far enough to even meet the Special Exception criteria; they  
227 would also be backing out onto the road.

228 Mr. Hirshberg continued that they have minimized the impact by placing the garage where it is  
229 impervious now and minimized the impact of backing out onto the road. With the 9 properties, 4 have  
230 the same conditions as what they are looking at for this property and none could even meet the  
231 requirements of needing a Special Exception. Mr. Simpson asked and Mr. Hirshberg explained that they  
232 are asking for a Variance.

233 Chairman Frothingham asked how long it had been since the other structures were approved. Mr.  
234 Hirshberg said that the Board would have to ask Mr. Landry.

235 Mr. Hirshberg explained that the garage needs a wide door in order to drive in to it. If they were to do a  
236 single bay garage you could not maneuver into it. The characteristics of the lot make it difficult to  
237 maneuver.

238 Mr. Simpson asked and Mr. Hirshberg confirmed that this is a two car garage with one single door. Mr.  
239 Simpson said that 23' x 26' does not seem like a typical garage size. Mr. Hirshberg confirmed this and  
240 said that they are going as narrow as they can. Ms. Keane said that the garage is actually 22' and the  
241 other foot is the overhang. Therefore, the actual wall is 9' off of the pavement.

242 Mr. Hirshberg gave the Board copies of current photos of the property. Mr. Hirshberg explained that  
243 the current retaining wall that goes along the road and is within 10' of the right of way and is over 40"  
244 high. This is defined as a structure so there is already a structure that is there.

245 Mr. Hirshberg said that there is another property along the road that meets the requirement for a  
246 Special Exception but there is still a retaining wall that is over 40" that is within 10' of the road right of  
247 way.

248 Mr. Hirshberg said that they are trying to ensure that they do not have to park out on the road as it is  
249 not very wide.

250 Dick Dulude, who lives beyond the end of the road, asked what the plans for the piece of land that is not  
251 on the lakeside. Mrs. Keane said they do not have any current plans. However, there is a turn around  
252 that the Town uses when they plow. The Town would like an Easement as there isn't a place to legally  
253 turn around. The rest of the lot is basically solid ledge and steep slope.

254 Mr. Dulude asked about the strip of land that he owns jointly with the Keane's. Mr. Hirshberg said that  
255 it is a grass area and they can't use it.

256 Mr. Hirshberg said that a majority of the lots in the area have issues and are within the setback of the  
257 road.

258 Mrs. Keane asked and Mr. Landry confirmed that he received an email from one of the abutter's, the  
259 Harrisons. Mrs. Keane explained that they have spoken to their neighbors to ensure that they  
260 understood the proposal and were able to voice their concerns. The neighbors were fine with the  
261 proposal and are happy with it.

262 Mr. Landry asked and Mr. Hirshberg explained that the garage will be 2' from the Town's right of way.  
263 Mr. Landry said that the current house is roughly 22' from the edge of the pavement. Mrs. Keane said  
264 that they will not abut the pavement. They have been trying to do what is best for everyone and they  
265 are trying to straighten it out. The retaining wall is already in closer but they are taking it back further.  
266 Mr. Hirshberg said that the edge of the house is 31' from the edge of the pavement and the garage will  
267 be 22' wide. There was further discussion regarding the measurement from the house to the pavement.

268 Mr. Landry said that the Town has a right of way of 33' and they cannot put a garage in the right of way.  
269 Mrs. Keane said that there will be more room than there is now. Mr. Hirshberg said that there will be 8'  
270 from the wall of the garage to the pavement. Mr. Landry said that the wall will be on the Town right of  
271 way line. Mr. Hirshberg said that the driveway is on the right of way and that the wall tapers to the road  
272 but it the garage will be 2' from the right of way. Mr. Schneider said that 2' away from the Right of Way  
273 is close. Mr. Hirshberg said that there are other structures that are even closer. Mr. Landry said that  
274 they are pre-existing, non-conforming structures. Mr. Schneider said that he does not think the Board  
275 has a reason to add another.

276 Mrs. Keane said that she does not understand the issue as there is nothing there, it is just air. Mr.  
277 Landry explained that they are proposing putting a two story building there. Mrs. Keane said that she is  
278 proposing a retaining wall that will hold in the side of the road. She is proposing not having to park her  
279 car across the road so that the Town plow can turn around. Mr. Landry said that there is room for the  
280 Keane's to build on the property across the street. Mrs. Keane said that when they originally bought the  
281 property they did not think they needed a garage but this winter showed that the driveway becomes  
282 filled with ice and they couldn't park in it so they had to park on the road. Mr. Hirshberg explained that  
283 right now the water washes off the road and creates a sheet of ice across the driveway.

284 Mr. Platt asked about the differences in the survey done by Cliff Richer and the plan because he does  
285 not see the two iron pipes that are on the survey on the plan. Also, it looks as though the Right of Way  
286 is parallel to the road and it does not show that on the plan. Mr. Hirshberg said that they inputted Mr.  
287 Richer's information and, based on the bounds that they shot, it was within a tenth of a variation.

288 Mr. Simpson asked where the water is coming from and Mr. Hirshberg explained that it is coming across  
289 the road. Mr. Hirshberg explained that by creating a solid wall with the garage concrete wall, they will



290 effectively be able to drain the water around the structure and run it to some stone-water features on  
291 site. The water currently runs through the wall.

292 Mr. Simpson asked for confirmation that three properties to the west of this property are closer than  
293 17' to the centerline. Mrs. Keane said that she has pictures of the structures that are up against the  
294 road. There is a house and three garages. Mr. Simpson said that this can be used as part of their reason  
295 for the Variance as granting the Variance should not injure the private or public rights of others.

296 Mr. Landry asked about hardship. Chairman Frothingham said that he realizes that building across the  
297 street could be more expensive. Mrs. Keane said that her builder looked at the site and it is more than  
298 20' high, you can't get into it. Mr. Landry said that he has been to that site and that there is a slight  
299 incline but then there is a plateau where a garage could be built. Mrs. Keane was concerned about  
300 safety in the winter to build across the street.

301 Mr. Landry said that they could build a single car garage on their property. Mrs. Keane said that they  
302 discussed doing a single car garage and you can't get into a single car garage. Mr. Larrow asked Mr.  
303 Hirshberg if there were any changes that could be made to the structure. Mr. Hirshberg explained that  
304 the difficulty with a single car garage is that there needs to be a bigger opening. Mrs. Keane said that  
305 they need to have room for two cars and if they put in a single car garage they lose the second parking  
306 space. They are on a dead end road and her neighbors have said that they are fine with the proposal.

307 Mr. Dulude said that he is probably the only person who uses the road as much. He is concerned with  
308 the construction and snow removal if the Board granted approval. The snow from the roof of the garage  
309 could go onto the road. Mr. Dulude said that the construction would also be a nuisance. Mrs. Keane  
310 said that they would not build the garage until the summer was over so that they did not affect the  
311 neighbors.

312 There was a brief discussion regarding the site across the street and a view easement and whether a  
313 structure could be built there.

314 Joel Dulude asked about drainage and where the water from the roof would go. Mr. Hirshberg said that  
315 there would be a gutter on the road side and the water would be brought around and run into drywells.

316 Mr. Landry said that the Highway Director is not in favor of this proposal as it puts the Town in a liability  
317 position if they push snow into the garage wall. Mrs. Keane said that now the snow gets pushed onto  
318 her car. Mr. Landry said that the retaining wall was not constructed correctly. Mrs. Keane said that she  
319 will be giving a straight line and 9' to push the snow and that the land owners past her do not care. The  
320 Town is also using her land to turn around.

321 Chairman Frothingham read the letter from the abutter into the record stating that they do not have  
322 any objections to the proposal (see attached).

323 Mr. Larrow said that the concern seems to be placement of the building in relationship to the road. He  
324 does not have a good feeling about snow being dumped onto the building by the Town plows. Mr.  
325 Larrow continued that he would like to see a better drawing of what they are dealing with. Mrs. Keane

326 asked why snow wouldn't be dumped on the other buildings but be dumped on hers when hers are  
327 further away. Mr. Larrow said that he does not know what the snow does to the other buildings.

328 Mr. Simpson asked and Mr. Hirshberg confirmed that the wall will be 9' from the pavement. The wall  
329 will be less than 8' from the Town Right of Way.

330 Mr. Platt said that it is difficult when there are all the structures along the road. Mr. Landry said that  
331 those are pre-existing, non-conforming buildings. The opinion of the Highway Director is that the Board  
332 would just be creating another liability. Mrs. Keane asked if the Town is liable if they dump the snow on  
333 her car roof and Mr. Landry said that they would be. Mrs. Keane asked what would happen if the wall  
334 was cement. Mr. Landry explained that it wouldn't matter if there was hard crusted snow. This would  
335 be creating another liability possibility with the Town. Mr. Hirshberg asked if they could talk to the  
336 Highway Director and Mr. Landry said that they could.

337 Mr. Landry said that he does not understand why they cannot go across the road to build the garage.  
338 Mrs. Keane explained that she cannot get out of the driveway and if she puts a one car garage in she  
339 doesn't have a place for the second car.

340 Mr. Landry asked about lot coverage. Mr. Hirshberg explained that this property is all one piece and if  
341 you take the lot across the road the entire square footage it is only 20% of the lot. Mr. Landry asked  
342 about the State requirement and Mr. Hirshberg said that they meet the State requirements.

343 Mr. Hirshberg said that they will deal with the storm water management by roof guttering and some  
344 drywells to pick up the runoff and direct it around the structure. Mr. Schneider asked and Mr. Hirshberg  
345 confirmed that this plan does not increase the use of pervious material. There is an existing bluestone  
346 driveway and the structure will be put there.

347 Chairman Frothingham said that his concern is that this structure will be very close to the road. Mr.  
348 Simpson said that he questions whether this is a hardship as there is a pre-existing house and he is not  
349 sure it is a hardship not to have the garage. Mr. Schneider said that the Keane's voluntarily bought the  
350 house the way that it is and he doesn't buy the argument about the ice.

351 Daniel Schneider made a motion to approve Case # 14-05: Parcel ID: 0107-0025-0000: seeking a  
352 Variance of Article III, Section 3.10 to reduce road front setback from 50' to 17' from center of road,  
353 Lawrence & Diane Keane, 1112 Lake Ave, GM. Clayton Platt seconded the motion. The motion failed  
354 with four opposed and one abstention.

355 **CASE # 14-06: PARCEL ID: 0147-0065-0000: SEEKING A VARIANCE OF ARTICLE III, SECTION 3.10 TO**  
356 **REDUCE SIDE SETBACK FROM 15' TO 8' ALLOWING CONSTRUCTION OF A NEW 11' X 12' DECK. JOSEPH**  
357 **& CAROL MARALDO, 48 HAMEL RD.**

358 Joseph Maraldo asked the Board to postpone the hearing on the Variance until the next meeting. They  
359 require two Variances for this project and he did not get the paperwork to Mr. Landry on time.

360 Mr. Schneider made a motion to reschedule the hearing on the Variance for Case # 14-06: Parcel ID:  
361 0147-0065-0000 until the June meeting. Aaron Simpson seconded the motion. The motion passed  
362 unanimously.

363 **CASE # 14-07: PARCEL ID: 0147-0065-0000: SEEKING A SPECIAL EXCEPTION OF ARTICLE III, SECTION**  
364 **3.50-I TO RAISE ROOFLINE FROM 21' TO 27' ON EXISTING CAMP. JOSEPH & CAROL MARALDO, 48**  
365 **HAMEL RD.**

366 Joseph Maraldo presented the merits of the case. Mr. Maraldo explained that they would like to  
367 remove the roof on the road side which is at 21' and raise it to 27'. The building currently doesn't meet  
368 any codes and they will be doing a complete rebuild. Mr. Maraldo continued that they have DES  
369 approval for the work which was submitted with the application. They are also putting in a drip line and  
370 two drywells to handle the storm-water management. Mr. Maraldo explained how a drip line works to  
371 the Board.

372 Mr. Maraldo read over the Ordinance that allows a pre-existing, non-conforming structure to be  
373 enlarged, replaced and/or the roofline altered. Mr. Maraldo explained that the enlargement is  
374 increasing the horizontal dimension by adding a small foyer but it is within the setbacks and doesn't  
375 require any Variances. The existing structure is a house that is less than 24' in height; they are looking  
376 for 6 additional feet. The roof changes are within the height requirements set forth in the Ordinance.  
377 Mr. Maraldo continued that in the judgment of the ZBA no abutter will be adversely affected by the  
378 enlargement he has included left and right pictures of the neighbors and most of the homes in that area  
379 are two story homes. He has received the DES Permit from the State.

380 Mr. Platt said that it sounds like Mr. Maraldo meets all of the requirements for the Special Exception.  
381 Chairman Frothingham agreed with Mr. Platt.

382 Mr. Simpson asked if there was anyone in the audience who wanted to comment on the case.

383 Nancy Marashio, owner of 45 Hamel Rd, said that she would like to see a picture of what the roof would  
384 look like as she owns a single story house. Mr. Maraldo showed her a plan of the design and  
385 development stage and also showed it to the Board.

386 There was a brief discussion regarding an Ordinance that was removed as well as the requirements for  
387 building a new house or an addition.

388 Ms. Marashio said that it changes the view from her side of the road. Mr. Simpson said that it not  
389 something that can be considered. Mr. Maraldo said that Ms. Marashio's house does not look at his  
390 house, it looks at the garage.

391 Mr. Simpson said that Section 3.50-I (8) is open ended and it seems as though it is asking the Board to  
392 consider other aspects of the Ordinance, though he may be interpreting it wrong. Mr. Simpson  
393 continued that the 25' maximum height does not apply because it is not an addition. Mr. Platt asked  
394 and Mr. Maraldo confirmed that the roofline on the lake side is not changing. Mr. Platt said that he

395 feels like the Board needs to give people on the small lots an opportunity to improve and they are only  
396 raising the house 6'.

397 Clayton Platt made a motion to approve the Special Exception for Case # 14-07: Parcel ID: 0147-0065-  
398 0000: Seeking a Special Exception of Article III, Section 3.50-I to raise roofline from 21' to 27' on existing  
399 camp; Joseph & Carol Maraldo, 48 Hamel Rd; all construction is to comply with the Shoreland Permit  
400 issued by NH DES file #2014-00742. Aaron Simpson seconded the motion. The motion passed  
401 unanimously.

402 **CASE # 14-08: PARCEL ID: 0225-0040-0000: SEEKING A SPECIAL EXCEPTION AS PER ARTICLE III,**  
403 **SECTION 3.50-B TO REDUCE ROAD FRONT SETBACK FROM 40' TO 35' ALLOWING CONSTRUCTION OF A**  
404 **NEW 8' WIDE DECK. ROBERT & TAMMY GONYO, 22 DEPOT RD.**

405 Robert & Tammy Gonyo and Bert Spaulding Sr., Tammy Gonyo's father, presented the case.

406 Mr. Spaulding gave documents to the Board for their review. Mr. Spaulding explained that one of the  
407 documents is a copy of the Town's tax map and the yellow tinted lot on the corner of Paradise Rd and  
408 Depot St is the lot being discussed. Another page shows the deck and Mr. Spaulding explained the  
409 layout along with the proposed handicap access ramp.

410 Mr. Spaulding explained that the setback from the centerline in this Zoning District is 40' and the way  
411 that the house is constructed is that the garage is slightly non-conforming as is the shed. Mr. Spaulding  
412 continued that the applicants would like to add a deck. He gave the Board pictures of what exists now  
413 and explained them to the Board. The deck will start at one corner of the house, turn and run along  
414 another side of the house. Mr. Simpson asked and Mr. Spaulding explained that there will be a roof  
415 over parts of the deck.

416 Mr. Platt asked about the handicap access as there are three criteria for a Special Exception (3.50-J).  
417 The access must fairly utilize the lot, be consistent with the intent of the Ordinance, and the structure  
418 must be temporary and not considered a permanent footprint. Mr. Landry said that this Ordinance  
419 would pertain to the ramp.

420 Mr. Spaulding said that as you are looking at the front of the building the sewage box that is on the front  
421 of the house will be the end of the deck; it will then be centered from there. The ramp will go from  
422 there to the garage. The area will still be open and the ramp can be removed so that they can have  
423 access to the pump. Chairman Frothingham asked and Mr. Spaulding confirmed that the ramp will go to  
424 the edge of the pavement which is part of the reason for the higher ratio on the handicap ramp. The  
425 other area will be open space with vegetation. Mr. Spaulding explained that the garage comes 3' 10"  
426 from the building and that with the 3' for the handicap access ramp and railings is what makes them  
427 need the 8' request for the deck so that it is straight through.

428 Mr. Simpson asked and Mrs. Gonyo confirmed that they are on Town Sewer.

429 Mr. Simpson asked if they are removing the tree in the yard. Mr. Spaulding said that Mrs. Gonyo wants  
430 both of the trees removed.

431 Mr. Simpson asked why the applicants are not trying to get a Special Exception under 3.50-j and Mr.  
432 Spaulding explained that they want to get it for the deck and that Mrs. Gonyo does not want the ramp  
433 which is why it is going to be removable. Mr. Landry said that they have to construct the ramp within a  
434 year or they lose the Special Exception. There is also a two year grandfather clause and if the ramp is  
435 removed for more than two years then they lose the right to have it.

436 Mr. Spaulding went over the criteria for a Special Exception under 3.50-b. The portion of the proposed  
437 structure encroaching the front setback shall be no higher than 25'. The proposed structure shall be no  
438 closer than 10' to the right-of-way line of the road. Mr. Platt asked if they knew what the right-of-way  
439 width is for Depot St. Mr. Spaulding explained that they measured it from the centerline which he  
440 assumed was what he would use. Mr. Landry said that if it is a Class V road it could be a 50' right-of-  
441 way. Mr. Spaulding continued that the proposed structure for which the Special Exception is being  
442 sought shall be no closer to the centerline of the road right-of-way than any other structure of equal or  
443 greater type being used in comparison. Mr. Spaulding explained that one of the pictures he brought  
444 shows a measurement of a structure to a centerline of the road. Referring to the document with the tax  
445 map, if you follow where Depot comes in by Youngs Hill, Lot #16 has buildings closer to the centerline.  
446 Mr. Platt said that it looks as though lots to the north and to the south have structures closer to the  
447 centerline. Mr. Spaulding said that the criteria that he is having difficulty with is number 1 which is that  
448 the lot for which the lesser front setback is requested is a pre-existing lot and non-conforming due to lot  
449 size. Mr. Spaulding explained that the lot is not non-conforming due to its size. It is .54 acres and the  
450 Ordinance requires .5 acres. The problem is that at the back of the lot is a ditch that drops about 6' – 7'  
451 at a 45 degree angle. Mr. Platt said that he believes that the Board cannot waive any of the  
452 requirements of a Special Exception. Mr. Landry confirmed that this is correct. Mr. Landry asked if the  
453 lot has been surveyed and Mr. Spaulding said that it has not. Mr. Landry checked the tax map to see if it  
454 says "AcC" or "Ac" and it has not been surveyed. There was another discussion regarding how far away  
455 this structure will be from the right-of-way line. The Board discussed continuing the case in order to  
456 allow the Gonyo's to have the lot surveyed and to also let them determine the width of the right-of-way.  
457 Mr. Spaulding said that the cost of the survey may be greater than the cost of coming back for a  
458 Variance.

459 Mr. Spaulding said that he assumed that what was on the tax map was the right-of-way because the  
460 Assessor's cannot assess from the right-of-way to the abutter and they have to do the research to find  
461 the right-of-way. The tax map shows it wider as it gets to Route 11 and 103 and narrower as it goes by  
462 this property. There was further discussion regarding the right-of-way and the road book that the Town  
463 has.

464 Mr. Spaulding and the Board briefly discussed the hardship criteria for a Variance. Mr. Simpson said that  
465 the Board would have to consider the ditch as part of hardship. Mr. Landry said that the applicants  
466 would not need to get a survey done if they applied for a Variance.

467 Mr. Spaulding requested that the hearing be continued until the next meeting and they will determine  
468 whether they want to request a Variance.

469 Aaron Simpson made a motion to continue the hearing until the next meeting. Clayton Platt seconded  
470 the motion. The motion passed unanimously.

471 Clayton Platt made a motion to adjourn at 9:44 pm. Daniel Schneider seconded the motion. The motion  
472 passed unanimously.

473 Respectfully submitted,

474 Melissa Pollari

475

476

---

---

477 Edward Frothingham

Aaron Simpson

478

---

---

479 Clayton Platt

Daniel Schneider

480

---

---

481 William Larrow

George Neuwirt, Alternate