

1 **TOWN OF SUNAPEE**

2 **ZONING BOARD**

3 **JANUARY 9, 2014**

4 **PRESENT:** Edward Frothingham, Chair, Daniel Schneider, Vice-chair, Aaron Simpson, Clayton Platt,
5 William Larrow, 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 Aaron Simpson made a motion to appoint William Larrow to fill Dick Katz's position until the Town
10 meeting in March. Clayton Platt seconded the motion. The motion passed unanimously.

11 Aaron Simpson made a motion to elect Daniel Schneider as Vice-chair. William Larrow seconded the
12 motion. The motion passed unanimously.

13 **PLANNING UPDATE**

14 Mr. Landry explained to the Board that the Planning Board did not meet on January 2nd as they decided
15 to meet on January 16th.

16 **MINUTES**

17 Changes to the minutes from the December 12, 2013 Zoning Board Meeting: Change line 86 to read
18 "...they can put a time limit on the Exception to whatever time frame..."

19 Clayton Platt made a motion to approve the minutes as amended. William Larrow seconded the motion.
20 The motion passed unanimously.

21 **CASE #14-01: PARCEL ID: 0235-0031-0000: SEEKING A VARIANCE OF ARTICLE III, SECTION 3:10 TO**
22 **ALLOW A REDUCTION OF REAR SETBACK FROM 25' TO 13' ALLOWING CONSTRUCTION OF AN**
23 **ADDITION. DANIEL & SUSAN O'CONNELL, 75 WATER LOT RD.**

24 Barry Paddock presented the case on behalf of Mr. and Mrs. O'Connell. Mr. Paddock explained the
25 O'Connell's would like to remove an existing addition and replace it. Mr. Paddock presented Plans to
26 the Board for their review.

27 Mr. Paddock showed the Board on the Plans that the back property line does not run parallel to the back
28 of the porch and the 13' measurement is perpendicular to the line and is the shortest distance that the
29 addition would be within the setback.

30 Mr. Paddock explained that the closest abutter, other than across the street, is the house on Lot 26 and
31 that house is about 440 feet away and slightly uphill. Ingrid Goubert, a representative of Hanging Rock,
32 Ltd, the owner of Lot 26, said that they have no objection to the proposal.

33 Mr. Simpson asked how far the existing addition is from the property line. Mr. Paddock showed on the
34 plan where the existing porch is located. Mr. Paddock also showed the Board pictures of the property
35 including looking from the addition side of the house to the other property.

36 Mr. Larrow asked what was going to be done with the huge bolder on the property. Mr. Paddock
37 explained that they will be breaking it up.

38 Mr. Schneider asked if the property line has been surveyed and Mr. Paddock said that it has not. Mr.
39 Paddock explained that he used the measuring tool on the Town's assessing maps website.

40 Mr. Larrow asked and Mr. Paddock confirmed that they are removing the screened porch and building
41 an addition in the same footprint yet squaring it off. Mr. Larrow asked about the note on the plan that
42 talks about extending the existing deck and Mr. Paddock said that they are not extending it they are
43 resurfacing the existing deck.

44 Mr. Paddock went through the facts supporting the request for the Variance. Mr. Paddock said that the
45 proposed use would not diminish the values of surrounding properties because the construction is in
46 keeping with the quality and architecture of the area. There remains an abundance of green space
47 between all abutting properties which is the main intent of the setback requirement.

48 Mr. Paddock said that granting the Variance would not be contrary to public interest because it would
49 not affect anyone's view and is not visible for the most part to anyone as it is in the back of the house.

50 Mr. Paddock said that denial of this Variance would result in unnecessary hardship per the following: the
51 Zoning restriction as applied to the property interferes with the reasonable use of the property,
52 considering the unique setting of the property in its environment because of the siting of the house by
53 its original owner, the area most conducive to expansion happens to be close to the back boundary. Mr.
54 Platt asked if there was a reason that the addition can't be built 25' from the property line. Mr. Paddock
55 explained that the way the house is laid out, the garage is on the right hand side and it wouldn't be ideal
56 to go into the garage to go to the screen porch. The screen porch is meant to create an expanded living
57 area off the main living area. Finally, they did not want to go off the southwestern part of the house as
58 that is where they get the most light and they did not want to block that. The porch that is there now,
59 which Mr. Paddock believes is grandfathered, is within the setbacks but the irregularity of the shape
60 means it is less useful and squaring it off makes more sense. Mr. Schneider asked when the original
61 house was built. Mr. Paddock said that it is at least 20 – 25 years ago. Mr. Landry said that if it was prior
62 to 1987 there was no Zoning. Mr. Landry said that the only other place would be on another end of the
63 house and Mr. Paddock said that there are bedrooms on that end and they would have to go through
64 them to access the porch.

65 Mr. Paddock continued that no fair and substantial relationship exists between the general purpose of
66 the Zoning ordinance and the specific restriction because all surrounding properties have houses
67 constructed and are well removed from the property. The variance would not injure the public or
68 private rights of others due to the fact that it is so removed, it should not affect anyone. Mr. Paddock
69 continued that most people wouldn't notice the difference.

70 Mr. Paddock said that granting a variance would do substantial justice because it would allow
71 reasonable expansion of the property in the location that is required. Also, granting the variance would
72 not create substantial injustice to anyone, including abutters. Mr. Simpson asked if the neighboring
73 property has been formally merged. Mr. Landry said that he does believe they have been merged and
74 Mr. Paddock said that the property line has been removed from the Tax Maps. Mr. Simpson asked and
75 it was confirmed that the abutting property is still sub-dividable. Mr. Simpson said that granting this
76 variance affects a potential building lot. There was further discussion regarding this matter. Mrs.
77 Goubert said that if there ever was to be another house built on this site it would not be close to the
78 property line as there is a view of the lake further over on the property.

79 Mr. Paddock said that the use is not contrary to the spirit of the ordinance because a vast green space
80 will remain despite of the setback infringement; no view will be compromised and there will be no
81 additional tree cutting.

82 Mr. Paddock said that taking the porch off and moving it in a different direction would be more of an
83 impact than just keeping it in the location where it is now.

84 Mr. Platt noted that, though the addition will be going from 17' or so to 13' within the setback, most of
85 the new addition will be further from the line than the existing porch. Mr. Platt said that he does not
86 feel the website is very accurate. Mr. Simpson said that is a concern that he has as well. Mr. Platt said
87 that if they grant a variance for 13' and they are within 10' they will not be within compliance. Mr.
88 Landry said that he feels as though the website is accurate and the assessor's use it consistently to
89 determine the square footage of houses, lots, etc. Mr. Platt said that the problem is that they don't
90 know how accurate it is.

91 Mr. Simpson asked if there is any survey of the property. Mr. Paddock said that there is an original
92 survey and that he did an addition on the house about five years ago and was concerned about the
93 setback and therefore found the pins and the line. Chairman Frothingham suggested having the line
94 surveyed as part of the approval and Mr. Paddock agreed.

95 Chairman Frothingham asked if there were any more questions from the Board. Mr. Schneider said that
96 there is no compelling reason to grant the variance as there is no reason for the addition except that the
97 owner wants to do it and there is no hardship in this case. Mr. Schneider continued that given where
98 the addition is, and given that it is already a pre-existing, non-conforming structure, it is in a sense no
99 harm, no foul. Also, you cannot see another house from this house. Mr. Schneider said that he does
100 feel as though surveys should be done when properties are encroaching setbacks and believes it should
101 be part of the approval.

102 Mr. Simpson asked about the deck as there is a dotted line on the Plan. Mr. Paddock said that there was
103 going to be a balcony on the second floor but there is not any longer. Mr. Paddock said that they will be
104 doing a patio. There was a discussion regarding other construction outside of the setback.

105 Daniel Schneider made a motion to approve Case #14-01, Parcel ID# 0235-0031-0000, seeking a
106 Variance of Article III, Section 3:10 to allow a reduction to rear setback from 25' to 13' allowing
107 construction of an addition, Daniel & Susan O'Connell, 75 Water Lot Rd with the condition that a survey
108 be done by a licensed surveyor and be submitted with the Building Permit showing that the setback is a
109 minimum of 13' from the nearest point. Aaron Simpson seconded the motion. There was a discussion
110 regarding the motion. The motion passed unanimously.

111 **CASE #14-02: PARCEL ID: 0235-0031-0000: SEEKING A SPECIAL EXCEPTION AS PROVIDED FOR IN**
112 **ARTICLE III, SECTION 3.50-I TO CONSTRUCT A 2ND FLOOR ADDITION WITHIN THE 25' REAR SETBACK.**
113 **DANIEL & SUSAN O'CONNELL, 75 WATER LOT RD.**

114 Mr. Paddock presented the case on behalf of the O'Connell's. Mr. Paddock explained that the Plans he
115 has given the Board shows the 2nd story addition. Mr. Paddock gave the Board details about the
116 addition including the roofline on one side and the dormer on another. The 2nd story will not be any
117 higher than the roofline of the rest of the house; they are just using what would be the attic space as a
118 playroom.

119 Mr. Paddock went over the criteria for a Special Exception under 3.50-i. Mr. Paddock said that the
120 enlargement structure will not increase the horizontal dimensions of the structure. Mr. Simpson asked
121 and Mr. Landry explained that the Board just approved enlarging the footprint and they are not
122 changing that footprint for the second floor.

123 Mr. Paddock said that the existing structure is a house, living area only. The existing structure is less
124 than two stories high. The enlarged or replaced structure will be no more than one additional story
125 higher than the pre-existing structure. The roof changes will be within the height requirements set forth
126 in this Ordinance. Mr. Paddock continued that no abutter will be adversely affected by the enlargement
127 there is no view there to be lost.

128 Mr. Paddock said that all State and local permits have been or will be acquired to insure compliance
129 with Article VII of the Ordinance. Mr. Landry said that this has to do with septic systems, if they were
130 adding bedrooms it would require a change in the septic system. Mr. Simpson asked what the space will
131 be used for and Mr. Paddock explained that it will be a playroom.

132 Aaron Simpson made a motion to approve Case #14-02, Parcel ID: 0235-0031-0000, seeking a Special
133 Exception as provided for in Article III, Section 3.50-(i) and construct a 2nd floor addition within the 25'
134 rear setback, Daniel & Susan O'Connell, 75 Water Lot Rd. Daniel Schneider seconded the motion. The
135 motion passed unanimously.

136 **CASE # 14-03: PARCEL ID: 0226-0030-0000: SEEKING A USE VARIANCE TO OPERATE AN AUTOMOBILE**
137 **AND EQUIPMENT REPAIR BUSINESS AND AN R.V. STORAGE SPACE IN A RURAL RESIDENTIAL ZONE.**
138 **RICHARD K OSBORNE, 284 ROUTE 11.**

139 Mr. Schneider asked why this needs a Variance as it is already a pre-existing, non-conforming use. Mr.
140 Landry said that they are changing the use by adding another use to it. The applicants would like to add
141 automotive repair and RV storage which is not the same as a marina, which was also not pre-existing, it
142 was approved by Special Exception.

143 Roger Rodewald presented the case on behalf of Richard Osborne. Mr. Rodewald explained that
144 Osborne Marina is off of Route 11 and Mr. Osborne would like to increase his facility and services. He
145 would like to offer R.V. storage and the service of repairing heavy equipment. The expansion would
146 augment the business Mr. Osborne already has in the fact that he has the space to store R.V.s as well as
147 storing boats. Mr. Rodewald was asked where Mr. Osborne would repair the heavy equipment and
148 explained that he would do it in the same facility, the 60 x 100 storage barn.

149 Chairman Frothingham asked where the storage for the R.V's would be and Mr. Osborne explained that
150 they will not be building another building, the storage will be outside.

151 Mr. Rodewald explained that Mr. Osborne has an employee that is a specialist in working on heavy
152 equipment and as he has a facility where he can do the work as well as the employee, it is something
153 that can add revenue. Mr. Simpson asked and Mr. Osborne confirmed that they could also be doing
154 automobile repairs. Chairman Frothingham asked and Mr. Osborne confirmed that they are already
155 doing boat repairs. Chairman Frothingham asked if Mr. Osborne already has all the necessary permits in
156 regards to waste and such. Mr. Rodewald said that the State has granted Mr. Osborne a holding tank for
157 the indoor draining system. Mr. Larrow asked if Mr. Osborne has a DES number and there was
158 discussion regarding this matter.

159 Mr. Schneider asked if the Variance is approved if it will result in any additional clearing of the property.
160 Mr. Rodewald said that they will not clear any more of the lot than what is shown. Mr. Schneider asked
161 if there were any restrictions on the originally approved Variance on the proportion of the property that
162 could be used. Mr. Simpson said that he does not believe the marina would have needed a Variance; it
163 would have needed a Special Exception.

164 Mr. Larrow said that the retaining tank does not constitute approval for the repairs and asked if Mr.
165 Osborne had an approval from DES to handle containments in either large or single volumes and then
166 the waste is hauled away. Mr. Osborne said that he burns the waste oil in a furnace. Mr. Larrow asked
167 about anti-freeze and explained that this is something that will be needed for approval. Mr. Larrow
168 asked and Mr. Osborne confirmed that he will also be doing full service automobile repairs. Mr. Larrow
169 asked if there is an office that people can wait to do these and Mrs. Osborne confirmed that there is a
170 place customers can wait.

171 Mr. Rodewald said that they have met with DOT regarding the driveway and filled out a new application
172 with the State and they said they would go back to the Town with concerns regarding what Mr. Osborne
173 would need to do to comply.

174 Mr. Landry said that there are no conditions on the Special Exception. The only condition for the Site
175 Plan Review for the Marina was sign-offs from the Department Heads which was completed.

176 Mr. Rodewald said that the repair of heavy equipment would also include the repair of automobiles.
177 There was a further discussion regarding this matter and the waste oil and antifreeze as well as the need
178 for a DES number.

179 Mr. Larrow asked if Mr. Osborne would be doing auto body repair and Mr. Osborne confirmed that they
180 would not. Peter Hill of 26 Garnet St said that they will be doing mechanic work, not auto body work.
181 There was further discussion regarding this issue. Mr. Simpson asked if this application is going to go to
182 the Planning Board if it is approved and it was confirmed that it will need Site Plan Review. Mr. Simpson
183 suggested having a joint meeting in regards to the case as there are concerns regarding what the Board
184 would be approving.

185 Mr. Rodewald noted that the location is good for this type of business as it will not impact abutters. Ron
186 Caputo of 21 Wendell Overlook said that he is an abutter. The Board was showed where Mr. Caputo's
187 property is located. Mr. Caputo said that when Mr. Osborne cleared some of the land it opened it up
188 and Mr. Caputo can now see onto Mr. Osborne's property. Mr. Caputo asked if there will be junk
189 automobiles and heavy equipment stored on the property that will be leaking oil, fluids, and rust and if
190 he will be able to see them from his property. Mr. Caputo also asked if the RV's will be stored where
191 Mr. Osborne cleared the land. Mr. Simpson asked Mr. Osborne if Mr. Caputo's land is downhill from
192 their property and Mr. Osborne explained that it is approximately level with his property.

193 Mr. Schneider noted that on one of the maps there is a boundary line noted that indicates the Current
194 Use boundary line and asked what that means. Mr. Rodewald said that it means that everything outside
195 that line is in Current Use and that they cannot use that land for a commercial venture except for
196 forestry. Mr. Simpson said that if it is the Current Use boundary then he does not believe Mr. Osborne
197 can put trailers, storage containers and such on that land. Mr. Landry confirmed that if Mr. Osborne
198 plans on storing anything on that land it has to come out of Current Use. Mr. Osborne explained that
199 when they built the house they shifted the line yet kept the acreage the same and the line probably
200 should be shifted around the trailers. Mr. Schneider suggested putting a restriction on an approval that
201 ensures that the activities cannot be expanded into the Current Use land.

202 Mr. Landry suggested Mr. Caputo go to the Planning Board meeting for the Site Plan Review if this
203 application is approved to ask for a limit on the number of storage trailers, for screening, etc. There was
204 further discussion regarding holding a joint meeting.

205 Mr. Simpson asked about the steepness of the driveway and there was a brief discussion regarding the
206 driveway. Mr. Landry said that the Town does not have jurisdiction for this driveway as it is off a State

207 road. Mr. Osborne said that they have put in an application to the State for a review but they have not
208 received final approval yet.

209 Mr. Simpson asked if there is a septic system for the building and Mr. Osborne confirmed that there is
210 not but they have an application in to the State and they have received approval for the holding tank for
211 the floor drains inside the building but have not received the approval for the septic system. Mr.
212 Rodewald also said that they will have to utilize a septic hauler that is licensed to take care of what is in
213 the holding tanks.

214 Mr. Simpson asked if the sound will increase and Mr. Osborne said he does not believe it will be any
215 louder than running the boats outside with no mufflers. Mr. Osborne was asked if he has ever had
216 complaints about the noise and he confirmed that he has not. Mr. Landry said that he has not received
217 any complaints either. Mr. and Mrs. Caputo said that they don't have concerns about the noise or the
218 smell.

219 Mr. Landry said that most of the issues such as hours of operation, the number of pieces of equipment
220 on the property, etc. will be handled by the Planning Board.

221 Mr. Schneider said that he does not see an issue with the application as long as the operation does not
222 stray into Current Use land. Mr. Rodewald suggested that Mr. Osborne could change the line of the
223 Current Use boundary if he needs. Mr. Simpson said that he does not believe that the Current Use lines
224 can just be adjusted without penalty.

225 Mr. Platt said that he has concerns regarding that this could become a major automobile place,
226 especially with the size of the building. The size could lend itself to a large commercial venture. Mr.
227 Simpson said that this is a reason the Boards may want to consider a joint meeting. There was further
228 discussion regarding this matter.

229 Mr. Landry asked about Mr. Osborne's plans regarding obtaining the things they will be working on and
230 if they will be going out to get it to repair it or having customers bring their automobiles and heavy
231 equipment. It was explained that for the heavy equipment they will have to subcontract out picking
232 them up.

233 Chairman Frothingham suggested waiting to decide on the application until next month to allow Mr.
234 Osborne time to determine exactly what he wants to do. Mr. Rodewald said that they wanted approval
235 from this Board before going to the Planning Board. There was further discussion regarding this matter
236 as the Board explained that they have had issues in the past where they have approved something and it
237 got changed when it went to Site Plan Review. Mr. Landry asked if there was a time constraint on the
238 application. Mrs. Osborne explained that they would like to add this business now because the boat
239 business starts to get busy on April 1st.

240 Mr. Landry went over the list of items that are outstanding including the driveway approval from DOT;
241 whether they will need to increase the capacity for the waste oils holding tank as the Permit they have
242 does not cover everything; the Planning Board meets February 6th but they may not hear some cases

243 until March 6th. This would give Mr. Osborne enough time to determine hours, if they will need to hire
244 more employees, etc. There was a discussion regarding the applicants going to the Planning Board for a
245 Conceptual.

246 Mr. Platt said that he would like to see a buffer between the Osborne's property and the abutters. Mr.
247 Schneider said he would like to see the area that the commercial business will be conducted to be more
248 specifically delineated. Mr. Larrow suggested that the applicants review the Site Plan criteria. Mr.
249 Landry also suggested that the applicants contact DES regarding their proximity to Wendell Marsh. The
250 applicants determined that they would like to continue the hearing until February's meeting.

251 Aaron Simpson made a motion to continue the hearing until the February 13th meeting. Daniel
252 Schneider seconded the motion. The motion passed unanimously.

253 Daniel Schneider made a motion to adjourn at 8:53 pm. William Larrow seconded the motion. The
254 motion passed unanimously.

255 Respectfully submitted,

256 Melissa Pollari

257

258

259 Edward Frothingham

Aaron Simpson

260

261 Clayton Platt

Daniel Schneider

262

263 William Larrow, alternate member