

1 **TOWN OF SUNAPEE**

2 **ZONING BOARD**

3 **SEPTEMBER 11, 2014**

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

6 **ABSENT:** Clayton Platt

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

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

9 Daniel Schneider made a motion to approve George Neuwirt to act as a voting member in place of  
10 Clayton Platt for the meeting. William Larrow seconded the motion. The motion passed unanimously.

11 **MINUTES**

12 Changes to the minutes from the August 14, 2014 Zoning Board Meeting: Change Line 45-46 to read  
13 "...pre-existing lot and non-conforming due to its lot size, 0.22 acres, as the District requires a one acre  
14 minimum." Change Line 52 to read "...the lots are non-conforming." Change Line 80 to read "...the rest  
15 are houses with living space..." Change Line 160 to read "...the next couple of weeks."

16 Daniel Schneider made a motion to approve the minutes as amended. Aaron Simpson seconded the  
17 motion. The motion passed unanimously.

18 Chairman Frothingham informed the applicants present that they do not have a full Board for the  
19 meeting.

20 **CONTINUATION: CASE #14-15: PARCEL ID: 0104-0010-0000: SEEKING A VARIANCE OF ARTICLE III,  
21 SECTION 3.10 TO REDUCE THE 10,000 SQUARE FOOT PER UNIT DENSITY TO 6,000 SQUARE FOOT  
22 PERMITTING A 6 UNIT RESIDENTIAL UNIT ON A .83 ACRE PARCEL. 350 ENTERPRISES, LLC, PATRICK  
23 CLAPP, 11 PLEASANT ST.**

24 Patrick Clapp continued presenting the merits of the case.

25 Mr. Landry said that he has spoken with Water & Sewer and there are only four hookups at the building.  
26 Also, the building has only been assessed for four units.

27 Mr. Clapp said that he has talked to most of the neighbors and the two who knew the most about the  
28 property was Brett Dashner and Tony Bergeron. Mr. Dashner knew the previous owner personally and  
29 thought that there were 6 units. Mr. Clapp presented the Board with a letters from Mr. Bergeron and  
30 Mr. Dashner who both said that, to the best of their knowledge, the building has always been 6+ units.  
31 Mr. Clapp continued that it would make sense that the Town would not have had a record of more units  
32 as the previous owner did not disclose it properly to the Town.

33 Mr. Larrow asked and Mr. Landry confirmed that as there are four hookups for Water & Sewer. If the  
34 application is approved Mr. Clapp will need to pay for two more hookups. There was further discussion  
35 regarding how the building may be hooked up to Water & Sewer.

36 Chairman Frothingham asked and Mr. Landry confirmed that the Town adopted Zoning in 1987.  
37 Chairman Frothingham said that the letter from Mr. Dashner just says as early as the late 1980's. Mr.  
38 Simpson said that the letter from Mr. Bergeron says before 1990. Mr. Clapp said that he thought that at  
39 the last meeting that Mr. Landry said that 1990 was the year that Zoning would have affected the  
40 building. Mr. Landry said that Use Zoning became effective in 1990 and this would fall into Use Zoning  
41 because there would not be enough land to cover 6 units at the time. Mr. Clapp was asked and  
42 confirmed that he asked the neighbors specifically about 1990 because that was the time period that  
43 Mr. Landry discussed at the last meeting.

44 Mr. Simpson asked and Mr. Landry clarified that, because the hearing was continued, no notices were  
45 sent out to abutters and the agendas were just posted in two places in Town. Mr. Clapp said that he  
46 tried to speak to most of the abutters and told them all what he wants to do.

47 Mr. Landry said that Mr. Clapp is asking to reduce the requirement from 10,000 sq. ft. per dwelling unit  
48 down to 6,000 sq. ft. Mr. Simpson said that if Mr. Clapp is Grandfathered then he does not need to ask.  
49 Mr. Landry said that it is up to the Board to determine if it is a Grandfathered Use. Mr. Larrow said that  
50 he wants to understand Grandfathering in this relationship. Mr. Landry read from the Zoning  
51 Ordinances the definition of Grandfathered Uses for structures prior to 1987. Mr. Landry said that even  
52 if the Board determines it is a Grandfathered Use, the Board needs to make a decision on the  
53 application for the Variance from the density requirement to go from 10,000 sq. ft. to 6,000 sq. ft. Mr.  
54 Landry said that the Grandfathering policy does not exclude 1987 through 1989.

55 Chairman Frothingham asked if there were any abutters present and there were none. Mr. Landry said  
56 that he has not heard from any of the abutters in regards to the case.

57 Chairman Frothingham asked how long the building has been vacant and Mr. Clapp said that it has not  
58 been long, the last person moved out in June.

59 Mr. Simpson said that he has concerns and asked if Mr. Landry has spoken with Town Counsel. Mr.  
60 Landry said that he did not. Mr. Simpson said that the Board has a letter from one person that says  
61 before 1990 and another that says late 1980's. Mr. Landry said that he just saw the letters.

62 Mr. Clapp said that the 1990 date was what he spoke to the neighbors about but he can try to get a  
63 more specific date if necessary.

64 Mr. Schneider said that it seems to him that it should either be Grandfathered, in which case it would  
65 not require a Variance, or it is not Grandfathered it needs a Variance. Mr. Landry said that is the reason  
66 that Mr. Clapp is asking for the Variance of the density requirement.

67 Mr. Simpson asked how long the prior owner owned the property. Mr. Clapp said that he believes the  
68 previous owner bought the property in 1984 but he is not sure. Mr. Simpson asked and Mr. Clapp

69 confirmed that the prior owner put in the additional units. Mr. Clapp said that the information that he  
70 received is that the prior owner ran the building as either a 6 or a 7 unit and he owned it for the last 30  
71 years.

72 Mr. Simpson asked what other information Mr. Clapp found. Mr. Clapp said that nothing is up to code  
73 and Mr. Dashner was positive it was 6 units. Mr. Bergeron knew that there were more than 4 units in  
74 the building as well. Mr. Clapp said that when he went in there were 7 units but he does not know how  
75 long it was 7 units.

76 Mr. Simpson said that he does not feel as though there is enough information to address the  
77 Grandfathering issue. He feels as though Mr. Landry should talk to Town Counsel. Mr. Landry said that  
78 he does not believe Mr. Clapp is asking the Board to consider that it is Grandfathered. Mr. Simpson said  
79 that if it is Grandfathered then the hearing is done but if it isn't then the Board will have to vote and the  
80 applicant may lose. The other Board members agreed with Mr. Simpson. Mr. Landry said that it is up to  
81 the applicant to agree to continue the hearing for another month. Mr. Simpson asked if Mr. Clapp was  
82 willing to try and get more specific information and Mr. Clapp agreed. Mr. Simpson also asked Mr.  
83 Landry to discuss the case with Town Counsel.

84 There was further discussion regarding the Grandfathering Policy.

85 Aaron Simpson made a motion to continue the hearing until the October 9, 2014 meeting. Daniel  
86 Schneider seconded the motion. The motion passed unanimously.

87 **CASE #14-17: PARCEL ID: 0118-0021-0000: SEEKING A SPECIAL EXCEPTION AS PER ARTICLE III, SECTION**  
88 **3.50-I-4 TO RAISE THE ROOFLINE APPROXIMATELY 4' TO ALLOW A FULL FOUNDATION AND USE OF**  
89 **LOWER LEVEL. JEFFREY & TAMMY BRODE, 55 PINEY POINT RD.**

90 Jeffrey and Tammy Brode presented the merits of their case.

91 Mr. Brode explained that they want to raise the house approximately 4' so that there is a useable  
92 basement area. There are also some foundation issues that they have found, mainly cracking, and there  
93 are some posts that seem to be sinking slightly. Mrs. Brode said that they do have pictures of the  
94 foundation that shows the cracking and chipping that has occurred.

95 Chairman Frothingham asked if there is currently a basement and Mr. Brode explained that there is a  
96 foundation, but not a full basement. Chairman Frothingham asked if the foundation is poured concrete  
97 and Mr. Brode explained that it is blocks.

98 Mr. Larrow asked and Mr. Landry confirmed that a Shoreland Permit will be required if this application is  
99 approved. Mrs. Brode explained that they have not applied for the Shoreland Permit as they wanted to  
100 go to the Board first.

101 Mr. Schneider asked and Mrs. Brode explained that they will not be expanding the footprint of the  
102 house.

103 Mr. Simpson asked and Mr. Brode explained that, because they will need to do some foundation work,  
104 they would like to add a full basement to make it useable space.

105 Chairman Frothingham asked and Mrs. Brode said that they own the lot across the street.

106 There were no abutters present. Mrs. Brode said that they spoke to the abutters and they were all fine.

107 Mr. Landry explained that by Special Exception they could ask to go up no more than 10' and the  
108 applicants are asking for 4'. Mr. Simpson asked about the existing height of the structure. Mr. Brode  
109 said that he has never measured it. Mr. Schneider said that you can see in the pictures that it is below  
110 any Zoning height restrictions. Mr. Landry said that it looks to be around 16' or 17', another 4' will put  
111 them up to 21' and they are allowed to go as high as 25'.

112 Mr. Neuwirt said that he is confused by the application as he believed that there is a Regulation that  
113 says that this can only be done with a house that it 24' or narrower. Mr. Simpson explained that the  
114 restriction has to do with height.

115 There was a discussion regarding the measurement from the lowest grade level or the lowest floor level.

116 Mr. Larrow said that he does not see an issue with the application as long as they obtain a Shoreland  
117 Permit. Mr. Simpson said that the Board does not have that discretion; the applicants can be approved  
118 if they meet all of the requirements.

119 Mr. Simpson asked the applicants to go over the criteria.

120 The first criterion is that: such enlargement or replacement will not increase the horizontal dimensions  
121 of the structure unless such horizontal increase would ordinarily be permitted by the Ordinance. Mrs.  
122 Brode confirmed that they are keeping the same footprint, just going up. The second criterion is that:  
123 the existing structure is a house (living area only), garage, or commercial building. Mr. Brode said that  
124 the existing structure is a house. The third criterion is that: the existing structure is less than 24' in  
125 height. Mr. Simpson said that he feels as though the photographs show that the structure is less than  
126 24'. The fourth criterion is that: the enlarged or replaced structure will be no more than 10' additional  
127 in height than the pre-existing structure. The application is for approximately 4' additional. The fifth  
128 criterion is that: any roof changes are within the height requirements set forth in this Ordinance. Mr.  
129 Simpson confirmed with Mr. Landry that the roof changes are within the height requirements. The sixth  
130 criterion is that: in the judgment of the ZBA no abutter will be adversely affected by the enlargement  
131 (loss of view will not be considered an adverse impact). Mr. Landry said that no abutter will be  
132 adversely affected. The seventh criterion is that: all State and local permits are acquired to insure  
133 compliance with Article VII of the Ordinance. Mr. Simpson said that he believes this criterion has to do  
134 with septic. Mrs. Brode confirmed they are not adding any bedrooms. The eighth criterion is that: such  
135 enlargement or replacement, in the judgment of the ZBA, is consistent with the intent of the Ordinance.  
136 Chairman Frothingham said that he thinks that the applicants meet all of the criteria.

137 Chairman Frothingham asked if there are any further questions for the applicants and there were none.

138 Chairman Frothingham closed the hearing to public input.

139 Mr. Simpson asked why the proposal is non-conforming and Mr. Landry explained that they do not meet  
140 the setbacks.

141 Daniel Schneider made a motion to approve the Special Exception for Case #14-17: Parcel ID: 0118-  
142 0021-0000 to raise the roofline approximately 4' to allow a full foundation and use of lower level, Jeffrey  
143 and Tammy Brode, 55 Piney Point Rd, subject to the condition that they obtain a Department of  
144 Environmental Shoreland Permit. Aaron Simpson seconded the motion. The motion passed  
145 unanimously.

146 **CASE # 14-18: PARCEL ID: 0115-0025-0000: SEEKING APPROVAL OF A VARIANCE OF ARTICLE III,**  
147 **SECTION 3.10 TO REDUCE SIDE SETBACK FROM 15' TO 9' ON EAST SIDE OF PROPERTY ALLOWING**  
148 **CONSTRUCTION OF A 9' X 30' ADDITION. AMANDA GORDON PULLIN, 21 NORTH SHORE RD.**

149 **CASE # 14-19: PARCEL ID: 0115-0025-0000: SEEKING APPROVAL OF A VARIANCE OF ARTICLE III,**  
150 **SECTION 3.10 TO REDUCE SIDE SETBACK FROM 15' TO 10' ON WEST SIDE OF PROPERTY ALLOWING**  
151 **CONSTRUCTION OF A 9' X 30' ADDITION. AMANDA GORDON PULLIN, 21 NORTH SHORE RD.**

152 Chairman Frothingham read a letter to the Board from the applicant for Case #14-18 and Case #14-19  
153 requesting that the Board postpone the hearing until the October 9, 2014 meeting as the final plans for  
154 the house are incomplete.

155 Aaron Simpson made a motion to grant the request for a continuance. George Neuwirt seconded the  
156 motion. The motion passed unanimously.

157 **CASE # 14-20: PARCEL ID: 0138-0004-0000: SEEKING APPROVAL OF A SPECIAL EXCEPTION AS PER**  
158 **ARTICLE III, SECTION 3.50-B-1 & 2 TO REDUCE ROAD FRONT SETBACK FROM 75' TO 50' ALLOWING**  
159 **CONSTRUCTION OF A NEW GARAGE. SCOTT & MICHELE TURNER, 122 EDMONT RD.**

160 Mr. Neuwirt recused himself from the case.

161 Scott Turner presented the merits of his case.

162 Chairman Frothingham explained to the applicant that, as the Board only has four voting members, he  
163 can chose to continue the hearing until the next meeting as he will need three votes in favor to get  
164 approval. Mr. Turner asked if he is denied if he can resubmit his application. The Board explained that  
165 he would have to submit something different, meaning a different location, etc. Mr. Turner decided to  
166 proceed with the hearing.

167 Mr. Turner explained to the Board that he has almost an acre of land but the grades and slope of the lot,  
168 the amount of water on the property, as well as the location of the French drain makes it a hardship for  
169 him to put the garage in any other location. The proposed location is the easiest place for him to do it  
170 without it being a hardship.

171 Mr. Turner said that he talked to some of the abutters that he knows and there was no resistance from  
172 any of them.

173 Mr. Turner said that it would be improving the property and would be to code. The only exception  
174 would be the setback rule.

175 Mr. Schneider noted that between the road and the proposed garage there are trees and said that he  
176 would want them to stay there because it gives shielding. Mr. Turner agreed.

177 Mr. Simpson asked if the application for a Special Exception is under 3.50-B and Mr. Landry confirmed.  
178 Mr. Simpson asked why it says that the Special Exception is for Section 3.50-B-1 & 2 as they are subparts  
179 of the requirement and can't be addressed separately. Mr. Landry agreed that they cannot.

180 Mr. Schneider said that he went to look at the property and there is a ditch, the road, and a very steep  
181 bank. Chairman Frothingham said that the proposal seems reasonable to him.

182 Mr. Simpson said that he understands that the Board does not get discretion whether or not the  
183 applicant meets the criteria. Mr. Simpson said that one of the criterion is that it is a pre-existing lot and  
184 it is non-conforming due to lot size. Mr. Simpson asked if the lot is non-conforming. Mr. Turner said  
185 that the lot is .91 acres. Mr. Landry said that there is a one acre requirement in the Residential District.  
186 Mr. Turner said that he thought that it is Residential and Commercial. Mr. Simpson asked and Mr.  
187 Landry said that he does not believe it is in Village Commercial or Village Residential or Mixed Use. Mr.  
188 Simpson said that all of the other Zones are above one acre minimum requirement. Mr. Schneider said  
189 that he thinks that Mr. Turner's property is in Village Residential. Mr. Landry checked and confirmed  
190 that the property is in the Village Residential Zone and is not a pre-existing, non-conforming lot and  
191 does not qualify for a Special Exception and Mr. Turner needs to apply for a Variance. Mr. Schneider  
192 said that it is unfortunate that the Board cannot approve the application as a Special Exception.

193 Aaron Simpson made a motion to approve Case # 14-20: Parcel ID: 0138-0004-0000: seeking approval of  
194 a Special Exception as per Article III, Section 3.50-B to reduce road front setback from 75' to 50' allowing  
195 construction of a new garage, Scott & Michele Turner, 122 Edgemont Rd. William Larrow seconded the  
196 motion. The motion was denied unanimously.

197 **POSTPONED 8/14/14 - CASE # 14-13: PARCEL ID: 0218-0061-0000: APPEAL OF ADMINISTRATIVE**  
198 **DECISION. THE APPLICANT, DUSTIN ALDRICH, WISHES TO APPEAL THE ZONING ADMINISTRATOR'S**  
199 **DECISION OF RETURNING AND NOT PROCESSING AN INCOMPLETE BUILDING PERMIT APPLICATION.**  
200 **112A SARGENT RD. REVIEW ANY NEW INFORMATION, RENDER A DECISION.**

201 Aaron Simpson recused himself from the case.

202 Dustin Aldrich was present for the case. Chairman Frothingham explained to Mr. Aldrich that they only  
203 have four voting members for the case.

204 Mr. Landry gave the Board a letter from Mr. Aldrich's attorney as well as a recommendation from the  
205 Town's attorney.

206 Mr. Neuwirt asked Mr. Landry for clarification as to what is going on. Mr. Landry said that the  
207 applicant's attorney has asked for a 30 day continuance and according to the Town's attorney, the Board  
208 should grant the continuance.

209 Chairman Frothingham said that he believes due to the circumstances of the case and as neither Mr.  
210 Aldrich attorney nor the Town's attorney are present that the Board should grant the 30 day  
211 continuance. Mr. Larrow agreed and said that the Board should acknowledge the request and extend  
212 the hearing for an additional 30 days.

213 William Larrow made a motion for Case #14-13 to postpone the appeal of administrative decision, the  
214 applicant, Dustin Aldrich, wishes to appeal the Zoning Administrator's decision of returning and not  
215 processing an incomplete building permit application, 112A Sargent Rd, until the next Zoning Board  
216 meeting. Daniel Schneider seconded the motion. The motion passed unanimously.

217 **PROPOSED ZONING ORDINANCES CHANGES**

218 The Board discussed different proposed Zoning Ordinance changes including: re-zoning part of Route 11;  
219 dropping the impermeable / permeable column on page eight; changing the allowed use of farming or  
220 farm animals in the Rural Residential Zone to include that it is not allowed in the Shoreland District;  
221 adding a section under Article VIII, Section 8.23 that Certificates of Compliance are transferable and  
222 must follow deeded ownership; under Article IX, reverse the wording to make it so that a Variance must  
223 be obtained prior to a Site Plan Review; and adding / revising some Definitions.

224 Daniel Schneider made a motion to adjourn at 9:20 pm. Aaron Simpson seconded the motion. The  
225 motion passed unanimously.

226 Respectfully submitted,

227 Melissa Pollari

228

229

230 Edward Frothingham

Aaron Simpson

231

232 Clayton Platt

Daniel Schneider

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234 William Larrow

George Neuwirt, Alternate