

1 **TOWN OF SUNAPEE**

2 **ZONING BOARD**

3 **OCTOBER 9, 2014**

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

6 **ABSENT:** George Neuwirt, Alternate

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 September 11, 2014 Zoning Board Meeting: Change line 33 to read  
11 "Mr. Larrow asked and Mr. Landry confirmed that there are four hookups for Water & Sewer." Change  
12 line 65 to read "...not require a Variance, or if it is not Grandfathered..." Change line 144 to read  
13 "...Environmental Services Shoreland Permit." Change line 164 to read "Mr. Turner asked if he is denied,  
14 if he can resubmit his application."

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

17 **CONTINUATION: CASE # 14-13: PARCEL ID: 0218-0061-0000: APPEAL OF ADMINISTRATIVE DECISION.**  
18 **THE APPLICANT, DUSTIN ALDRICH, WISHES TO APPEAL THE ZONING ADMINISTRATOR'S DECISION OF**  
19 **RETURNING AND NOT PROCESSING AN INCOMPLETE BUILDING PERMIT APPLICATION. 112A SARGENT**  
20 **RD. REVIEW ANY NEW INFORMATION, RENDER A DECISION.**

21 Chairman Frothingham decided to hear the case first, though it was last on the agenda.

22 Aaron Simpson recused himself from the case.

23 Chairman Frothingham asked and there was no one present for the case.

24 Chairman Frothingham said that this case has been continued twice and moved to hear the case and  
25 vote. Chairman Frothingham continued that there is legal counsel present for the Town.

26 The attorney for the Town, Laura Spector, explained that there has been another request for a  
27 continuance from the applicant. Ms. Spector said that the basis for the request is that the applicant has  
28 filed a petition in the Superior Court and they believe it should stay these proceedings. Generally  
29 speaking, the Court will require the Board acts before they act so she is not sure that it is a basis to  
30 continue. Ms. Spector continued that she understands that the case has been continued a couple of  
31 times so it is in the Board's discretion to continue it again or they can hear it tonight.

32 Mr. Landry gave the Board copies of correspondence between Mr. Aldrich's attorney and the Town's  
33 attorney.

34 Mr. Platt asked Mr. Landry to briefly review the case for the Board.

35 Ms. Spector recommending that the Board should determine whether or not to continue the case.

36 Mr. Schneider asked for clarification as to what the applicants are requesting. Mr. Landry said that they  
37 are requesting another continuance and it is at the recommendation of Attorney Whitley and the other  
38 Town attorneys that the Board does not give them another continuance, per the letters that he has  
39 given the Board. Attorney Spector explained that Attorney Whitley feels like the case has already been  
40 continued twice and the applicants have not really given a valid reason as to why to continue it again.  
41 Their request for a continuance is based on the Superior Court complaint. It is within the Board's  
42 discretion to grant another continuance if they would like, but if they want to move forward that is  
43 within their discretion as well. Mr. Larrow asked what the Superior Court case is based on. Attorney  
44 Spector said that she has not seen it yet, nor does she believe Attorney Whitley has either. Mr. Landry  
45 said that if they followed due process the Court should send it back to the Board to be heard first.

46 Attorney Spector explained that tonight's application is an appeal of an Administrative Decision that was  
47 given by Mr. Landry which was that Mr. Aldrich needs to provide some type of certification that the  
48 septic system can handle the increase load in turning a one-family into a two-family.

49 Mr. Larrow asked what would happen if the Board hears the case. Attorney Spector explained that if  
50 the Board decides to affirm Mr. Landry's decision then they would have the opportunity to file for a  
51 motion for a rehearing with the Board where they can present additional evidence or evidence they  
52 believe the Board overlooked. The Board could then determine whether or not to rehear the case.

53 Mr. Larrow asked and Attorney Spector confirmed that the Board is not circumventing anything so that  
54 they have the opportunity to present their case. Attorney Spector said that the applicants sent in their  
55 request for a continuance yesterday, which it was actually a request for an indefinite postponement. An  
56 email was sent from the Town today to the applicant's attorney's office that the case is on tonight's  
57 agenda and the Board may grant the continuance or hear the merits.

58 Mr. Schneider asked why a continuance should not be granted. Attorney Spector said that the only  
59 reasoning she has heard is that it has dragged out this long and there comes a point when you have to  
60 hear it. Mr. Landry explained that if the applicants wanted the case to go on, they've had over two  
61 months to prepare. Mr. Schneider said that he is reluctant to try and make a decision on the case. Mr.  
62 Landry said that if the applicants do not like the Board's decision, they have the opportunity to ask for a  
63 rehearing and they can bring evidence to support the rehearing or if the Board does not grant them a  
64 rehearing they can appeal to Superior Court.

65 Mr. Schneider said he does not see a reason not to continue it. If and when they get their act together  
66 they can do the appeal and if they don't then the original Administrative Decision stands. Mr. Platt said  
67 that one reason is that if they continue it until next month, the Town will have to pay for an attorney to

68 come and if the applicants do not show up and it gets continued again, it will cost the Town more  
69 money.

70 Mr. Platt asked about a case on Mountain View Lake that was denied administratively because the  
71 applicants did not provide anything to support the case. Mr. Platt asked if this is an option in this case  
72 and then the applicants can chose to refile if they want. Attorney Spector said that the applicants have  
73 given the Board very little information in their actual appeal. They allege that Mr. Landry acted in error  
74 in denying the building permit and appeals all findings as well as the decision but does not provide any  
75 rationale for their objection, although it says that they may submit an additional memorandum. The  
76 Board would have very limited information on which to base a decision.

77 Mr. Platt asked what the Zoning Ordinance that this is based on says because he seems like it is more of  
78 a building permit issue than a Zoning issue. Mr. Landry asked if it is permissible for him to read the  
79 letter from when he originally sent the building permit back to Mr. Aldrich. Attorney Spector  
80 recommending reading the Zoning Ordinance that relates, being Article VII, Section 7.10 on page 42.

81 Mr. Schneider asked and Chairman Frothingham said that he did not request the Town's attorney to be  
82 present. Mr. Landry said that he did as it was the recommendation of the attorney's office that she be  
83 here just in case the applicant's attorney showed up and wanted to be heard. Mr. Larrow said that, not  
84 knowing if they will ever be here, it is good procedure. Mr. Landry said that if the applicant was here  
85 and the Town didn't have the attorney present that he'd be asking for a continuation.

86 Mr. Schneider commented on the Ordinance and Attorney Spector said that she believes that the Board  
87 is beginning to discuss the merits of the appeal, which is fine if the Board does not want to grant the  
88 continuance but the Board should decide if they want to grant it first. Mr. Schneider said that he does  
89 not feel comfortable deciding on the merits without hearing both sides of it.

90 Mr. Platt said that he has questions and thinks that the Board should continue the case and get on with  
91 the rest of the business.

92 Mr. Schneider said that he has questions about Mr. Landry's letter to the applicant.

93 Clayton Platt made a motion to continue the case until the next Zoning Board meeting. Daniel Schneider  
94 seconded the motion. The motion failed with two in favor and two against.

95 Mr. Platt said that Mr. Landry's letter about getting the septic system approval from DES seems personal  
96 to him.

97 Chairman Frothingham asked if anyone present has any input into the case.

98 Mr. Landry explained that after the first appeal he received a building permit from Attorney Durbin. The  
99 amount paid was wrong as there was no square footage calculation and the Town charges \$.20 per  
100 square foot as an alteration fee; it was only sent in with the \$50.00 application fee.

101 Mr. Landry continued that he reviewed the application, as he does for all building permits, for its  
102 completeness. One thing that he checks is to see if there is enough septic capacity based on the septic  
103 design approval in the assessment file. Mr. Landry said that he wrote that he was returning, not  
104 rejecting or denying, the Aldrich building permit application with the check for \$50.00. The application  
105 required additional information and a new check to make it complete for processing. Mr. Landry  
106 continued that the first requirement was an acknowledgement letter from a licensed septic designer or  
107 the DES Subsurface Division that the requested two-family dwelling, with two kitchens and five  
108 bedrooms, is an acceptable load to the existing septic design of 750 gallons per day; Sunapee Zoning  
109 Article VII, Section 7.10. Mr. Landry read from his letter to the applicant. "The original building permit,  
110 #2292, which was given to Benson, the previous owner, was approved for a five bedroom, single family  
111 residence with a two-car, drive under, garage. The Town of Sunapee inspects completed foundations  
112 for its first inspection and a completed project for its inspection. Since Mr. Benson, the original owner,  
113 never completed the project, a final inspection was never done." Mr. Landry said that the Benson  
114 project was approved for five bedrooms on the first floor with a drive under garage with nothing in the  
115 lower level but a walkout basement. Mr. Landry continued reading from the letter. "Any work that was  
116 completed to support anything more than single family home is in violation. The work that was  
117 completed illegally towards a two-family, kitchen, separation walls, etc., and any new finish work, must  
118 be considered in the square foot calculation to determine the total cost of the building permit. I have  
119 enclosed the appropriate application and Zoning Compliance fee schedule. If you have any questions in  
120 this matter, please call me. I would be happy to meet with you and get this application moving."

121 Mr. Schneider said and Mr. Landry agreed that Mr. Landry was asking for two things. One was proof of  
122 approval of the septic system from DES and the other was an increase in the fee. Mr. Schneider asked  
123 how much the fee would have been and Mr. Landry explained that he does not know because he does  
124 not have the square footage calculations. Mr. Landry continued that immediately after receiving his  
125 letter, Attorney Durbin sent in an application to appeal his decision based on the fact that Mr. Landry  
126 denied his permit, which he did not do. Mr. Landry said that it is his job to send a permit back; it is the  
127 Selectmen's job to deny or approve a permit. He makes out a decision sheet with a recommendation to  
128 approve or deny. Mr. Landry continued that if the applicant had come to him and asked him to process  
129 it anyway, he would have recommended that the Selectmen deny the permit because of what it was  
130 lacking. The Selectmen, ultimately, would have denied it.

131 Mr. Schneider asked what the charge is per square foot. Mr. Landry said that it is \$.20 per square foot.  
132 Attorney Spector said that the fee schedule is not in the Zoning Ordinance so the Board should probably  
133 not be talking about it because they do not have jurisdiction over anything that is not part of the Zoning  
134 Ordinance. The focus tonight should be on Mr. Landry's interpretation of the septic requirement.

135 Mr. Landry gave an example of a case, on Burma Rd, where this regulation has been enforced in the  
136 past.

137 Mr. Schneider asked and Mr. Landry confirmed that he is asking that DES or a septic designer confirm  
138 that the septic is up to standards. Mr. Landry said that from what he understands from Jim Berg and  
139 another gentleman that he spoke to at DES, the minute someone starts adding kitchens, it adds a 20%

140 load to the system and it kicks it up; or, if another bedroom was added it would automatically require  
141 another 150 gallons per day.

142 Mr. Larrow said that as long as Mr. Landry is complying with the rules and just asking basic questions he  
143 does not see a problem. Mr. Landry said that he did not deny the permit; he was just doing his job.  
144 Chairman Frothingham said that the applicant is not answering Mr. Landry's questions or coming forth  
145 with the needed information.

146 Mr. Landry briefly discussed the previous appeal case heard by the Board for the same applicant.

147 Clayton Platt made a motion to approve the administrative appeal by Mr. Aldrich; Case # 14-13: Parcel  
148 ID: 0218-0061-0000: Appeal of Administrative Decision; the applicant, Dustin Aldrich, wishes to appeal  
149 the Zoning Administrators' decision of returning and not processing an incomplete building permit  
150 application, 112A Sargent Rd. William Larrow seconded the motion. The motion was denied  
151 unanimously.

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

156 Patrick Clapp continued presenting the merits of the case.

157 Mr. Clapp said that he followed up on some of the old leads, updated the letters, and looked through  
158 the Town records to see if he could find anything. What he found is that he has two direct abutters, one  
159 who has lived there for 57 years and the other over 30 years, both of whom say that since at least 1987  
160 the building has been used as a six unit building. The only thing that he could find from the Town was  
161 that in 1998, a tenant reported six apartments.

162 Mr. Clapp said that at the previous meetings, the Board told him to talk to abutters and get letters from  
163 them to go back as far as they knew. Mr. Clapp gave copies of the letters and the one assessment  
164 record to the Board.

165 Mr. Landry asked and Mr. Clapp confirmed that the building is on Town Water and Sewer.

166 Mr. Clapp said that the building currently has seven units.

167 Mr. Simpson said that he does not believe that the application needs to be heard because he believes it  
168 is Grandfathered property. Mr. Simpson said that he does not believe that the Board has jurisdiction.  
169 Mr. Larrow said that he thought that the Board asked Mr. Landry to verify with the Town's attorney  
170 about the Grandfathering. Mr. Landry said that he did not get the chance to ask but that he agrees with  
171 Mr. Simpson, if the Board determines that the property is Grandfathered then they can deny the  
172 application and in the denial say it is because they believe it to be Grandfathered. Mr. Simpson said that  
173 he does not think the Board should even vote on it if it is Grandfathered. Mr. Landry said that the Board

174 cannot leave an application hanging. There was further discussion regarding how the Board should  
175 proceed if they determine that the property is Grandfathered.

176 Chairman Frothingham asked if there was anyone in the audience with any questions or comments and  
177 there were none.

178 Clayton Platt made a motion to approve the Variance for Case #14-15: Parcel ID: 0104-0010-0000:  
179 Seeking a Variance of Article III, Section 3.10 to reduce the 10,000 square foot per unit density to 6,000  
180 square foot permitting a 6 unit residential unit on a .83 acre parcel, 350 Enterprises, LLC, Patrick Clapp,  
181 11 Pleasant St. Aaron Simpson seconded the motion. There was discussion on the motion.

182 Mr. Simpson said that he would not vote for this Variance if not for the Grandfathering and he does not  
183 see how Grandfathering fits any of the criteria. Mr. Larrow said that he doesn't disagree with Mr.  
184 Simpson.

185 Mr. Platt asked if the Variance is granted if it becomes a conforming use. Mr. Simson said it becomes a  
186 permitted non-conforming use. Mr. Landry explained why he thinks that the Board should consider the  
187 Variance and deny it because it is Grandfathered. Mr. Simpson went over all the requirements to grant  
188 a Variance and how they are met simply because the property is Grandfathered. Mr. Landry said that if  
189 the Board determines that they want to just approve the Variance, then it will go to the Planning Board  
190 for Site Plan Review. The advantage of a Site Plan Review is that then there is a base plan to work from.

191 Mr. Schneider said that he believes that there are Zoning Ordinances for a reason and that the Board  
192 does not need to create any more nonconforming buildings that are not up to standards. Mr. Landry  
193 said that right now the property is a seven unit and the applicant is pulling it down one. Mr. Schneider  
194 said that someone in the Town dropped the ball on this. Mr. Landry explained that he cannot go into  
195 buildings uninvited without an Administrative Warrant and if he gets the Warrant then he has to be sure  
196 that he is right or the Town could be sued.

197 Mr. Platt said that he has concerns with someone just coming in and saying that something is  
198 Grandfathered and then trying to get a Variance but in this case it has been at least three months since  
199 the paperwork is filed. The applicant is following the guidance of the Zoning Administrator and he is  
200 therefore leaning towards granting the Variance. Mr. Larrow said that he thinks that there should be  
201 stipulations including the Grandfathering and if the Board is concerned about the lot size, parking, etc.  
202 then a condition requiring a Site Plan Review does not hurt.

203 Mr. Clapp asked for an explanation of a Site Plan Review. Mr. Landry explained that Mr. Clapp would  
204 have to go to the Planning Board. However, the Planning Board cannot take the Zoning Board's decision  
205 away. The Planning Board will review the Plan for signage, parking, landscaping, there will need to be a  
206 sign offs, etc.

207 Chairman Frothingham asked if Mr. Clapp wants to add information to his motion and Mr. Clapp said  
208 that he does not want to. Mr. Simpson said that he does not think that the Board should be hearing this  
209 case. Mr. Larrow said that he thinks more information should be added. Mr. Schneider said that he

210 agrees with Mr. Simpson. Mr. Landry said that he can still make a requirement that Mr. Platt go to the  
211 Planning Board for Site Plan Review because it is a multi-family unit.

212 The vote on the motion was four in favor and one against.

213 **CONTINUATION: CASE # 14-18: PARCEL ID: 0115-0025-0000: SEEKING APPROVAL OF A VARIANCE OF**  
214 **ARTICLE III, SECTION 3.10 TO REDUCE SIDE SETBACK FROM 15' TO 9' ON EAST SIDE OF PROPERTY**  
215 **ALLOWING CONSTRUCTION OF A 9' X 30' ADDITION. DOMINIC & BARBARA TRIPOLI, 21 NORTH SHORE**  
216 **RD.**

217 Dominic and Barbara Tripoli, Peter Hill, and Bill Evans presented the merits of the case.

218 Mr. Tripoli explained that he and his wife recently bought a small parcel of land with a three season  
219 home on it at 21 North Shore Rd. Because of his and his wife's work schedules and their difficulty in  
220 attending meetings, they have engaged the services of Mr. Hill, who has applied for several Variances on  
221 their behalf. They have also applied for a Shoreland Permit from the State. Mr. Tripoli continued that  
222 they have hired Mr. Evans to understand the local and State Ordinances and laws.

223 Mr. Simpson asked if Amanda Pullin is present. Mr. Tripoli explained that the property was in the  
224 process of being sold to the Tripolis when the original applications were filed but the sale has now gone  
225 through. Mr. Simpson asked and Mr. Landry confirmed that there is a deed on record.

226 Mr. Schneider asked if the property has been surveyed. Mr. Evans said that Tom Dombrowski surveyed  
227 the property and the plans are based on the survey. The survey has been recorded at the registry,  
228 though the applicants did not have a copy for the Board.

229 Mr. Landry explained that originally there were two Variance applications for the small 9' x 30' addition  
230 on the road side of the building. After reviewing the whole project, the applicants decided that because  
231 they are going to be pouring a new foundation, squaring off the building to the lot would be better.  
232 That is where the third Variance comes in, because they are creating a new footprint.

233 Mr. Platt asked about lot coverage. Mr. Landry said that they do have an increase in lot coverage, and  
234 the Shoreland Permit shows an increase from 37% to 42.7%.

235 Mr. Schneider asked how far away the existing house is from the lake. Mr. Evans said that he does not  
236 have the measurements but that they are moving the cottage farther away from the lake. Mr. Landry  
237 said that it improves the lakefront setback by a few feet. Mr. Evans explained that the State requires  
238 that the change be "more nearly conforming". They want it to be setback even a foot more from the  
239 lakefront. He ensured that they moved the structure back so that it is more conforming.

240 Mr. Evans continued that another change he made is that they are proposing adding ecogrid to the  
241 parking lot which will mean that they will have significantly less impervious area when they are done.  
242 Right now, the State considers the parking area to be impervious and they will make it a 645 square foot  
243 of pervious area. It will put them down to less than the current 37% of pervious coverage. Mr. Landry  
244 said that it will be less than 40% coverage so they will not need to get a Variance for lot coverage.

245 Mr. Evans said that the proposed plan will be an improvement to the site. The corner of the deck was  
246 very close to the lot line and they will be losing additional walkways behind the house. The net result is  
247 accommodations for the addition and the additional 4' shown on the deck. The reason for the 12' deck  
248 is that a non-conforming structure under State law is allowed to extend a full 12'. Mr. Landry said that it  
249 is not allowed in Sunapee as the Town's rules are tighter than the State's. Mr. Evans said that it is not  
250 something that the Tripoli's are holding fast to if the Board does not allow this. Mr. Clapp asked and Mr.  
251 Evans said that the deck is not closer to the water than it was before. Mr. Schneider asked and Mr.  
252 Evans confirmed that the deck will be wood. Mr. Schneider asked if the applicants will have any  
253 problems with a condition that the deck cannot be changed without further approval from the Board.  
254 Mr. and Mrs. Tripoli affirmed that they do not want to close the deck in. Mr. Evans said that it would  
255 not be allowed by the State. Mr. Evans said that he did not check the Town's regulations as he was  
256 more concerned with the State. There was further discussion regarding this matter.

257 Mr. Simpson asked and Mr. Evans confirmed that this application is for the south-east side and if it is  
258 less non-conforming.

259 Chairman Frothingham asked if there were any abutters present.

260 James Fuller said that he does not mind the house being straightened and has no objections.

261 Mr. Simpson asked if the deck is any further away from the lake. Mr. Evans said that he made sure that  
262 he shifted everything towards the road. Mr. Schneider asked and Mr. Evans confirmed that the side  
263 decks will not be any larger.

264 Mr. Hill went over the facts supporting the Variance. The proposed use would not diminish surrounding  
265 property values because many of the houses on North Shore Rd were built before Zoning Regulations  
266 and are within the setback distances. Granting the Variance would not be contrary to the public interest  
267 because the Sunapee ZBA has granted Variances for setbacks that do not meet the current setbacks for  
268 construction and additions. Denial of the Variance would result in unnecessary hardship per the  
269 following: A. the Zoning restriction as applied to the property interferes with the reasonable use of the  
270 property considering the unique setting of the property in its environment because the lot is non-  
271 conforming as it predates the Zoning Regulations. The proposed addition and new foundation will not  
272 adversely impact any neighbor, or the pond. The narrow width of the lot restricts the area in which to  
273 construct the proposed 9' x 30' addition. B. No fair and substantial relationship exists between the  
274 general purposes of the Zoning Ordinances and the specific restriction on the property because due to  
275 the size and shape of the lot there is no alternate location to put the 9' x 30' addition. C. The Variance  
276 would not injure the public or private rights of others because the proposed new foundation will  
277 improve drainage and erosion controls, the addition will not interfere with existing views or the  
278 aesthetic integrity of the existing neighborhood. Mr. Landry asked and Mr. Hill confirmed that the  
279 roofline will not be raised. Mr. Hill continued that granting the Variance would do substantial justice  
280 because the existing foundation is in structural distress; the upgrades would improve not only the  
281 existing drainage but would allow for maintenance of future run-off. The use is not contrary to the spirit



282 of the Ordinance because this is a residential property in a residential zone and most of the houses in  
283 the area violate the setback limits because of the size and configuration.

284 Mr. Platt asked if the drain pipes have outlets. Mr. Evans said that they do not, they are all in the  
285 ground and are storage for the water and provide infiltration means for the water to move in.

286 Mr. Simpson said that he does not believe the Board should grant a Variance because they have granted  
287 other Variances or because other people's lots are non-conforming; but he would consider granting it  
288 for a lot of the reasons because it is less non-conforming. Mr. Platt said that there is not a lot that could  
289 be done on this lot that would be conforming. Mr. Hill said that it is a tight lot. Mr. Landry said that  
290 they are lucky enough they can move the camp a few feet and still not violate the 50' setback from the  
291 centerline of the road. Mr. Evans explained that they are trying to get the setbacks to both properties  
292 less non-conforming.

293 Aaron Simpson made a motion to approve Case # 14-18: Parcel ID: 0115-0025-0000: Seeking approval  
294 of a Variance of Article III, Section 3.10 to reduce side setback from 15' to 9' on east side of property,  
295 meaning the south-east side of the property, allowing construction of a 9' x 30' addition, Dominic and  
296 Barbara Tripoli, 21 North Shore Rd. Daniel Schneider seconded the motion. Aaron Simpson made a  
297 motion to amend his motion to include that it is subject to the conditions of the Shoreland Permit and  
298 that the deck cannot be enclosed as a living space. William Larrow seconded the amendment. The  
299 motion passed with four in favor and one abstention. The first motion, as amended, passed  
300 unanimously.

301 **CONTINUATION: CASE # 14-19: PARCEL ID: 0115-0025-0000: SEEKING APPROVAL OF A VARIANCE OF**  
302 **ARTICLE III, SECTION 3.10 TO REDUCE SIDE SETBACK FROM 15' TO 10' ON WEST SIDE OF PROPERTY**  
303 **ALLOWING CONSTRUCTION OF A 9' X 30' ADDITION. DOMINIC & BARBARA TRIPOLI, 21 NORTH SHORE**  
304 **RD.**

305 Dominic and Barbara Tripoli, Peter Hill, and Bill Evans presented the merits of the case.

306 Mr. Simpson asked why Mr. Hill is referring to a 9' x 30' addition. Mr. Hill explained that they are asking  
307 to build this addition on the street side of the building.

308 Mr. Hill asked and the Board determined that he does not have to repeat the facts supporting the  
309 Variance.

310 Aaron Simpson made a motion to approve Case # 14-19: Parcel ID: 0115-0025-0000: Seeking approval  
311 of a Variance of Article III, Section 3.10 to reduce side setback from 15' to 10' on the west side of  
312 property, or the north-west side of the property, allowing construction of a 9' x 30' addition, Dominic &  
313 Barbara Tripoli, 21 North Shore Rd conditioned on DES approval and that the deck shall not be  
314 converted into living space. Clayton Platt seconded the motion. The motion passed unanimously.

315 **CASE #14-21: PARCEL ID: 0121-0000-0000: SEEKING A VARIANCE OF ARTICLE III, SECTION 3.40-C TO**  
316 **REDUCE LAKEFRONT SETBACK FROM 50' TO ALLOWING REALIGNMENT OF EXISTING HOME WITH**  
317 **PROPERTY LINES. DOMINIC & BARBARA TRIPOLI, 21 NORTH SHORE RD.**

318 Dominic and Barbara Tripoli, Peter Hill, and Bill Evans presented the merits of the case.

319 Mr. Hill asked the Board if they would like him to read the facts supporting the Variance as they are all  
320 the same. Mr. Schneider said that he thinks that it should be on record that the house, even though it is  
321 within the 50' lakefront setback and is currently non-conforming, will be actually further from the lake  
322 than it is now and will be less non-conforming.

323 Mr. Platt said that he has a problem with the enlargement of the deck as he does not think that the  
324 Board would approve it if they were not moving the house and he is not sure why they are approving it  
325 just because they are. He thinks that an 8' deck is a reasonable use for most people. Mr. Hill said that  
326 he believes that the Tripoli's would like a 12' deck because they are on the pond and adding space  
327 outside that is usable would be a greater benefit to them. Mr. Simpson said that he agrees with Mr.  
328 Platt. Mr. Platt said that it is not clear to him how far the deck is from the pond on the plans. Mr. Evans  
329 showed the Board on the Plan. Mr. Hill said that the owner is willing to go with an 8' deck if needed.

330 Mr. Simpson asked about the impervious coverage. Mr. Landry explained that it is currently 37% and  
331 with the additions it is 42.7%, however, changing the parking lot to pervious will make it less than 37%.  
332 There was further discussion about the calculation of the impervious coverage and the 37% lot coverage  
333 is Grandfathered.

334 Mr. Evans explained the Shoreland requirements to the Board including the tree and shrub count,  
335 drainage, etc.

336 Mr. Landry explained that there has not been an application for the new deck and the Board could put a  
337 condition in their approval.

338 Clayton Platt made a motion to approve Case #14-21: Parcel ID: 0121-0000-0000: Seeking a Variance of  
339 Article III, Section 3.40-C to reduce lakefront setback from 50' to allow the realignment of existing home  
340 with property lines, Dominic & Barbara Tripoli, 21 North Shore Rd, with the condition that all  
341 construction proceed according to the Shoreland Permit and that the proposed deck not extend more  
342 than 8' from the new house and that the deck not be covered or converted to living space. Aaron  
343 Simpson seconded the motion. Aaron Simpson made a motion to include that the lot coverage not be  
344 more than 37% impermeable. Daniel Schneider seconded the amendment. The amendment to the  
345 motion passed with four in favor and one abstention. The amended motion passed unanimously.

346 **CASE #14-23: PARCEL ID: 0112-0002-0000: SEEKING A ONE (1) YEAR EXTENSION AS PER ARTICLE X,**  
347 **SECTION 10.6-E ON APPROVED VARIANCE #13-33. DAVID & BEVERLY BJORKLUND, 14 WOODLAND RD.**

348 Mr. Platt asked and Mr. Landry confirmed that the request for the extension is because construction has  
349 not yet started on the project. Mr. Platt said that he just heard that there is a new RSA that gives two  
350 years for a Variance. Mr. Landry said that the Town has not adopted that RSA yet and the Town is more  
351 restrictive. Mr. Platt said that the State trumps local Zoning Ordinances in this instance. Mr. Simpson  
352 said that he agrees with Mr. Platt in this case. The Board agreed to look into the RSA but to also grant  
353 the extension.

354 Aaron Simpson made a motion to approve Case #14-23: Parcel ID: 0112-0002-0000: Seeking a one (1)  
355 year extension as per Article X, Section 10.6-E on approved Variance #13-13, David & Beverly Bjorklund,  
356 14 Woodland Rd. William Larrow seconded the motion. The motion passed with four in favor and one  
357 abstention.

358 **CASE #14-22: PARCEL ID: 0121-0005-0000: SEEKING APPROVAL OF AN EQUITABLE WAIVER OF**  
359 **DIMENSIONAL REQUIREMENTS FOR CONSTRUCTING A STRUCTURE (PATIO) WITHIN 50 FT LAKEFRONT**  
360 **SETBACK WITHOUT A BUILDING PERMIT OR VARIANCE. DON & MARCIA BLENKO, 82 WOODLAND RD.**

361 Clayton Platt and Daniel Schneider both recused themselves from the case. Chairman Frothingham  
362 explained to the applicants that there are two people who have recused themselves which leaves just  
363 three people who can vote and as there must be three votes in the affirmative to pass, it must be an  
364 unanimous vote to be approved. Chairman Frothingham continued that if the applicants wish to  
365 continue the case until the next hearing that it is within their rights. The applicant asked if there are any  
366 other Board members and it was explained that there is an alternate member who is not present for the  
367 meeting. The applicant determined that they would proceed.

368 George Pellettieri, a landscape architect and the owner of Pellettieri & Associates, and Chris Kessler, a  
369 landscape designer with Pellettieri & Associates, presented the merits of the case.

370 Mr. Pellettieri explained that they are requesting an Equitable Waiver of Dimensional Requirements at  
371 82 Woodland Rd. Mr. Pellettieri showed the Board a conceptual landscape plan which was also used for  
372 the Shoreland Permit application.

373 Mr. Simpson asked what is non-conforming on the Plan. Mr. Landry explained that Mr. Kessler came to  
374 him and said that they built a 150 + square foot patio without coming to the Board for a Building Permit.  
375 As of a case last year, the Howland case, a patio is considered a structure that requires a Building Permit.  
376 They built this patio and Mr. Kessler asked if he should come in for a Variance and Mr. Landry  
377 recommended that they should apply for an Equitable Waiver of Dimensional Requirement.

378 Chairman Frothingham asked and Mr. Kessler explained where the affected area is located. It is a of 12'  
379 x 12' natural bluestone patio located within the 50' waterfront setback. It is more than 20' away from  
380 the reference line of Lake Sunapee, as required by DES.

381 Mr. Larrow asked and Mr. Kessler confirmed that the patio was on the original plan that was sent to  
382 DES. Mr. Kessler said that they started working with the client at the end of 2012 and had a meeting  
383 with Mr. Landry in the beginning of 2013. After that meeting, they sent the application in to DES and  
384 the Town and got approval in April of 2013. Construction on the house began that summer and the  
385 landscape construction began the summer of 2014. Mr. Kessler continued that at the end of the  
386 summer they learned of the change that had happened due to some legal issues with the Town and that  
387 is when he met with Mr. Landry again to find out the best course of action to take as they had already  
388 constructed the 150 sq ft patio.

389 Mr. Landry said that the only way that he may have found the patio if Mr. Kessler hadn't come in would  
390 have been at the final inspection or the Assessors would have picked it up and notified him. Mr. Landry  
391 said that if the Board approves the Equitable Waiver he thinks it should be conditional that it cannot be  
392 expanded vertically as it is now a footprint.

393 Chairman Frothingham asked if the Board has any questions.

394 Mr. Larrow said that he is wondering how it originally got missed. Mr. Landry said that it didn't, the  
395 applicants came in and reviewed the drawings with him. However, the case that determined that patios  
396 are structures had not yet been heard by the Board. Mr. Pellettieri said that they had received approval  
397 from the Town and the State to proceed with the project and as they were finishing it up they  
398 discovered that there was a change in the Regulations. Mr. Simpson asked how there was a change in  
399 the Regulations and if Mr. Kessler had believed it was buildable beforehand without getting the  
400 Variance. Mr. Landry explained that the Howland case determined that any type of a patio is a  
401 structure. However, at the time Mr. Landry and Mr. Kessler met, it was not considered a structure; if  
402 the patio were to be built today, a Variance would be required.

403 Jim Lyons asked if any members of the Board had gone to visit the property and none had. Mr. Lyons  
404 said that there are some places where it looks as though they are going to fill in the Lake and if they do  
405 that he would object. Mr. Kessler said that there is nothing else being done on the Lake and everything  
406 on the shorefront has been completed, minus some plantings. Mr. Pellettieri said that there have never  
407 been any plans to fill in the lake.

408 Mr. Kessler said that DES has a 20' accessory structure setback from the Lake, the patio is between 20'  
409 and 50' from the shorefront.

410 Mr. Pellettieri said that he is currently on the Shoreland Advisory Committee to the Commissioner of  
411 DES. They have a long record of working on this lake and other lakes in NH and a good relationship with  
412 DES and with Towns because they always try to be upfront.

413 Mr. Schneider said that he is an abutter, which is why he recused himself. He does not have a problem  
414 with the patio; he did have a question about the perched beach but that is not what the case is about.

415 Mr. Simpson said that he has a problem with one of the criteria that talks about how the violation was  
416 not an outcome of ignorance of the law, which he thinks that it was. Or bad faith resulting in a good  
417 faith measure or calculation, he does not think it has anything to do with this. Mr. Simpson continued  
418 that the Statute says, or by an error in ordinance interpretation or applicability made by a municipal  
419 official, and he thinks that is what this case is. The definition never changed, but the interpretation  
420 changed. Mr. Landry said that the Town never considered a patio a structure before the Howland case.

421 Aaron Simpson made a motion to approve Case #14-00: Parcel ID: 0121-0005-0000: Seeking an  
422 Equitable Waiver of Dimensional Requirements for construction a structure (patio) within the 50 ft  
423 lakefront setback without a Building Permit or Variance, Don & Marica Blenko, 82 Woodland Rd,

424 conditioned on the requirement that the structure not be enlarged in any way. William Larrow  
425 seconded the motion. The motion passed unanimously.

426 Aaron Simpson made a motion to adjourn at 8:53 pm. Chairman Frothingham seconded the motion.  
427 The motion passed unanimously.

428 Respectfully submitted,

429 Melissa Pollari

430

431 \_\_\_\_\_

432 Edward Frothingham

Aaron Simpson

433 \_\_\_\_\_

434 Clayton Platt

Daniel Schneider

435 \_\_\_\_\_

436 William Larrow

George Neuwirt, Alternate