

1 **TOWN OF SUNAPEE**

2 **ZONING BOARD**

3 **MAY 9, 2013**

4 **PRESENT:** Edward Frothingham, Chair, Dick Katz, Daniel Schneider, Aaron Simpson, Roger Landry,
5 Zoning Administrator

6 **ABSENT:** Clayton Platt, William Larrow, 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 April 11, 2013 Zoning Board Meeting: On line 37 change it to read "not
11 needed".

12 Dick Katz made a motion to accept the minutes as amended. Aaron Simpson seconded the motion. The
13 motion passed unanimously.

14 **OLD BUSINESS**

15 Chairman Frothingham informed the Board of a State of NH Superior Court Notice of Decision regarding
16 the Donna Davis Larrow and Sirius 2000 vs the Town of Sunapee case. The Court made a decision on
17 April 10th of 2013 and they have supported the Zoning Board of Adjustment's decision.

18 **CASE # 13-06: PARCEL ID: 0106-0016-0000: SEEKING APPROVAL OF A VARIANCE OF ARTICLE III,**
19 **SECTION 3.40-C TO REDUCE THE WATERFRONT SETBACK FROM 50 FEET TO 27 FEET TO ALLOW**
20 **CONSTRUCTION OF A 12 X 20 FOOT DECK. TIMOTHY & MARJORIE GODFREY, 60 OAK RIDGE RD.**

21 Chairman Frothingham explained to the applicant that the Board does not have all of its members
22 present and asked the applicants if they would like to continue the hearing to the next meeting to try
23 and have a full Board. Mrs. Godfrey asked what would happen if their case is not approved. Chairman
24 Frothingham explained that if the case is denied, the applicants would have to go through the appeal
25 process if they felt the reasoning was not valid. Mr. Simpson explained that the applicant would need
26 three votes in favor of the proposal in order for the application to be approved. Mr. Godfrey said that
27 he would like to proceed with the hearing.

28 Timothy Godfrey, owner of 60 Oak Ridge Rd, presented the case. Mr. Godfrey explained that he
29 currently has a 12 x 12 deck and he would like to extend it across the entire front of the property. Mr.
30 Godfrey said that his first step was to go to the State and they just passed a new law that says you can
31 build within 25 feet of the waterfront. Mr. Schneider said that he cannot find this new law on the
32 Department of Environmental Services (DES) website and he also spoke with the Lake Sunapee
33 Protective Association (LSPA) who said that they do not know about it either. Mr. Godfrey showed the

34 Board a copy of his approval from DES for the deck extension. Mr. Schneider said that he read the
35 approval but he did not see any reference to the fact that they have reduced the Shoreland setback
36 from 50' to 25'. Mr. Godfrey said that he spoke with Craig Day at DES who contacted him because he
37 does work around different lakes and Mr. Day told him that this law had been passed. Mr. Godfrey said
38 that he then filed a permit with the State and it took about three months to receive the approval for the
39 project. Mr. Landry asked if Mr. Day had said that he could grant Mr. Godfrey a waiver if the project
40 was more than 25' from the lakefront rather than saying that they have changed the rule from 50' to
41 25'. Mr. Landry said that the Town does not know anything about this new law and Mr. Godfrey
42 confirmed that the Rules have changed. Mr. Godfrey explained that the new rules only allow certain
43 projects as a house cannot be built within 25' but decks and gazebos can be built.

44 There was a discussion regarding the size of the deck and Mr. Godfrey explained that the new part of
45 the deck will be 12' x 20'.

46 Mr. Simpson said that the Town's Ordinance does not allow construction within 50' of the waterfront
47 and asked the applicant to go through the criteria regarding why the Board should grant the Variance.

48 Mr. Godfrey said that the old deck needs to be replaced and though he knows he could just rebuild it in
49 the same footprint, he would like to expand it. Mr. Simpson asked why the deck was originally built the
50 way that it is and Mr. Godfrey explained that it was there when he purchased the property so he does
51 not know the reason. Mr. Simpson asked if the current deck is within 50' of the waterfront and Mr.
52 Godfrey said that it is within the setback. Mr. Landry explained that the existing deck is Grandfathered
53 as a preexisting, non-conforming use.

54 Mr. Godfrey went through the criteria for the Variance for the Board. Mr. Godfrey said that the
55 application will not cause diminution in value of surrounding properties because the front of the house
56 will look better which will help the value of his property and therefore not cause any other properties to
57 lose value.

58 Granting the permit will benefit the public interest because of the same reason as criteria number one.

59 Denial of the variance would result in unnecessary hardship because the current deck needs
60 replacement and has limited space for normal use. Chairman Frothingham explained that the
61 replacement of the current deck does not pertain to this application because it can be replaced in the
62 current footprint without a Variance. Chairman Frothingham continued that in relation to the limited
63 space, there is also a deck on the side of the house which could possibly be expanded without
64 encroaching on the waterfront. Mr. Godfrey explained that it would make it more difficult to get to the
65 water and also that the roofline would make it difficult because it would not be good to drop the snow
66 onto the deck from the covered portion. Chairman Frothingham said that he does not see a hardship
67 with this application. Chairman Frothingham continued that part of the problem he has is that if the
68 Variance is granted and the deck is built that it becomes part of the footprint of the building. Mr.
69 Godfrey said that, according to the State, he is not allowed to use the deck as part of the footprint of the
70 house. Mr. Landry said that is not correct, as with the Town Regulations, once it is on the ground it
71 becomes part of the footprint. As long as there was no digging or land disturbance involved, there

72 would then be no permit needed from the State. Mr. Schneider asked and Mr. Godfrey confirmed that
73 they will be drilling two holes for sauna tubes. Mr. Simpson asked and Mr. Godfrey confirmed that the
74 area he would like to put the deck is currently grass with some flowers and plants. Mr. Schneider said
75 that he has a problem with the possibility of the deck being finished to a porch, then a three season
76 room, and then being winterized. Mr. Godfrey said that it would not happen as long as he owns the
77 property and Chairman Frothingham explained that the Variance continues with the land. Mr. Simpson
78 said that he does not see the hardship issue as hardship has to be related to the property and not to the
79 house. Mr. Simpson asked Mr. Godfrey about the size of the lot and how close the neighbors are to the
80 property. Mr. Godfrey showed a copy of a plan showing the deck and the lot lines and the deck would
81 be 28 feet from one neighbor and 25 feet from the other.

82 Chairman Frothingham asked if there were any comments from members of the audience.

83 Gloria Gaudette, owner of 58 Oak Ridge Rd, said that she lives next door to the Godfrey's property and
84 the proposed deck would be coming towards her house. Ms. Gaudette explained that her bedroom
85 window overlooks the that side of her property and she has concerns such as noise. Chairman
86 Frothingham read a letter from Ms. Gaudette to the Board (see attached). Mr. Simpson asked Ms.
87 Gaudette how far her house is from Otter Pond. Mr. Simpson explained he wanted to know more about
88 the neighborhood and average distances from the waterfront. Ms. Gaudette said that her house was
89 rebuilt in the original footprint and the proposed deck is about the same distance as her house is from
90 Otter Pond. Mr. Simpson asked about the neighbor on the other side of Mr. Godfrey. Mr. Godfrey said
91 that his house is probably the same as the distance of the proposed deck.

92 Mr. Godfrey presented the Board with a letter from his neighbor, David Erickson, owner of 62 Oak Ridge
93 Rd.

94 Mrs. Godfrey asked if there was a way to postpone the decision in order to get the wording of the new
95 DES rule. Chairman Frothingham confirmed that they could continue the hearing. Mr. Simpson
96 explained that he does not believe the DES rule will have an effect on the Board's decision. Mr. Simpson
97 continued that the only people that can now hear the case are the members present and even if one of
98 the members is absent at the next meeting then they would have to continue with the case.

99 Mr. Landry gave copies of maps showing the abutting properties and the subject property to the Board.
100 Mr. Landry commented that they seem to be distanced similarly from the waterfront and if the Board
101 was to grant the Variance it could "open a can of worms" as per Ms. Gaudette's letter.

102 Chairman Frothingham explained that his concern is adding to the footprint of the building. Mr.
103 Simpson said that he is still concerned about the hardship issue.

104 Mr. Landry advised the Board that if the applicants have requested a continuance they can vote to allow
105 it. Chairman Frothingham asked if the applicants would like to continue the hearing.

106 Mr. Godfrey said that he is sorry that the State has adopted a new law and yet no one has been
107 informed about it. Mr. Landry said that he is surprised that the DES has not notified towns of any

108 changes. Mr. Schneider said that even if the rule has changed, the Town still has the 50' setback rule.
109 Mr. Landry agreed and said that the States does not prevail over the Town.

110 Mr. Simpson asked Ms. Gaudette if she has a deck on the front of her house and she stated that she
111 does not.

112 Chairman Frothingham asked the applicants if they would like to continue the hearing. The applicants
113 determined that it would not make a difference to have a copy of the new State regulation as the
114 Town's regulation is 50'. Mr. Godfrey decided to continue with the hearing. Mrs. Godfrey expressed
115 concern as the State and the Town have two different Regulations. Mr. Landry asked Charlie Hirshberg
116 of CLD Engineers if he had heard if the State has reduced the primary setback from the water from 50'
117 to 25' and he said that he has not. Mr. Landry said that the Board has to decide cases on the Zoning
118 Regulations that are voted on by the Town, not on what the State has for regulations. Mr. Schneider
119 said that the Town's regulations are allowed to be more restrictive than the State but that they cannot
120 be less restrictive.

121 Mr. Simpson asked Mr. Landry where it says that if the deck is approved that it becomes part of the
122 footprint of the building. Mr. Landry gave a definition of a structure from the Zoning Ordinance. There
123 was further discussion regarding this issue.

124 Dick Katz made a motion to approve Case # 13-06: Parcel ID 0103-0016-0000; seeking approval of a
125 Variance of Article III, Section 3.4-c to reduce the waterfront setback from 50 feet to 27 feet to allow
126 construction of a 11 x 20 foot deck, Timothy & Marjorie Godfrey. Aaron Simpson seconded the motion.
127 The motion was denied unanimously.

128 Mr. Godfrey asked what the next step would be for him and asked if he could bring in the person from
129 DES to discuss the waterfront setback rule with them. Mr. Landry said that the denial does not have
130 anything to do with the State as it is a Town regulation.

131 **CASE # 13-07: PARCEL ID: 0218-0061-0000: SEEKING APPROVAL OF A VARIANCE OF ARTICLE III,**
132 **SECTION 3.10 TO REDUCE ROAD FRONTAGE REQUIREMENT OF 75 FEET PER RESIDENTIAL UNIT AND**
133 **ALLOW THREE RESIDENTIAL UNITS TO BE CONSTRUCTED ON A PRIVATE RIGHT-OF-WAY. DUSTIN**
134 **ALDRICH, 112 A SARGENT RD.**

135 **CASE # 13-08: PARCEL ID: 0218-0061-0000: SEEKING APPROVAL OF A SPECIAL EXCEPTION AS PER**
136 **ARTICLE IV, SECTION 4.10 WHICH IS REQUIRED FOR A THREE UNIT MULTI-FAMILY. DUSTIN ALDRICH,**
137 **112 A SARGENT RD.**

138 David Montambeault of 112 Sargent Rd, an abutter to the property, expressed that he finds Mr.
139 Aldrich's plans acceptable and he feels that Mr. Aldrich may do whatever he wants to do.

140 Mr. Simpson recused himself from the case.

141 Mr. Aldrich informed the Board that he is withdrawing both of his applications.

142 Dick Katz made a motion to accept Mr. Aldrich's withdrawal. Daniel Schneider seconded. The motion
143 passed unanimously.

144 Mr. and Mrs. Ortiz of 114 Sargent Rd came to the meeting and asked for an explanation of why they
145 were notified of the case and why it was withdrawn. Mr. Landry explained that the deed for Mr.
146 Aldrich's property says that it is subject to Covenants and Restrictions and Easements. The Covenants
147 and Restrictions state that the property can only be used for a single family dwelling unit. Mr. Landry
148 explained that the footprint of the house was going to remain the same but Mr. Aldrich wanted to
149 convert it to a three-family dwelling unit. Mr. Landry also explained why the Ortiz's were notified as
150 abutters.

151 **CASE # 13-09: PARCEL ID: 0106-0021-0000: SEEKING APPROVAL OF A VARIANCE OF ARTICLE III,**
152 **SECTION 3.40-G-2 TO ALLOW A 5 FOOT WIDE WALKWAY WITHIN 50 FEET OF LAKEFRONT. CURRENT**
153 **REGULATION ALLOWS 4 FOOT WIDE MAXIMUM. HK SUNAPEE COVE, LLC, 1250 ROUTE 11.**

154 Bob Batson of HallKeen Management / HK Sunapee Cove, LLC and Charlie Hirshberg of CLD Engineers
155 presented the case. Mr. Hirshberg explained that HK Sunapee Cove, LLC would like to install a handicap
156 accessible walkway from the existing building down to the waterfront where there is an existing dock.
157 The walkway has to be 5' wide for wheelchair access and the Zoning Regulations allow 4'. The walkway
158 they are proposing is 5' 3" to allow clearance for a railing to be installed. The 239' walkway will be
159 pervious and, according to ADA regulations, whenever there is a turn in a walkway there needs to be a
160 5' x 5' area. Also, any 30" drop requires another platform and in terms of the grade, anything over 8% is
161 deemed a ramp and requires railings.

162 Mr. Landry asked if it was an 11' drop from the building down to the lake and Mr. Hirshberg confirmed
163 that it is roughly that amount. Mr. Hirshberg explained that they have conditional approval from the
164 Zoning Board and there is State Shoreland approval. Most of the wheelchairs will be accompanied by a
165 staff member and there are also flat sections and also railings where it is steeper. Mr. Hirshberg showed
166 the Board a patio on the plan and the existing walkway.

167 Mr. Schneider asked why the Zoning Regulations only allow for 4' and Mr. Simpson said that it is the
168 standard width of a sidewalk. There was further discussion regarding this issue.

169 Mr. Hirshberg explained that, though the plan shows pavers, they are now thinking of going with
170 pervious concrete. There was further discussion regarding the pavers and the concrete.

171 Mr. Simpson asked if the dock goes with the building. Mr. Landry said that the dock does go with the lot
172 with the building on it.

173 Mr. Simpson said that he would like to talk about the criteria of the case and that, in terms of hardship,
174 he feels that the facility is dedicated as elderly housing and the Town's regulations do not permit ADA
175 pathways and that does create a hardship. The Board members agreed with Mr. Simpson in regards to
176 accessibility and hardship

177 Aaron Simpson made a motion to approve Case # 13-09: Parcel ID 0106-0021-0000; seeking approval of
178 a Variance of Article III, Section 3.40-G-2 to allow a 5 foot wide walkway within 50 feet of lakefront;
179 current regulation allows 4 foot wide maximum, HK Sunapee Cove, LLC, 1250 Route 11, as per Site Plan
180 Approval. Dick Katz seconded the motion. The motion was approved unanimously.

181 Dick Katz made a motion to adjourn the meeting at 8:00pm. Aaron Simpson seconded the motion. The
182 motion was approved unanimously.

183 Respectfully submitted,

184 Melissa Pollari

185

186 _____

187 Edward Frothingham

_____ Aaron Simpson

188 _____

189 Dick Katz

_____ Clayton Platt

190 _____

191 Daniel Schneider

_____ William Larrow, alternate member