

1 **TOWN OF SUNAPEE**

2 **ZONING BOARD**

3 **AUGUST 08, 2013**

4 **PRESENT:** Edward Frothingham, Chair, Dick Katz, Daniel Schneider, Clayton Platt, Aaron Simpson,
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 **MINUTES**

10 Changes to the minutes from the July 11, 2013 Zoning Board Meeting: Change line 92 to read "...shall
11 not be enclosed and a record of this restriction shall be kept with the Building Permit..." On line 99
12 change "planeing" to "planing". On line 277 change "on" to "one". On line 311, change "pre-exiting" to
13 "pre-existing". Change line 359 to read "... Mr. Katz are coming from but..."

14 Aaron Simpson made a motion to approve the minutes as amended. Clayton Platt seconded the
15 motion. The motion passed unanimously.

16 **PLANNING BOARD UPDATE**

17 Mr. Landry gave an update to the Board regarding the Planning Board meetings on July 18th and August
18 1st.

19 **(CONTINUATION) CASE # 13-18: PARCEL ID: 0130-0006-0000: SEEKING A VARIANCE OF ARTICLE IV,
20 SECTION 4.10 TO ALLOW AN AUTOMOTIVE REPAIR SHOP TO OPERATE IN THE VILLAGE RESIDENTIAL
21 DISTRICT (TROW MILL SITE). JEFFREY TROW, 134 LOWER MAIN ST**

22 Jeffrey Trow continued presenting the merits of the case. Mr. Trow presented a packet of information
23 including pictures to the Board.

24 Mr. Trow explained that the entrance to the automotive repair shop will be off Lower Main St.

25 Mr. Trow said that in the pictures there are orange dots that they have added to represent 10 parking
26 spaces. Mr. Trow explained the locations of the parking spaces. Mr. Trow continued that the
27 automotive section will be on the backside of the building and not visible from Lower Main Street or
28 West Court.

29 Mr. Trow said that he took rough measurements and the front of the mill building is approximately 100'
30 from the river and the automotive section will be 200'. There is almost 300' to West Court Rd. Mr. Trow

31 said that the abutter on one side is his sister. Also, they are centered towards the middle so they have a
32 few hundred feet until the other property line.

33 Brianna Trow said that she has talked with the Department of Environmental Services (DES) and they do
34 not have any concerns with the proximity to the river as long as any anti-freeze or used oils is stored
35 inside with a floor that does not allow any type of spills. Mrs. Trow said that there will not be any floor
36 drains.

37 Mr. Larrow asked if they will be getting a DES number and Mrs. Trow explained that they will not as the
38 way the current rules are that as long as they utilize certain best practices and are below the limits, they
39 do not qualify for a hazardous waste generator. Mrs. Trow said that the only thing that would put them
40 close to the limits would be the used waste oil if they were not planning on burning it for heat on site.
41 Mr. Larrow cautioned that the limits are very low. Mr. Simpson said that the Board should put a
42 condition that they comply with the DES regulations. Mr. Landry said that the Board should ask the
43 applicants to obtain and submit a letter from DES. There was further discussion regarding this matter.
44 Mr. Larrow advised that the applicants request a site review from DES.

45 Mr. Landry asked if the garage will be outside the 250' Shoreland limit from the river. Mr. Trow said that
46 it will not be outside the limit. Mr. Landry advised that if they are within the 250' they have to follow
47 Shoreland Regulations for any site work.

48 Mr. Platt said that some of the parking looks to be on grass and asked if that is considered a pervious
49 surface. Chairman Frothingham asked why there are two different versions of the parking. Mr. Trow
50 said that he was trying to have options and one is using more of the gravel area. Mr. Landry advised Mr.
51 Trow that if he receives approval he will want to make a scale drawing, including the parkin, to go to Site
52 Plan Review.

53 Mr. Platt inquired about the square footage of the automotive shop area. Mr. Trow said that it is about
54 20' x 30'. There was further discussion regarding this issue.

55 Mr. Landry asked if the repairs on the cars will be mechanical and Mr. Trow confirmed they will be.
56 Jeremy Trow explained that he does not do any body work, the most that he would do is to repair a rust
57 part. Mr. Larrow said that he understood the proposal was for automotive repairs, which is mechanical;
58 body work and mechanical work are two different things. Cutting out rust spots and painting crosses
59 into body work. Mr. Larrow said that the applicants should determine which one they are going to do as
60 it is easy to cross over and it makes a difference. Mr. Trow said that the paragraph regarding light body
61 work is acceptable to be removed from the proposal.

62 Mr. Trow was asked and explained that there is a paragraph in the packet of information regarding
63 signage and the number of employees which could be up to two.

64 Mr. Katz asked if it is acceptable to use the same address for two separate businesses. Mr. Landry
65 confirmed that it is acceptable and that one will be the actual address and the other would be the
66 number dash "a".

67 Mr. Platt asked about the long term storage of vehicles. Mr. Landry explained that there can only be a
68 maximum of two unregistered vehicles on site. Also, an unregistered trailer is considered a vehicle. Mr.
69 Platt said that he would like a contingency in the approval so if there are numerous wrecks on site then
70 the Town can take action against it.

71 Chairman Frothingham asked if Mr. Trow had rewritten any of his reasons that his Variance should be
72 granted. Mr. Trow said that he has not. Mr. Simpson explained why the Board requested this as the
73 reasons have to meet the Statutes, an example being hardship.

74 Mr. Platt said that he feels as though the bottom line is that it is Commercial Use now and will be
75 Commercial Use after. Mr. Schneider said that it seems to be more of a Planning Board issue in terms of
76 Site Usage. Mr. Simpson explained that it is a change of a Non-Conforming Use and said that he thinks
77 this is spot Zoning. Mr. Landry said that one of the considerations he is going to again bring to the
78 Planning Board is to reclassify that end of Lower Main St as Village-Commercial. There was further
79 discussion regarding this matter.

80 Chairman Frothingham noted that if this application is approved it will have to be contingent on many
81 things. Mr. Schneider asked what is needed from DES to say that they accept the proposal. Mr. Landry
82 said that the applications should request an inspection of the property and then they will issue a letter
83 of compliance. Mr. Platt said that he feels that there should be a contingency regarding compliance
84 with the Shoreland Regulations. Chairman Frothingham said that a Plot Plan of the building with the
85 setback and parking defined is needed. Mr. Schneider said that they should also say that they are not
86 being approved as a junk yard. Mr. Platt said that they should put a maximum allowance of a 750 sq ft
87 service bay as a contingency. Mr. Landry explained that they can also increase by Site Plan Review a
88 Non-conforming Use by up to 50%. Mr. Platt said that another condition would be one principal and
89 two employees.

90 Mr. Simpson said that he would like to go over the criteria to approve the proposal as he has concerns
91 that he does not have answers that he is satisfied with.

92 Chairman Frothingham read the criteria for a Variance.

93 The first criterion is that the proposed use will not diminish the value of surrounding properties. Mr.
94 Simpson explained that the answer given discusses Mr. Trow's property and not any of the surrounding
95 properties. Mr. Landry confirmed that there have not been any comments from abutters regarding the
96 case. There was a brief discussion regarding this criterion and Mr. Simpson said that he believes it has
97 been met.

98 The second criterion is that granting the Variance would not be contrary to the public interest. Mr.
99 Simpson said that the discussed conditions cover this criterion.

100 The third criterion is that not granting the Variance will result in unnecessary hardship: the Zoning
101 restriction as applied to the property interferes with the reasonable Use of the property, considering the
102 unique setting of the property in its environment. Mr. Simpson said that this is where he feels there is a

103 problem. Mr. Platt said that it is already a Commercial property. Mr. Simpson asked what part of the
104 nature of the property makes it a hardship. Mr. Platt said that he feels as though it an existing
105 Commercial Property in a Residential Zone. Mr. Landry said that theoretically, Mr. Trow could put four
106 houses on the property as he has four acres of land. Because of the pre-existing business, it would be
107 difficult to sell a house lot there. It is the best Use of the property to continue using it as a Commerical
108 Property. Zoning cannot be blamed as a hardship.

109 Regarding hardship, no fair and substantial relationship exists between the general purposes of the
110 Zoning Ordinance and the specific restriction on the property. Mr. Simpson said that he does not
111 believe Mr. Trow's written statement meets this condition.

112 Regarding hardship, granting the Variance will not injure the public or private rights of others. Mr. Platt
113 said that he believes the applicant has covered this in the presentation. He feels as though there is an
114 existing business there and is just a new use of an existing Commercial space. Chairman Frothingham
115 added that it will be in an existing structure as well. Mr. Larrow said that he feels as though with the
116 restrictions that there is not a problem.

117 The fourth criterion is that by granting the permit, substantial justice will be done. Mr. Simpson said
118 that he feels as though the application meets substantial justice because he does not think that there
119 will be a benefit gained to the area by prohibiting this Plan.

120 The fifth criterion is that the Use will not be contrary to the spirit of the Ordinance. Mr. Simpson said
121 that he feels as though the application meets the spirit of the Ordinance.

122 Daniel Schneider made a motion to approve Case #13-18, Parcel ID: 0130-0006-0000: seeking a
123 Variance of Article IV, Section 4.10 to allow an automotive repair shop to operate in the Village
124 Residential District (Trow Mill Site), Jeffrey Trow, 134 Lower Main St, subject to the conditions: a
125 detailed Plan to scale will be submitted with the existing buildings, setbacks, etc.; there will be a
126 compliance review by DES; the number of parking spaces for the new business will be 10 spaces; there is
127 no approval for a junkyard; the size of the auto repair shop will not exceed 750 sq ft; there can be up to
128 two employees plus the owner; there will be no auto body work done; there will be no long term vehicle
129 storage; and the Plan will be in compliance with the Shoreland Protection Act. Dick Katz seconded the
130 motion. The motion passed unanimously.

131 **(CONTINUATION) CASE # 13-20: PARCEL ID: 0148-0011-0000: SEEKING A SPECIAL EXCEPTION AS PER**
132 **ARTICLE III, SECTION 3.50-B TO ALLOW CONSTRUCTION OF A GARAGE 36 ½ FT FROM THE CENTER LINE**
133 **OF THE ROAD. ERIC HORSLEY & PASCALE WIEDENROTH , 126 HAMEL RD**

134 Doug Gamsby of CLD Engineers rescinded the Special Exception application on behalf of the applicants.
135 They will be applying for a Variance with the case scheduled for later this evening.

136 Dick Katz made a motion to accept the withdrawal. Aaron Simpson seconded the motion. The motion
137 passed unanimously.

138 **CASE # 13-27: PARCEL ID: 0148-0011-0000: SEEKING A VARIANCE OF ARTICLE III, SECTION 3.10 TO**
139 **REDUCE ROAD SETBACK FROM 50' TO 36.5' TO ALLOW CONSTRUCTION OF A NEW 16' X 26' GARAGE.**
140 **ERIC HORSLEY & PASCALE WIEDENROTH, 126 HAMEL RD**

141 Chairman Frothingham asked if there were any objections to moving the Variance application for 126
142 Hamel Rd up in the order and there were none.

143 Mr. Landry explained that the reason the Special Exception was withdrawn and that they are asking for a
144 Variance is because they researched whether or not the majority of the houses within 500' of each side
145 of the side of the property are within the setback and there were not.

146 Charlie Hirshberg of CLD Engineers presented the case.

147 Mr. Hirshberg explained that the lot is .25 acres on Mountain View Lake which has many small lots. In
148 order to meet the setbacks on this lot, the 50' setback off the center road leaves 15' to work with. They
149 are proposing to be within the 50' setback from the road and are at 36.5' from the portion of the garage
150 that is closest to the road.

151 Mr. Hirshberg continued that the existing house has 792 sq ft of living space. The owners have 5
152 children and 2 adults and they would like to convert the existing garage into a kitchen. The proposal is
153 to add a single bay garage on the opposite side of the house.

154 Mr. Hirshberg said that they have a State Shoreland Permit for the expansion. They are doing storm
155 water management. In terms of lot coverage, there will be 23.6% impervious, the allowance is 25% and
156 if you add the pervious it will be 27.6% coverage, the allowance for this is 40%.

157 Mr. Hirshberg explained that they are also improving the septic on this site. This new system is also
158 shown on the Plan.

159 Mr. Hirshberg said that the one of the abutter's house is 21.5' from the center of the road. Mr.
160 Hirshberg explained that he did an inventory of the houses around the Lake and showed the Board the
161 Map and gave a description regarding the properties around the Lake. Mr. Hirshberg explained that the
162 applicant's lot is one of the shorter ones in terms of depth. The adjacent properties to the left are on a
163 point that sticks out and they still have their houses in the 50' setback.

164 Mr. Schneider asked if Hamel Rd is a Town Rd. Mr. Hirshberg explained that on the map there is a line
165 which represents where the Town owned portion ends and the private Right-of-Way begins. However,
166 the Town does maintain the private portion. Mr. Landry explained that the Right-of-Way is considered
167 an emergency Right-of-Way.

168 Mr. Hirshberg asked Mr. Horsley to speak in regards to the hardship situation. Mr. Horsley explained
169 that they purchased the property in 2008 and they had 4 children at the time. They have 5 children now
170 and there is approximately 100 sq ft of footprint per person. The reason they purchased this property is
171 due the fact that it is on a dead end road with very little traffic. Their house has gotten so tight that
172 their living space is not enough for their family. Also, they have a spiral staircase that goes to the top

173 floor and is dangerous. With the remodel, they will be able to put in a regular staircase. Mr. Horsley
174 said that he feels like this expansion is necessary for them to be able to live under reasonable
175 conditions.

176 Mr. Schneider asked and Mr. Landry confirmed that the only Variance needed is for the road setback.
177 They meet the side and waterfront setbacks adequately.

178 Mr. Simpson said that he feels as though the danger of the staircase is definitely a hardship for the
179 building.

180 Clayton Platt made a motion to approve Case # 13-27, Parcel ID: 0148-0011-0000: seeking a Variance of
181 Article III, Section 3.10 to reduce the road setback from 50' to 36.5' to allow construction of a new 16' x
182 26' garage, Eric Horsley & Pascale Wiedenroth at 126 Hamel Rd subject to the conditions of DES
183 Shoreland Permit #2013-01899. Aaron Simpson seconded the motion. The motion passed unanimously.

184 **CASE # 13-23: PARCEL ID: 0148-0024-0000: SEEKING A VARIANCE OF ARTICLE III, SECTION 3.40-C TO**
185 **REDUCE LAKEFRONT SETBACK FROM 50' TO 24' (AN IMPROVEMENT OF AN EXISTING CONDITION) TO**
186 **ACCOMMODATE A REPLACEMENT RESIDENTIAL STRUCTURE. JOSEPH & CAROL MARALDO, 8 HAMEL**
187 **ROAD**

188 Mr. Landry clarified to the Board that three out of the four following cases are identical to the ones that
189 were heard by the Board last year which were approved. Mr. Landry said that he gave copies of the
190 decisions from the previous cases in the Board packets. There is a one year window to start a project
191 that the Board votes on otherwise the applicant has to come in for an extension. Mr. and Mrs. Maraldo
192 did not start their project nor did they apply for an extension prior to the expiration of the Variances.
193 They have reapplied for the three that were approved as well as one for the height.

194 Mr. Maraldo explained that the Building Codes have not changed, the project hasn't changed, and the
195 DES Permit #2012-0045 has not expired. He therefore feels as though the three Variances should go
196 through though he can go over the project again if the Board wishes. Mr. Landry recommended that
197 Mr. Maraldo explain to the Board the project and answer any questions that may come up.

198 Mr. Maraldo said that his project is located on Hamel Rd and his lot is very small. His house has been
199 enlarged three times and now needs to be torn down and rebuilt as it is not structurally sound. On one
200 side, the foundation is two rocks, the front side has an addition that they did not put any footings
201 underneath, and there is a roof over the old roof. They are looking to retire to Sunapee and they want
202 to be able to expand their house.

203 Mr. Maraldo explained that when they did the DES Permit they improved the setback a little. Mr.
204 Maraldo showed the Board the survey and pointed out that they are turning the house slightly which
205 brings it back from the Lake a little. They would like to fill in the open 8' x 10' corner on the street side
206 which is what one Variance is for. Also, they are going to improve the setback because they are
207 removing the bulkhead which is 7.5' closer to the abutters. They are also taking off the deck that is

208 there now and squaring off the house so the house will be 30' x 30'. The current footprint is almost that
209 size and they will be building a 2 story, 2 bedroom house.

210 Mr. Maraldo continued that the septic was built in 2000 and was re-approved by the State when they
211 submitted the permit to DES.

212 Mr. Maraldo said that when they purchased the property, the property sloped severely into the Lake.
213 They have rebuilt the stone walls to try to fix the runoff. They will be leveling the property and putting
214 in two drywells in order to do water management. They will also be building one retaining wall as
215 opposed to rebuilding the six retaining walls they have and those will be removed.

216 Mr. Schneider asked about the Shoreland Permit # 2012-0045 as the previous approval was subject to
217 #2012-00633. Mr. Landry said that the approval he has is #2012-00633, the #2012-0045 was an
218 approval prior to the #2012-00633 approval which is the one that is in force.

219 Mr. Maraldo said that in regards to the Lakefront setback, the proposed house is actually an
220 improvement as they are tilting the house back so they are increasing it from 23' to 24'.

221 Mr. Simpson said that he looked through the facts supporting the Variance from the previous approval
222 and that he feels that they do still support the Variance requirements.

223 Dick Katz made a motion to approve Case # 13-23, Parcel ID: 0148-0024-0000: seeking a Variance of
224 Article III, Section 3.40-c to reduce lakefront setback from 50' to 24' (an improvement of an existing
225 condition) to accommodate a replacement residential structure, Joseph & Carol Maraldo, 8 Hamel Road
226 subject to the Shoreland Impact Permit # 2012-00633. Daniel Schneider seconded the motion. The
227 motion passed unanimously.

228 **CASE # 13-24: PARCEL ID: 0148-0024-0000: SEEKING A VARIANCE OF ARTICLE III, SECTION 3.10 TO**
229 **REDUCE SIDE SETBACK FROM 15' TO 10'2" (AN IMPROVEMENT OF AN EXISTING CONDITION) TO**
230 **ACCOMMODATE A REPLACEMENT RESIDENTIAL STRUCTURE. JOSEPH & CAROL MARALDO, 8 HAMEL**
231 **ROAD**

232 Mr. Maraldo said that this Variance is to increase the West side setback from what is currently 9' from
233 the property line to 10' 2" from the property line. Mr. Maraldo showed on the Plan how they turned the
234 house and therefore gained more of a setback. This is an improvement, though they would like to fill in
235 the corner.

236 Mr. Schneider commented on the previous approval as the Variance was approved with the exception of
237 the proposed 8' x 20' porch shown on the Plan. Mr. Maraldo said that they are not building the porch.
238 Mr. Schneider recommended including that exception as a condition for approval again.

239 Aaron Simpson made a motion to approve Case # 13-24, Parcel ID: 0148-0024-0000: seeking a Variance
240 of Article III, Section 3.10 to reduce side setback from 15' to 10'2" (an improvement of an existing
241 condition) to accommodate a replacement residential structure, Joseph & Carol Maraldo, 8 Hamel Road
242 with the condition that it comply with Shoreland Impact Permit # 2012-00633 and with the exception of

243 the proposed 8' x 20' porch shown on the Plan. Clayton Platt seconded the motion. The motion passed
244 unanimously.

245 **CASE # 13-25: PARCEL ID: 0148-0024-0000: SEEKING A VARIANCE OF ARTICLE III, SECTION 3.10 TO**
246 **REDUCE SIDE SETBACK FROM 15' TO 10'2" (AN IMPROVEMENT OF AN EXISTING CONDITION) TO**
247 **ACCOMMODATE A REPLACEMENT RESIDENTIAL STRUCTURE. JOSEPH & CAROL MARALDO, 8 HAMEL**
248 **ROAD**

249 Mr. Maraldo explained that the third Variance request is to increase the East side from 6' 7" to 10' 2" to
250 allow construction of the new home as by turning the house, everything increases. They are therefore
251 making it less non-conforming. Also, the bulkhead on that side is coming out so it is even more distance
252 from the setback.

253 Clayton Platt made a motion to approve Case # 13-25, Parcel ID: 0148-0024-0000: Seeking a Variance
254 of Article III, Section 3.10 to reduce side setback from 15' to 10'2" (an improvement of an existing
255 condition) to accommodate a replacement residential structure, Joseph & Carol Maraldo, 8 Hamel Road
256 with the exclusion of the proposed 8' x 20' porch shown on the Plan and subject to the conditions of
257 Shoreland Impact Permit # 2012-00633. Aaron Simpson seconded the motion. The motion passed
258 unanimously.

259 **CASE # 13-26: PARCEL ID: 0148-0024-0000: SEEKING A VARIANCE OF ARTICLE, III, SECTION 3.50-B-5**
260 **TO ALLOW THE HEIGHT OF A NEW BUILDING IN AN ENCROACHMENT TO BE INCREASED FROM 25' TO**
261 **33'. JOSEPH & CAROL MARALDO, 8 HAMEL ROAD**

262 Mr. Maraldo said that he realized after he was told that his Variances were expired that there is also a
263 height issue. Mr. Maraldo explained that when they were meeting with excavators they kept suggesting
264 they do a full walkout basement. They had the Plans drawn and when he brought them to Mr. Landry
265 he was told he needs another Variance for the height.

266 Mr. Landry explained about the recent change to the Zoning Regulations in regards to height and the
267 reason for the change as applicants would get around the requirement by bringing dump truck loads of
268 material in change the average grade of the lot. However, at the start of encroachment, which Mr.
269 Maraldo has, you cannot be any higher than 25'. Mr. Maraldo is requesting that the house go up to 33'.

270 There was a discussion regarding the Section of the Zoning Ordinance that the application applies to as
271 the application says 3.50-i. Mr. Landry read Section 3.50-b-5: the portion of the proposed structure
272 encroaching on the front setback shall be no higher than 25'. There was further discussion regarding
273 this matter.

274 Mr. Platt asked and Mr. Maraldo explained how the retaining wall and the walkout basement would be
275 situated. Mr. Maraldo was asked and confirmed that he does not have plans showing this proposal.
276 Chairman Frothingham suggested that the Board ask Mr. Maraldo to get drawings done so the Board
277 can make a more informed decision. Mr. Maraldo said that he is agreeable to a continuance but he does
278 not think that he could get drawings done in 30 days. Mr. Landry explained that the Board has to make

279 a decision within 30 days so Mr. Maraldo will be put on the agenda and Mr. Maraldo can request to
280 have it extended. There was a discussion regarding this as some Board members felt as though they
281 could continue it for a longer period.

282 Aaron Simpson made a motion to continue the hearing per the request of the applicant. Dick Katz
283 seconded the motion. The motion passed unanimously.

284 **CASE # 13-28: PARCEL ID: 0113-0023-0000: REVIEW APPLICATION FOR CONSIDERATION OF A**
285 **REHEARING OF VARIANCE DENIAL OF CASE #13-13. DAVID HOWLAND, 56 RIDGEWOOD RD.**

286 Mr. Simpson asked if there is a standard for an application of reconsideration. Mr. Landry explained
287 that Mr. Howland's motion was submitted timely and normally there has to be new information that the
288 Board did not hear at the first meeting. Mr. Landry continued that he spoke with Town Counsel and
289 gave information to Chairman Frothingham to give out to the Board which recommends granting the
290 rehearing

291 Mr. Schneider commented that one of the things that has changed since the case has been heard is the
292 ability to put into an approval that the deck will not be closed in. Mr. Landry said that the definition of a
293 footprint has to be cleared up still.

294 Attorney John Sokul was present in regards to the application of David Howland. Attorney Sokul said
295 that he would like some questions answered by the Board. Attorney Sokul said that he has some
296 pictures so that the Board could see what has been built including a picture of the platform that was
297 torn out.

298 Mr. Simpson said that the Board should determine whether they are granting the rehearing. Attorney
299 Sokul said that he is questioning why the deck requires a Zoning Variance. Mr. Landry said that he
300 would be happy to discuss the reasons the deck needs a Variance with Attorney Sokul.

301 Mr. Platt said that he agrees that a cement structure like the one that was on the property is more of a
302 structure than a patio. Mr. Simpson asked if Mr. Platt feels as though there is a mistake of law and Mr.
303 Platt confirmed that he does feel this way. Mr. Simpson said that he agrees with Mr. Platt.

304 Mr. Schneider asked about the ramification that if the slab is considered a structure it is part of the
305 footprint and if a building permit is needed subject to the setbacks the same as any other structure. Mr.
306 Schneider also asked about a flagstone patio and how that would then not be considered a structure.
307 Mr. Landry said that the definition of a structure is anything with a fixed location on the ground. Mr.
308 Schneider asked if a stone wall would be considered a structure. Mr. Landry said he was not sure how
309 something could be built upon a stone wall. Mr. Schneider explained that his concern is how to define a
310 structure. Mr. Landry explained that the definition in the Zoning Ordinance needs to be rewritten for
311 clarification purposes. Attorney Sokul said that there is a big difference between what the concrete
312 structure was as opposed to someone just putting in pavers that are not connected to each other and
313 calling it a patio. There was further discussion regarding this issue.

314 Mr. Platt said that the letter from Attorney Sokul discusses Article 6.12 of the Zoning Ordinance and said
315 that he does not see how you can have a swimming pool and then build a house on a swimming pool
316 just because it is a "structure" as a house would not have the same purpose as a pool. Mr. Landry said
317 that in this particular case, the Town's attorney believes the deck is serving the same purpose as the
318 patio did but it is one story higher. Mr. Landry said that the issue is that then someone could then turn
319 the deck into living space as it is part of the footprint. Mr. Simpson and Mr. Platt disagreed with Mr.
320 Landry due to Article 6.12.

321 Attorney Sokul said that if the rehearing is granted he believes that the Board will hear some facts that
322 distinguish this from a lot of patios as it was physically attached to the footings of the house in a couple
323 of places with concrete.

324 There was a discussion regarding the definition of a structure. Mr. Schneider asked Mr. Landry to speak
325 to the Town's attorney regarding these issues.

326 Aaron Simpson made a motion to grant a rehearing based on the fact that the Board may have made an
327 error of law in the prior decision in determining whether the pre-existing slab or patio was a pre-existing
328 structure. Dick Katz seconded the motion. The motion passed.

329 **CASE # 13-29: PARCEL ID: 0120-0015-0000: SEEKING A SPECIAL EXCEPTION SECTION 3.50-I TO ADD A**
330 **SECOND STORY TO AN EXISTING GARAGE WHICH IS NON-CONFORMING DUE TO SIDE SETBACK.**
331 **RAYMOND, ROBERT & CIVITA CAVICCHIO, 7 SCOTTS COVE RD.**

332 Aaron Simpson recused himself from the case.

333 Daniel Schnedier made a motion to appoint the Alternate, William Larrow, as a voting member of the
334 case. Dick Katz seconded the motion. The motion passed unanimously.

335 Christina O'Brien of SISR Architecture presented the case on behalf of the Cavicchio's. Ms. O'Brien gave
336 the Board copies of a Site Plan done by CLD Engineers and showed on the Plan the existing house and
337 garage.

338 Ms. O'Brien explained that the existing one story garage has a corner that overlaps the side setback and
339 they are proposing to enlarge two existing bedrooms that are above the existing garage and also to put
340 a small addition on the side. Ms. O'Brien showed the Board a Plan of the new garage.

341 Mr. Schneider asked and Ms. O'Brien confirmed that the garage will not be any more encroaching than
342 it currently is as they will just be going up one story. They will also stay within the 25' maximum height
343 requirement.

344 Mr. Schneider asked about the abutters and Ms. O'Brien explained that she has been in communication
345 with one of the abutters and has sent some preliminary sketches to her. Mr. Landry said that he has not
346 had any complaints from any of the abutters.

347 Mr. Platt said that there are eight criteria required for a Special Exception and the case seems to meet
348 them all.

349 Ms. O'Brien said that CLD has submitted a Shoreland Permit by Notification which has not been
350 approved yet. Mr. Landry said that if this is approved then it should be a condition of the approval.

351 Daniel Schneider made a motion to approve Case # 13-29, Parcel ID: 0120-0015-0000: seeking a Special
352 Exception Section 3.50-i to add a second story to an existing garage which is non-conforming due to side
353 setback, Raymond, Robert & Civita Cavicchio, 7 Scotts Cove Rd subject to receiving a DES Shoreland
354 Protection Act Permit. Dick Katz seconded the motion. The motion passed unanimously.

355 **DISCUSSION**

356 There was a discussion in regards to when the Board members could hold a meeting in order to discuss
357 working on changes to the Zoning Ordinances to the present to the Planning Board. Mr. Simpson said
358 that there are many changes that need to be made to the Zoning Ordinances and thinks that it may
359 need a whole re-write. Mr. Simpson suggested meeting elsewhere if needed.

360 Aaron Simpson made a motion to adjourn the meeting at 9:30 pm. Dick Katz seconded the motion. The
361 motion was approved unanimously.

362 Respectfully submitted,

363 Melissa Pollari

364

365

366 Edward Frothingham

Aaron Simpson

367

368 Dick Katz

Clayton Platt

369

370 Daniel Schneider

William Larrow, alternate member