

1 **TOWN OF SUNAPEE**

2 **ZONING BOARD**

3 **OCTOBER 10, 2013**

4 **PRESENT:** Edward Frothingham, Chair, Dick Katz, Clayton Platt, Aaron Simpson, William Larrow,
5 Alternate, Roger Landry, Zoning Administrator

6 **ABSENT:** Daniel Schneider

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

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

9 Aaron Simpson made a motion to appoint William Larrow as a voting member for the meeting to sit for
10 Daniel Schneider. Dick Katz seconded the motion. The motion passed unanimously.

11 **PLANNING UPDATE**

12 Mr. Landry gave the Zoning Board an update of the recent Planning Board meeting on October 3rd. Mr.
13 Landry also explained that there were two follow meetings, one October 6th and the other October 8th
14 regarding the Conceptual Review for the road between the Elementary School and the Safety Services
15 Building.

16 **MINUTES**

17 Changes to the minutes from the September 12, 2013 Zoning Board Meeting: Change line 32 to read
18 "Mr. Landry passed out copies of a change..." Change line 41 to read "discussed the definition of a
19 structure..." Change line 42 to read "having the location of a deck / patio surveyed." On line 56 change
20 "evergreen" to "evergreens". Change line 84 to read "...asked why such a use requires a sign." Change
21 line 139 to read "was not to be any retail sales..." Change line 143 to read "to direct traffic away from..."

22 Aaron Simpson made a motion to approve the minutes as amended. Dick Katz seconded the motion.
23 The motion passed unanimously.

24 **(CONTINUATION) CASE # 13-28: PARCEL ID: 0113-0023-0000: REHEARING ON DENIAL OF A VARIANCE**
25 **TO CONSTRUCT A DECK OVER PRE-EXISTING PATIO AND FLAGSTONE WALKWAY. DAVID HOWLAND,**
26 **56 RIDGEWOOD RD.**

27 Chairman Frothingham explained that the Town's attorney concluded that a patio that is fixed in the
28 ground and connected to a building is considered a pre-existing structure. The Board did not hear the
29 case on September 12th because there was no representative available on behalf of the applicant to
30 discuss any concerns or conditions the Board may have placed on the decision. The motion to reverse
31 the decision of denial is based on recent legal interpretation allowing Mr. Howland to replace the 12' x
32 20' patio with a 12' x 20' deck.

33 John Sokul, the attorney for Mr. Howland, said that he withdrew the request for this Variance
34 application because it pertained to facts that were related to a situation that was resolved outside the
35 Board. He has two more applications to be heard at this meeting but he had formally withdrawn this
36 Variance.

37 Chairman Frothingham asked for a motion to approve the withdrawal. Mr. Simpson said that he
38 believes this case should be tabled until the other two cases are heard. Mr. Landry advised the Board
39 that the other two applications do not have anything to do with this case. Attorney Sokul said that his
40 preference would be to have the case withdrawn. Mr. Landry explained the differences between the
41 three cases. Mr. Platt argued that the cases are related and the Board should hear them together.

42 Clayton Platt made a motion to continue the hearing until after the Board has heard Case 13-33 so the
43 Board can hear all three cases together. Aaron Simpson seconded the motion. The motion passed.

44 **CASE # 13-30: PARCEL ID: 0119-0009-0000: SEEKING A VARIANCE OF ARTICLE III, SECTION 3:40-(0) TO**
45 **REDUCE 25' BUFFER TO 15' APPROX. ACCOMMODATING ERECTION OF A BUSINESS SIGN. PLEASANT**
46 **ACRES PROPERTY MAINTENANCE, LLC, ROUTE 11.**

47 Chairman Frothingham read a letter from Matthew McClay, owner of Pleasant Acres Property
48 Maintenance, LLC stating he would like to withdraw his hearing as he does not want to cut into the
49 buffer at this time.

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

52 **CASE # 13-33: PARCEL ID: 0112-0022-0000: SEEKING APPROVAL OF A VARIANCE OF ARTICLE III**
53 **SECTION 3.40-C TO REDUCE 50' WATERFRONT SETBACK TO 41.2' TO ALLOW CONSTRUCTION OF A**
54 **NEW PORCH. DAVID & BEVERLY BJORKLUND, 14 WOODLAND ROAD.**

55 Everett Pollard of Northcape Design in Sunapee presented the case on behalf of the Bjorklunds. Mr.
56 Pollard explained that the applicant is requesting a reduced setback in order to expand their screen
57 porch on the lake side of the house. The expansion is a 10' x 10' addition to an existing screen porch,
58 approximately 80' of which is within the 50' buffer zone. Mr. Landry asked and Mr. Pollard confirmed
59 that part of the new porch will be outside the 50' setback and part will be in the encroachment.

60 Mr. Pollard said that one thing not on the application for the Variance that was on the application for
61 the Shoreland Permit is that the applicant is giving up an approximate 600 sq ft patio on the lake side
62 that is more non-conforming than the request for the screen house. Mr. Pollard said he has approval
63 from the State for this project and removing the patio is part of the requirement of the permit.

64 Mr. Platt asked if the existing screen porch has a second floor over it and Mr. Pollard confirmed that it
65 does but that the addition will have a flat deck on top.

66 Mr. Platt asked if there were any plans for a deck in addition to this and Mr. Pollard explained that there
67 is only going to be a deck on top of the screen porch. Mr. Platt suggested that if this application is

68 approved that the Board should count the 80 sq ft against any additional 150 sq ft of decking. Chairman
69 Frothingham suggested putting a condition that the deck can never be turned into living space. There
70 was further discussion regarding these issues.

71 Chairman Frothingham asked if Mr. Landry had received any correspondence from any neighbors and he
72 confirmed that he had not. Chairman Frothingham asked if there were any abutters present to
73 comment on the case and there were none.

74 Mr. Simpson asked and Mr. Pollard clarified that one of the dotted lines on the plan is where the eaves
75 are to show the drip line.

76 Dick Katz made a motion to approve Case #13-33, Parcel ID: 0112-0022-0000, seeking approval of a
77 Variance of Article III, Section 3.40-c to reduce 50' waterfront setback to 41.2' to allow construction of a
78 new porch and a second floor deck; there cannot be an expansion of more than 70 sq ft on the deck
79 with a Variance; and the upper deck will not be enclosed; all construction should conform to Shoreland
80 Impact Permit #2013-02101, David and Beverly Bjorklund, 14 Woodland Rd. Aaron Simpson seconded
81 the motion. The motion passed unanimously.

82 **(CONTINUATION) CASE # 13-28: PARCEL ID: 0113-0023-0000: REHEARING ON DENIAL OF A VARIANCE**
83 **TO CONSTRUCT A DECK OVER PRE-EXISTING PATIO AND FLAGSTONE WALKWAY. DAVID HOWLAND,**
84 **56 RIDGEWOOD RD.**

85 Mr. Simpson said that he knows Mr. Howland but that he does not think that it is a conflict.

86 Attorney Sokul presented the case on behalf of David Howland. Attorney Sokul gave the Board some
87 pictures for their review.

88 Attorney Sokul explained that about a year ago the Howland's came before the Board to get a Special
89 Exception to raise the elevation of the house to put a foundation under it and to shore up the
90 construction of the house. Attorney Sokul explained one of the pictures is the house with the patio and
91 then another picture shows that the house has been raised and that decking has been added to the
92 raised house.

93 Attorney Sokul said that after Mr. Landry went to do an inspection he determined that a Variance was
94 needed for the decking and he issued a letter instructing the Howland's of this. The Board heard the
95 Variance application and subsequently denied it. Attorney Sokul continued that he then submitted a
96 motion for a rehearing which was granted by the Board and immediately after this he had further
97 dialogue with Mr. Landry about whether a Variance is required and for which pieces. In late August, Mr.
98 Landry indicated to Attorney Sokul that he had modified his original determination and that the portion
99 of the deck that was built immediately over where the patio was located does not require a Variance.
100 Attorney Sokul showed the Board the picture of this area. Attorney Sokul reiterated that the deck is
101 directly above and is the same size as the patio was.

102 Mr. Landry informed the Board that, because they denied the motion for a rehearing, they should
103 reverse the decision of the denial of the Variance. Mr. Simpson asked if Mr. Landry is acknowledging he

104 was wrong and Mr. Landry clarified he was wrong about the deck that was on the original drawing.
105 Attorney Sokul said that he does not believe that anything needs to be done because Mr. Landry
106 reversed his decision. Mr. Platt asked and it was explained that Attorney Sokul is appealing Mr. Landry's
107 decision that a Variance is needed. Mr. Landry explained that the Town's attorney said that a patio is a
108 footprint and a Variance is not required because he is replacing a footprint in like kind.

109 Mr. Landry asked and Mr. Howland confirmed that the deck is 12' 5" x 19' 3".

110 Mr. Platt asked if Attorney Sokul is also appealing Mr. Landry's decision that the 64 sq foot deck needs a
111 Variance. Attorney Sokul said that is appealing that determination as well but in the next case.

112 Clayton Platt made a motion to open Case # 13-28, Parcel ID: 0113-0023-0000, rehearing on denial of a
113 variance to construct a deck over pre-existing patio and flagstone walkway, David Howland, 56
114 Ridgewood Rd. Dick Katz seconded the motion. The motion passed unanimously.

115 Mr. Platt asked and Mr. Landry explained that, based on legal opinion, the patio was a footprint and the
116 applicant does not need a Variance to replace the patio under Article VI, Section 6.12.

117 Mr. Simpson made a motion to find that there is a non-conforming structure that is replaced with a
118 similar structure with the same footprint and therefore the decision to deny the Variance originally was
119 unnecessary because of Article VI, Section 6.12. Clayton Platt seconded the motion. The motion passed
120 unanimously.

121 **CASE # 13-34: PARCEL ID: 0113-0023-0000: APPEAL OF ZONING ADMINISTRATORS DECISION DATED**
122 **08/19/13 RE: DAVID HOWLAND DECK CONSTRUCTION, 56 RIDGEWOOD ROAD.**

123 Attorney Sokul presented the case on behalf of the Howland's.

124 Attorney Sokul explained that this case relates to the portion of the deck that he considers the walkway.
125 The Board questioned whether this portion was covered by the Shoreland Permit and Mr. Howland
126 thought that it was included though they called DES to confirm and DES issued a new permit in August
127 with some new square footages on it. Attorney Sokul continued that DES appreciated the deck walkway
128 as opposed to a stone one as it allows more vegetation to grow. Mr. Landry said that he did not see any
129 difference in the square footage on the new DES Permit and he called DES and they agreed. Attorney
130 Sokul explained that DES calculates their square footage differently and the applicants sent them
131 information with what they were doing and they were approved. Mr. Landry explained that the Board
132 does not necessarily approve cases based on DES approvals. Attorney Sokul continued that the
133 Howland's submitted the picture and the square footages of the deck to DES.

134 Mr. Landry asked Attorney Sokul if this appeal is based on his decision that this walkway does not fall
135 into the 150 sq ft category and that it also does not fall in the Article VI, Section 6.12 category because it
136 is not a pre-existing non-conforming structure. Attorney Sokul explained that he respectfully disagrees
137 with Mr. Landry's interpretation because if Mr. Howland had not touched the stone patio and had just
138 built this deck (walkway), he would not have needed a Variance as this deck is 64 sq ft. Attorney Sokul
139 continued that a Building Permit would have been issued and then if Mr. Howland had replaced the

140 stone patio with exactly what is there now, it would fall under 6.12 and would have been fully
141 authorized. Attorney Sokul said that the two provisions should be read additively rather than chipping
142 away at each other. The fact that this has all been done relatively simultaneously should not negate the
143 fact that they could have been built in reverse order.

144 Mr. Platt said that, while he appreciates Attorney Sokul's argument, it plagues on the issue that the
145 Board has been having regarding decks and patios. Attorney Sokul questioned if the Board would had
146 been happier if Mr. Howland had built the patio up instead of building the deck.

147 Mr. Landry said that Mr. Howland did not come in with a Building Permit for a 64 sq ft deck and a set of
148 stairs, he came in for a 12' x 20' deck. If Mr. Howland had come in for the 64 sq ft deck before he built
149 the 12' x 20' deck, he probably would have received a Building Permit because at that time patios were
150 not recognized as footprints. As a result of the legal interpretation that the patio is part of the footprint,
151 as Mr. Howland built the 12' x 20' deck first, and then built the 64 sq ft deck which Mr. Landry said could
152 not be done as there is already 240 sq ft of decking within the 50' waterfront. Mr. Landry continued
153 that Section 3.40 (g)-(1) states that the 150 sq ft cannot be allowed if there is any additional square
154 footage within the 50' section of the lake.

155 Mr. Simpson asked if Case #13-35 is an alternate to the appeal. Attorney Sokul explained that Case #13-
156 35 is the case for the Variance if he is denied in this case.

157 Aaron Simpson made a motion to continue the case until after the hearing for the Variance. William
158 Larrow seconded the motion. The motion passed unanimously.

159 **CASE # 13-35: PARCEL ID: 0113-0023-0000: SEEKING APPROVAL OF A VARIANCE OF ARTICLE III**
160 **SECTION 3.40-G TO ALLOW CONSTRUCTION OF MORE THAN 150 SQUARE FEET OF DECK SPACE. 56**
161 **RIDGEWOOD ROAD.**

162 Attorney Sokul presented the case on behalf of the Howlands.

163 Attorney Sokul explained that there is a rear door on the house that this deck was built to access after it
164 was raised. Before the house was raised, there was a fieldstone walkway that led to the patio and the
165 functionality is being replicated.

166 Attorney Sokul said that he has submitted in writing the reasons that he believes the Variance criteria
167 have been met and that he would be happy to go over them for the Board. Attorney Sokul continued
168 that, in respects to the intent and the public interest, the reason that DES likes the deck better is
169 because Mr. Howland has gone to great lengths to minimize the impact on the ground, to restore
170 previously stone covered areas with plantings and grass, and to minimize the structural support so there
171 is less disturbance on the ground. Attorney Sokul said that in respects to public interest, it is not altering
172 the neighborhood and makes the house function properly as it was raised per the Board's approval.
173 Attorney Sokul continued that in regards to substantial justice, there has been a series of unfortunate
174 events that have caused some confusion and that this is a fair result that allows the property to continue
175 to be used as it was prior to it being raised. Attorney Sokul said that in respects to hardship, the current

176 standard is whether the proposed use is a reasonable use owing to special conditions on the property.
177 Attorney Sokul continued that the house was raised which created the need for the deck to make the
178 back entrance serviceable and that the applicants raised the house based on approval from the Board.
179 Also, there was a pre-existing raised platform here which is eating into the 150 sq ft and it was accessed
180 with the stone platform and now is connected with a raised deck.

181 Chairman Frothingham asked the applicant why, when he came before the Board to raise the house,
182 was the decking not in the drawings. Mr. Howland explained that it was his understanding, and he
183 believes Mr. Landry has affirmed this, that he could put a 4' x 8' platform in front of the door. This is the
184 only secondary exit from the house and the assumption was that it was allowable without a permit. Mr.
185 Landry said that it was not discussed at the time, even with the builder. Mr. Landry continued that a 4' x
186 8' platform is allowed, provided it is not more than 4' off the ground. Mr. Landry explained that, as far
187 as replacing a pre-existing walkway is concerned, there was never a fixed location on the ground.
188 Attorney Sokul said that if the plans that were submitted are reviewed there is something that is labeled
189 "deck" and looks to be in the same spot as the original platform. Mr. Howland said that there is a
190 landing at the bottom of the stairs that is outside the 50' setback. There was further discussion
191 regarding the dimensions of the deck and where everything is in relation to the waterfront.

192 Attorney Sokul said that there is a letter of support from the immediate abutters to the right looking at
193 the lake, the Mulligans. Mr. Landry said another abutter, Mr. Hack called him and said that he has no
194 objections. Stuart Caswell of 57 Ridgewood Rd, the abutter across the street, said that he is also in
195 support of Mr. Howland.

196 Aaron Simpson made a motion to approve the Variance with the condition that there is no further
197 decking be permitted within the Shoreland district given the pre-existing decks that are there and that
198 part of it will be in the Shoreland district and it will be over 150 sq ft. Mr. Platt said that he would like to
199 know specifically how big the deck is and how far it is away from the Lake. Mr. Simpson withdrew his
200 motion.

201 Clayton Platt made a motion to approve Case # 13-35, Parcel ID: 0113-0023-0000, seeking approval of a
202 Variance of Article III, Section 3.40-G to allow construction of more than 150 square feet of deck space
203 at 56 Ridgewood Road with the conditions that the proposed additional deck space shall not exceed 64
204 square feet and shall not be closer than 45 feet to the lake; also conditioned that no additional decking
205 shall be allowed in the Shoreland Zone and all construction will proceed according to the Shoreland
206 Permit #2013-02162, approval date August 26, 2013. Aaron Simpson seconded the motion. The motion
207 passed unanimously.

208 **CASE # 13-34: PARCEL ID: 0113-0023-0000: APPEAL OF ZONING ADMINISTRATORS DECISION DATED**
209 **08/19/13 RE: DAVID HOWLAND DECK CONSTRUCTION, 56 RIDGEWOOD ROAD**

210 Attorney Sokul withdrew his application for the appeal.

211 Aaron Simpson made a motion to approve the withdrawal of the appeal. Dick Katz seconded the
212 motion. The motion passed unanimously.

213 **ZONING AMENDMENTS DISCUSSION**

214 The Board discussed proposed changes to the Zoning Ordinances. Mr. Landry explained that he met
215 with Mr. Marquise, Chairman Frothingham, and Mr. Simpson to discuss the Zoning Amendments.

216 Mr. Simpson said that he thinks that Mr. Marquise should be involved in Board trainings as he has a
217 historical knowledge of why some of the Ordinances were created. Mr. Landry said that he would like
218 the Town’s attorney to review the Ordinances or to sit down with himself and Mr. Marquise to go
219 through each Article for explanations.

220 Mr. Landry went over the proposed Amendments for the Board (see attached). The Board discussed the
221 Amendments and made some changes. There was a discussion regarding having joint meetings for
222 some cases and the need to set procedure for these cases. The Board also discussed having a Table of
223 Contents for the Zoning Ordinances book. The Board asked to include an Amendment to have setbacks
224 for fences and signs.

225 Dick Katz made a motion to adjourn at 9:06pm. Clayton Platt seconded the motion. The motion passed
226 unanimously.

227 Respectfully submitted,

228 Melissa Pollari

229

230 _____

231 Edward Frothingham

_____ Aaron Simpson

232 _____

233 Dick Katz

_____ Clayton Platt

234 _____

235 Daniel Schneider

_____ William Larrow, alternate member