

1 **TOWN OF SUNAPEE**

2 **ZONING BOARD**

3 **MAY 10, 2012**

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

6 **ALSO PRESENT:** See Attached Sign-In Sheet

7 Edward Frothingham called the meeting to order at 7:00 PM and introduced the Board members.

8 Changes to the minutes from the February 9, 2012 Zoning Board Meeting: Change line 42 from “excuse”
9 to “excused”

10 Dick Katz made a motion to approve the minutes as amended. Aaron Simpson seconded the motion.
11 The motion passed with three votes in favor and two abstentions.

12 Changes to the minutes from the March 8, 2012 Zoning Board Meeting: Change line 108 to read
13 “Chairman Kish said that the letter basically said it was requested by the applicant, at the Zoning Board’s
14 suggestion...” Change line 15 to read “...vote unanimously for approval”. Change line 48 to read “...that
15 the addition could violate the State...”

16 Aaron Simpson made a motion to approve the minutes as amended. Dick Katz seconded the motion.
17 The motion passed with three votes in favor and two abstentions.

18 Changes to the minutes from the April 12, 2012 Zoning Board Meeting: Dick Katz made a motion to
19 continue the minutes to the May 22nd Zoning Board Meeting. Aaron Simpson seconded the motion. The
20 motion passed unanimously.

21 There was a discussion regarding copies of the minutes. Roger Landry stated that the Board members
22 need to sign up for the automatic emails for the minutes. Aaron Simpson and Dick Katz said that they
23 are signed up for the automatic emails; however, they did not receive the April 12th meeting minutes.
24 Mr. Landry stated he will check with the Administrative Assistant to ensure that they receive the
25 minutes.

26 Chairman Frothingham introduced Roger Landry to the audience.

27 **APPOINTMENT OF NEW ZONING BOARD MEMBER**

28 Mr. Landry stated that Charles Balyeat resigned from the Zoning Board effective April 26, 2012. This
29 leaves a permanent opening on the Board.

30 Edward Frothingham recommended Aaron Simpson as a permanent member as he is the senior
31 alternate. Dick Katz made a motion to appoint Aaron Simpson to become a permanent member of the
32 Zoning Board until the March 2013 election. Clayton Platt seconded the motion. The motion passed

33 unanimously with one abstention. The Zoning Board signed the certificate appointing Mr. Simpson to
34 the Zoning Board as a permanent member until the March 2013 election.

35 **ELECTION OF VICE CHAIR**

36 Dan Schneider made a motion for Dick Katz for Vice Chair. Aaron Simpson seconded the motion. The
37 motion passed with one abstention.

38 **PLANNING BOARD DISCUSSION**

39 Roger Landry went over the recent Planning Board meetings.

40 At the March 15th Planning Board meeting, Soo-Nipi Realty Trust, LLC's Site Plan Review for take-out
41 service at 36 River Road was approved. It was then re-continued to the April 19th meeting as a formality
42 to properly notify abutters as the Planning Board didn't meet on the originally scheduled meeting date
43 of March 1st.

44 At the March 15th Planning Board meeting, a Subdivision / Annexation of .2 acres from Joseph and Helen
45 Bouscaren to Abigail Brown Living Trust on Lake Ave. was approved. The Bouscaren lot remained
46 conforming and the Brown lot became less non-conforming.

47 At the April 19th Planning Board meeting, Oakwood Park, the owners of Sunapee Center, had their final
48 review for the subdivision though there are now some issues with the deed. The Mylar should be
49 completed by the next Planning Board meeting for signing.

50 At the May 3rd Planning Board meeting, there was a Site Plan Review that was approved for the Waste
51 Water Treatment Plant Upgrade and new building. A 4x8 sign with the drawing of the plan will soon be
52 constructed on the site.

53 **CASE 12-05: PARCEL ID: 0104-0020-0000, ADMINISTRATIVE APPEAL OF ZONING ADMINISTRATORS**
54 **CEASE & DESIST ORDER ON AN AUTO BODY REPAIR BUSINESS IN OPERATION IN A RESIDENTIAL**
55 **DISTRICT WITHOUT PLANNING & ZONING APPROVALS, DONNA DAVIS, 15 PROSPECT HILL ROAD**

56 Dick Katz made a motion to continue the hearing until Tuesday, April 22nd at 7:00 at the Town Office.
57 Aaron Simpson seconded the motion. The motion passed unanimously.

58 Chairman Frothingham explained to the audience that none of the Board members are experts. They
59 have all been elected by the townspeople of Sunapee or appointed by the Board. Their job is to be fair
60 to all the applicants and to be fair to the voters and property owners in the Town of Sunapee. Though
61 they try to make decisions on the night of the case, they do reserve the right to take 30 days to make
62 their decision.

63 **CASE 12-06: PARCEL ID: 0238-0061-0000, SEEKING A VARIANCE OF ARTICLE IV SECTION 4.10 TO HAVE**
64 **A CONTRACTOR YARD, SUPPORTING A LANDSCAPING BUSINESS. JAMES & EVELYN ANDERSON, 51**
65 **SIOUX PATH**

66 James Anderson stated that he was at the meeting to submit an application for a variance for a
67 contractor's yard. Based upon the crowd of his neighbors, Mr. Anderson would like to withdraw his
68 application and will make other arraignments. Mr. Anderson said that he does not want to make the
69 situation miserable as he still has to live in the neighborhood. Mr. Anderson asked for patience from the
70 neighbors for the next few weeks and he will eliminate the contractor's yard.

71 Mr. Landry asked for clarification and Mr. Anderson confirmed that he is not going to continue the
72 contractor's yard where it is presently and that he is officially withdrawing the application.

73 Mr. Landry advised the Board that they will have to vote to accept the withdrawal of the application.

74 Joseph Adams of 47 Sioux Path asked if Mr. Anderson's trucks were going to continue going in and out
75 of the neighborhood.

76 Roger Landry said that there is a Town policy to allow someone who has been denied or who has
77 withdrawn their application 30 days. Beyond the 30 days, Mr. Landry can then invoke a fine up to \$275
78 per day every day that the violation continues.

79 Diana Spiwak of 27 Penacook Path asked if the neighbors could have a signed contract from Mr.
80 Anderson saying that he would stop. The Zoning Board stated that a contract is not in their jurisdiction.
81 Ms. Spiwak then asked how the neighbors could be sure that Mr. Anderson would comply. Mr. Landry
82 said they would have to rely upon him to ensure the compliance.

83 Chuck Weinstein of 13 Sioux Path thought the meeting was informative and did not know there was
84 already a business being run from the property.

85 Mr. Landry explained that there has been a business on the premises, though Mr. Landry is not sure how
86 long. There have, however, been several complaints from the neighbors. Several times, the police and
87 Mr. Landry had gone up to the property and not seen some of the violations that were implicated. In
88 the meantime, when spring came along, Mr. Landry discovered the business was operating from the
89 premises and sent the Anderson's a violation notice. The violation notice basically told Mr. Anderson
90 that he had three options: he could appeal Mr. Landry's decision, he could close the business, or he
91 could come in for a use variance. Mr. Anderson worked with Mr. Landry to put together a plan, a
92 description of the business, and justification of the application. The Board was going to consider a
93 contractor's yard to allow Mr. Anderson to continue the landscaping business which could have had
94 conditions should the Board had decided to make conditions. If it had been approved it would have
95 gone to the Planning Board for a Site Plan Review which could have had further conditions. There has
96 been a great deal of concern amongst the neighbors and several letters of concern regarding the
97 neighborhood, property values, public interests in the neighborhood, and so on. Mr. Landry said that
98 the result is that Mr. Anderson has decided to withdraw his application.

99 Dick Katz made a motion to accept the withdrawal of the application. Clayton Platt seconded the
100 motion. The motion passed unanimously.

101 Diana Spiwak asked if by withdrawing the application, if Mr. Anderson's landscaping business is finished
102 on Sioux Path. It was asked if Mr. Anderson could submit another application and Mr. Landry said he
103 could not. Mr. Landry clarified that if someone withdraws an application or it gets denied they are
104 allowed by the Town up to 30 days to seek another location. If the business doesn't move, the Town
105 can go to court and get an injunction and it can cost \$275 a day for every day he is there after the 30
106 days. Mr. Landry advised the neighbors that they have to trust the system and the Town.

107 **CASE 12-07: PARCEL ID: 0133-0087-0000, SEEKING A SPECIAL EXCEPTION AS REQUIRED IN ARTICLE III**
108 **SECTION 3.50 TO INSTALL A 72" HIGH FENCE AS REQUIRED BY STATE OF NH DAY CARE LICENSING**
109 **BOARD, SUNAPEE HARBOR RIVERWAY-"SLAVEN'S HAVEN", 70 MAIN STREET**

110 Sue Mills, manager of the Sunapee Harbor Riverway presented the case. The Riverway's tenant,
111 Slaven's Haven, per NH licensing for daycare, they need to erect a fence that exceeds the limitations of
112 the ordinances. Mr. Landry stated that the Town allows fences up to 60" in height and per special
113 exception they can go higher. Ms. Mills stated that the fence will be 68" and will be on the parcel that
114 has the grassy area behind the deck pavilion. It will be PVC construction and a solid wall per State
115 guidelines. It will be 24 x 40 fence as it has to be right angles. The business is operating out of 31 River
116 Road, the Pete's Shed building. Mr. Landry said that the Planning Board decided per Statement of
117 Property Usage that the business didn't have to go through Site Plan Review as there had already been a
118 business at the location. However, the State requires a fenced in yard with a 68" fence so the kids can't
119 fall in the river which necessitates a special exception. Mr. Simpson asked if there are setback
120 requirements. Mr. Landry stated that for a fence the setback is two feet and the requirement is more
121 than met.

122 Clayton Platt made a motion to approve the application as presented. Dick Katz seconded the motion.
123 The motion passed unanimously.

124 **CASE 12-08: PARCEL ID: 0125-0044-0000, SEEKING A SPECIAL EXCEPTION TO REDUCE ROAD FRONT**
125 **SETBACK AS PER ARTICLE III SECTION 3.50-B2 AND 3.50-B3 TO ACCOMMODATE CONSTRUCTION OF A**
126 **GARAGE, HARRY C. SNOW TRUST, 15 DEWEY BEACH ROAD**

127 Harry Snow presented the case with assistance from Clifford Richer, a land surveyor from Newport. The
128 special exception is to reduce the building set back from the edge of the road to construct a one car
129 garage. Presently, there is no garage on the property but there is a large gravel parking / driveway /
130 turn-in area and the garage will consume maybe 1/3rd of this area. Dewey Beach is a one way road and
131 there will be plenty of room to back out of the garage and still be on the property and be able to pull out
132 onto the road.

133 It was asked if there was a drawing of how the garage would sit with the building. Mr. Snow said that is
134 not currently a design for the building as he didn't have a permit. Mr. Landry asked if there was a
135 concern regarding the height of the garage. Mr. Snow said it will be a single story garage with storage
136 above. There was further discussion regarding the height of the building.

137 Mr. Landry explained the reason for the application for the Special Exception. Mr. Landry said that he
138 suggested Mr. Snow and Mr. Richer use 3.50 B2 and 3F where they are allowed to take and use an
139 example on the same side of the road of other recent approvals. About a year and a half ago, the Board
140 approved a variance for a bathhouse very close to the road. This garage project will not be that close to
141 the road but they can be up to 10' from the ROW using that Special Exception. It was clarified that the
142 garage will not exceed the house. Mr. Landry continued that he lot is unique as it has a road in the front
143 and in the back. Mr. Richer explained that when the original subdivision was done, this particular lot
144 was exempt from the restriction of the boundary line setbacks in the covenants. The reason was
145 because the lower 2/3rds of the lot towards the pump station is wet. Mr. Landry clarified that the lot is
146 a pre-existing non-conforming lot. Mr. Frothingham asked about the 9.6' from back lot line that the plan
147 shows. Mr. Landry clarified that the 9.6' is the house and when they apply for the building permit, they
148 will have to show at least 10' from the line which will be a slight jut, not flush with the back of the
149 house, otherwise they will have to ask for a variance.

150 Dick Katz made a motion to approve Case 12-08, special exemption to add a garage as per the submitted
151 drawing. Aaron Simpson seconded the motion. The motion passed unanimously.

152 **CASE 12-09: PARCEL 0119-0009-0000, SEEKING A VARIANCE OF ARTICLE IV SECTION 4.10 TO HAVE A**
153 **CONTRACTOR YARD SUPPORTING THE OPERATION OF A LANDSCAPE BUSINESS, HEIDI WILSON /**
154 **PLEASANT ACRES PROPERTY MAINTENANCE LLC., ROUTE 11**

155 Matt McClay of 342 Cross Hill Rd. Wilmot, owner of Pleasant Acres Property Maintenance LLC presented
156 the case. Mr. McClay has received permission from the owner of the lot to represent the case. Mr.
157 McClay has a Purchase and Sales Agreement on the 5 acre lot on Route 11 that is located just west of
158 Brown's Hill, and just east of Granliden Rd. With the permission of owner, Mr. McClay is seeking a
159 variance to operate a contractor's yard to run landscaping / lawn care / property maintenance business.

160 Mr. McClay said that the original plan which the Board Members have a copy of showed the driveway
161 access directly onto Route 11. However, the he met with the State and it is a limited access highway and
162 they will not allow a driveway to access the property directly from the road. Mr. McClay said that the
163 property has a deeded shared ROW with the Huff's driveway and therefore he has a new plan which has
164 the driveway showing it will be shared this driveway but come off almost immediately. Mr. McClay
165 showed the updated plan to the Board.

166 Mr. McClay was asked about his plans for the 25' buffer. Mr. McClay stated that he would like to make
167 the road side as nice as possible by getting the lawn looking good and cleaning up the woods by thinning
168 it out and planting shrubs and such. Mr. Landry clarified that the landscaping would be considered in
169 the Site Plan Review by the Planning Board.

170 Mr. McClay stated that he is trying to get the layout of the lot as it is a wood lot and he is trying to
171 determine where there is ledge and where to put the building.

172 Mr. Platt asked if Mr. McClay would have any retail. Mr. McClay stated that he would eventually like to
173 sell mulch and such to the public. It was asked if retail sales qualified as a part of a contractor's yard.

174 Mr. Landry read the Town of Sunapee Zoning definition for a contractor's yard. "An area used by
175 builders, electricians, plumbers, excavators, roofers, yard maintenance and other similar contracting
176 service establishments for the storage of materials and equipment." Mr. Landry said that the definition
177 does not allow for retail sales and that retail sales would be another variance and be subject to another
178 Site Plan Review.

179 Mr. Simpson confirmed with Mr. McClay that he would not be living on the property. Mr. Landry
180 clarified that Mr. McClay have to come in for another variance to do retail sales on the property as it is
181 not permitted by special exception. Mr. Simpson asked about nurseries and greenhouses. Mr. Landry
182 looked for a description and stated that he would have to speak to the Town's attorney for clarification.
183 There was further discussion regarding having a nursery or greenhouse. Mr. McClay stated that at this
184 point he has no plans to do retail sales but he may look at the option down the road.

185 Mr. Landry stated that he has received three letters from abutters that are in support of the proposal.
186 Mr. Simpson read the letters into the record (SEE ATTACHED).

187 Mr. Simpson stated that the Huff's attached a copy of the plan to their letter. Mr. Landry stated that
188 Mr. McClay had submitted the plan attached to the letter as it relates to the access but that the Board
189 had not received a copy. Mr. McClay stated that he had spoken with the Huffs to try and work out a
190 plan that would be suitable for them as well, for instance putting the material storage on his side and
191 the vehicle parking and the buildings on the other side.

192 Mr. Larrow advised Mr. McClay that he would be protecting himself to get clarification from the Board if
193 there are any thoughts to starting a retail business in the future. Mr. Landry said he plans on talking to
194 the Town's attorney and will get clarification as nurseries and greenhouses are not really addressed in
195 the Zoning Ordinances. Mr. McClay said he wants to get the variance for the contactors yard and then
196 down the road will work on the other aspects of the business.

197 Mr. Simpsion asked for Mr. McClay to address the five criteria needed for the Variance.

198 Mr. Simpsions asked how the the granting of the variance would not be contrary public interest. Mr.
199 McClay stated that with the buffers and access change, the plan is to keep rural feel. The way the
200 property will be laid out will also not negatively impact public. The people who would have had the
201 most impact have already given their approval. The plan is to improve the landscaping and lawn and
202 pick up the trash along Route 11. The property is not on town road and will not increase traffic in a
203 residential area. Mr. McClay was asked and clarified that the hours will be 7:00 am to 5:00 pm except
204 for plowing, problems with properties, etc. and there will not be double shifts.

205 Mr. McClay said that the reason the business would not diminish the surrounding property valuses is
206 that with the buffer zones, screening and landscaping, the goal is to make a the property a positive
207 advertising influence. Mr. McClay continued that most of their work is in Sunapee and they would use
208 the property as an example of their work. Though the area is zoned Rural Residential, the property is
209 unique in that it is right on Route 11 and a five acre parcel that he can have screening and can still meet

210 the setbacks and not increase traffic on town roads or bother the neighbors. Mr. McClay said that he
211 feels as though any improvements he makes will help the neighborhood.

212 Mr. Simpson asked if Mr. McClay had letters from all the neighbors. Mr. McClay said that he has letters
213 from the immediate abutters but not from the ones across the road though they were sent certified
214 letters regarding the meeting. Mr. Landry stated that he had not had any communications from any of
215 the other abutters.

216 Chairman Frothingham asked about criteria number three: denial of the permit would result in
217 unnecessary hardship to the owner. Mr. McClay said that most of their business is in Sunapee. He has
218 been looking for some time to find a lot that would not have a negative impact on the neighbors.
219 However, with gas prices and labor prices, the commute from Wilmot every day is inhibitive. This lot
220 seems to be the perfect fit for them and for the neighbors as they can do it and not negatively impact
221 the neighbors.

222 Mr. Landry said he has been asking the Planning Board to change the Route 11 corridor Zoning. Mr.
223 Landry discussed the change in the Zoning on Avery Road and the different businesses along Route 11
224 and how a Zoning change would be beneficial. Mr. Schneider said that he agrees with Mr. Landry,
225 however, he does not believe in spot zoning.

226 Mr. McClay said that according to Mr. Huff, they hauled in fill to try get a perc test done and get a house
227 lot in and could not get it done. Mr. McClay continued that it would help his business to give better
228 service by being more local and being able to meet customers need better.

229 Mr. Platt asked if there was something about this property that makes it different than the other
230 properties on Route 11. The Town has decided not to zone the area as commercial and is there
231 something that makes this particular property something that should be allowed a variance. Mr. Landry
232 said that the application is no different from the storage center that was allowed. There was a
233 discussion regarding Ideal Properties, Chase's Marina and Cooper Street Partners.

234 Mr. Platt clarified his concerns by asking if this variance is approved, if someone else in the
235 neighborhood came could they be denied. Mr. Landry stated that every case is justified on its own
236 merits. Mr. Platt said that the application says that it is a five acre lot on Route 11 which is why the
237 variance should be approved. Mr. Landry said that you have to look at the five criteria of the variance.

238 Mr. McClay said that the employ people from Sunapee and take care of approximately 100 houses in
239 Sunapee. They are going to improve the look of the lot which is a benefit.

240 Mr. Schneider had a concern over the wording of the regulations in the Zoning Book. Mr. Landry
241 clarified that you have to use the wording on the application, not in the book. The State of NH has
242 changed the wording of the criteria and the Zoning Book has not been changed yet. Aaron read the
243 State law which says "the variance will not be contrary to public interest."

244 Chairman Frothingham spoke about his opinion of what makes a good community which includes
245 businesses. Chairman Frothingham stated that he does not see how the applicant does not meet the
246 criteria.

247 Mr. McClay spoke about the hardship to the property as the owners currently cannot sell the property
248 because it cannot have a house built upon it. Mr. Schneider said that he feels as though an engineer
249 should tell them that. Mr. Simpson continued that if someone has dug test pits to try and put a septic in
250 and they say it is unbuildable. Mr. Platt said that with the new septic systems that are available it is hard
251 to find a lot that is unbuildable unless the property is very wet.

252 Mr. Simpson read the Statute: For purposes of this subparagraph, “unnecessary hardship” shall mean
253 that because of the unique and particular characteristics of a property no fair and substantial
254 relationship exists between the general public purposes of the ordinance provision and the specific
255 application of the provision to the property.” Mr. Simpson asked why contractor yards are not allowed
256 in Rural Residential neighborhoods. Mr. Landry said that the Zoning and Planning Boards usually get
257 together in September and zoning changes can be recommended. Mr. Schneider feels that contractor’s
258 yard are not allowed in Rural Residential zones because of homes in the neighborhoods. Mr. Larrow
259 stated that the difference is in the placement of this yard which is on Route 11.

260 Mr. Simpson asked about clarification of the substantial justice criteria. Mr. McClay stated that the
261 variance would allow him to operate the business in Sunapee where most of the clientele is located as
262 well as to employ people from Sunapee.

263 There was a discussion about other property options that Mr. McClay has looked into.

264 Mr. Schneider stated that he thinks the area should be rezoned but should not be done here and he
265 thinks that this is rezoning. Mr. Schneider feels as though it is woodland lot and not different than other
266 lots in the neighborhood. Mr. Simpson spoke about the training meeting with Attorney Whitelaw and
267 her descriptions regarding how to look at some of the different issues that will come to the Board.
268 There was further discussion about this meeting. Mr. Simpson stated that he agrees that they should
269 not be spot zoning but this lot may be different. There was additional discussion regarding rezoning.

270 Mr. Landry stated that if there is a restriction on the land that so that people cannot sell property
271 because the Town has not taken the necessary steps to rezone, they should not punish people. This is
272 the reason there are use variances. Mr. Katz asked if the board has done what amounts to spot zoning
273 in the past. Mr. Landry clarified that they have not done spot zoning, they have done variances. Mr.
274 Landry gave some examples which includes: Chase Marine, the storage facility, and the assisted living
275 area in Georges Mills.

276 Dick Katz made a motion on Case 12-09 to approve on parcel 0119-0009-0000 a variance of Article IV,
277 Section 4.10 to have a contractor yard supporting the operation of a landscape business, Heidi Wilson /
278 Pleasant Acres Property Maintenance, LLC, Route 11, as submitted. Clayton Platt seconded the motion.
279 The motion passed 4 in favor and 1 opposed.

280 Mr. Simpson asked how to get changes in the ordinances to the Planning Board, specifically the
281 language changes in the books. Mr. Landry stated that they have to wait until September to meet with
282 the Planning Board. Mr. Landry clarified that changes cannot be made unless voted upon by the Town.
283 Mr. Simpson asked if they could add language such as "as required by New Hampshire Law" which Mr.
284 Landry said could be suggested. Mr. Landry suggested having something that allows the Zoning Board to
285 make changes associated with any changes in the State laws. The Planning Board would have to draft
286 the changes but they would be staying with the State

287 Aaron Simpson made a motion to adjourn the meeting. The motion was seconded by Clayton Platt. The
288 motion passed unanimously.

289 The meeting was adjourned at 8:25 PM

290 Respectfully submitted,

291 Melissa Pollari

292

293

294 Edward Frothingham

Aaron Simpson

295

296 Dick Katz

Clayton Platt

297

298 Daniel Schneider