

1 **TOWN OF SUNAPEE**

2 **ZONING BOARD**

3 **JUNE 14, 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 Chairman Frothingham called the meeting to order at 7:00PM

8 **ZONING ADMINISTRATOR**

9 Roger Landry spoke to the Board about 911 numbers as well as the recent Planning Board approvals.

10 Changes to the minutes from the May 22, 2012 & May 30, 2012 meetings:

11 Aaron Simpson made a motion to postpone reading and correcting the minutes until the end of the
12 meeting. Dick Katz seconded the motion. The motion passed unanimously.

13 **CASE 12-10: PARCEL ID: 0207-0015-0000, SPECIAL EXCEPTION AS PER ARTICLE III, SECTION 3.50-I. TO**
14 **RAISE ROOF HEIGHT WITHIN LAKEFRONT SETBACK TO ACCOMMODATE HIGHER CEILINGS ON**
15 **2NDFLOOR. TOM & MEG NELSON. 48 KELLSWOOD LN.**

16 Matt O’Claire, the contractor for Mr. and Mrs. Nelson, presented the case. Mr. O’Claire said that the
17 house is a ranch style house and the owners would like to remove the roof, update the siding and
18 windows, and turn it into a cape style home. There will be no change to the foundation they are just
19 going up. Mr. Schneider asked and Mr. O’Claire confirmed that there will be no land disturbance. Mr.
20 Platt asked if the 10 x 14 x 10 x 18 was what is already there and it was confirmed that it is. Mr.
21 Schneider asked Mr. Landry if the project required any septic. Mr. Landry responded that something he
22 was going to ask is that looking at the layout that was submitted with the application, specifically the
23 drawing that shows the first floor. It shows the den, the great room, the master bedroom, the kitchen
24 and the existing screen porch. Mr. Landry continued that if you go to the second floor drawing, it shows
25 a bedroom to the left corner, the vaulted ceiling over the living room, and he can’t understand the part
26 showing the office. Mr. O’Claire responded that it is a small little nook. Mr. Landry said that it could be
27 a bedroom because when you put a closet in a room it becomes a bedroom in the State of NH and with
28 three bedrooms they are over the capacity of the septic system. Mr. Landry also asked about access to
29 that room as well as to the bathroom. Mr. O’Claire said that the sketches are preliminary and said that
30 the closet is going to have a low ceiling and is only about four feet deep. Mr. Landry responded that it
31 still is a closet. Mr. O’Claire asked if a room that small could be considered a bedroom. Mr. Landry said
32 that the minute you put a room with a bedroom it is considered a closet in the State of NH. Mr. Platt
33 asked if the number of bedrooms was a Zoning issue. Mr. Landry responded that it is as well as a State
34 issue. Chairman Frothingham asked if the closet will have to be crossed off if they approve the

35 application. Mr. Simpson asked and Mr. Landry confirmed that the approval is for a two bedroom
36 septic.

37 Chairman Frothingham asked about access to the room. Mr. O’Claire responded that there are two
38 doors missing from the sketch and showed the Board where the doors will be. Mr. Schneider asked if
39 the den could be construed as a bedroom as it looks like there are closets in that room as well. Mr.
40 Simpson said that there are two sets of closets in the den. Mr. Landry said that he thinks when the
41 Board considers the case they should put it as a condition that it is allowed for two bedrooms only per
42 septic approval. Chairman Frothingham asked if the Nelson’s would have to remove the closets and Mr.
43 Landry replied that it is up to them but he thinks it should be limited to no more than two bedrooms and
44 anything more than that would be a violation. Mr. Simpson said and Mr. Landry agreed that the Board
45 can’t change the Plan and tell the Nelson’s what to do. It was asked what the Nelson’s could do if they
46 upgraded their septic. Mr. Landry said that they can do that, it just has to be certified by the State
47 Department of Environmental Services (DES) and then return to the Zoning Board for approval.

48 There was a discussion about the Ordinance which relates to the increase in the bedrooms and also
49 what the definition of a bedroom is a room with a closet. Chairman Frothingham asked if the Nelson’s
50 had to go through the wetlands permit and the Mr. O’Claire responded that there is no disturbance to
51 soil so they do not think that they need a wetlands permit. Mr. Landry stated that if there is no digging
52 and no disturbance, Mr. O’Claire is correct that they do not have to go through wetlands.

53 Mr. Simpson asked for clarification as to where the Ordinance Mr. Landry had discussed was located in
54 the Zoning Book. Mr. Landry said that Article 7, Section 7.10 on page 41 states that “no structure shall
55 be converted in any manner resulting in an increased septic flow or water utilization without installation
56 of a septic system approved by the New Hampshire Water Supply and Pollution Control Commission or
57 approval from the Sunapee Water and Sewer Commission if on municipal water.” Mr. Landry continued
58 that if you are increasing the usage of the septic system, going from two to three bedrooms, it has to be
59 approved by the State of NH.

60 Mr. Schneider stated that it is interesting that on one of the plans, the room that is labeled “Master
61 Bedroom” does not have a closet. Mr. Simpson asked and it was confirmed that the property is
62 currently a two bedroom. Mr. Simpson asked if there is a drawing of what is currently there. Mr. Landry
63 responded that the Town has the property as a one bedroom but it is not unusual to disagree from what
64 is actually there and showed Mr. Simpson the current tax card. Mr. Landry clarified that the septic is
65 approved for two bedrooms.

66 Mr. Platt had a question regarding the sketch as in the Rules and Procedures it talks about the sketch
67 being to scale and he is not sure what the Board has done in the past. Mr. Landry stated that if there is
68 an expansion in the footprint, usually the Board can demand that it be surveyed to make sure that the
69 setbacks are met. Mr. Landry continued that as in this particular case, the Nelson’s are not changing the
70 footprint; they usually accept just a drawing. Mr. Landry said that not meeting the setback is the reason
71 the Nelson’s is coming to get a Special Exception to raise the roofline. Mr. Platt asked if the 40’ was
72 taped off from the Lake and Mr. O’Claire said that it was done from both corners and the deck. Mr.

73 Landry said that the Board has the option of postponing the case and asking for a survey but if Mr.
74 O'Claire has measured it and says that it is 40' and he is in for a Special Exception, what is the benefit of
75 a survey telling them it is closer as he will still need to get approval. Mr. Platt said he is not saying a
76 survey, maybe something that is a little more inclusive than the drawing presented as it looks like it was
77 prepared quickly. Mr. Platt suggested that this be taken care of in the application process.

78 Chairman Frothingham asked for comments from abutters.

79 Mr. Larry Brown, Mr. and Mrs. Nelson's abutter, said that he had a couple of questions, some of which
80 were answered by Mr. Landry. Mr. Brown said that they have had their property since the mid-50's and
81 they always recognized the cottage as a one bedroom but when Mr. Landry said that it is approved for
82 two, it takes the question off the table. Mr. Brown continued that his other question is whether the
83 septic was sufficient to support additional water with another half bath coming in as they are very close
84 to the water and the septic's are not up to today's standards but are grandfathered. Mr. Landry replied
85 that the State of NH says that if the Nelson's wanted to put in six bathrooms and they are not going to
86 add any bedrooms, it does not need the septic to be changed. Mr. Brown said that he had concerns as it
87 is a very pristine pond and he would like to see it protected.

88 Mr. Brown said that the letter that came that was apparently sent to abutters by the Nelson's was never
89 received and he heard about it only by chance. Mr. Landry asked if Mr. Brown is a direct abutter and
90 Mr. Brown confirmed that he is but the letter was sent to his post office box in Sunapee, not where he
91 receives his mail which is his home address in Florida. Mr. Brown continued that normally things are
92 forwarded from here to Florida but he assumes that it is floating around somewhere. Mr. Landry asked
93 where Mr. Brown receives his tax bill and Mr. Brown stated at his home address in Florida which is why
94 he was surprised it was sent to his PO Box here. Mr. Landry said that there have been problems in the
95 past with people having various mailing addresses but generally the notices are sent to where the
96 person gets their tax bill. Mr. Landry asked if the tax bill was being forwarded down there and Mr.
97 Brown said that it is going directly there. Mr. Landry said that he will look into it.

98 Mr. Brown asked about the current state of the septic. Mr. O'Claire stated that the Nelson's brought the
99 property in the spring and had a test which said it was in good working condition and that is all the
100 information he has. Mr. Simpson asked if a new well was installed and Mr. O'Claire said he was not
101 sure. Mr. Simpson stated that it looked like a new there was a new well head. Mr. Brown said that
102 there was a new well head on the north side of the property. Mr. Platt asked if the septic was shared
103 and Mr. O'Claire stated it was a single. Mr. Platt said that there is a maintenance agreement and asked
104 if the septic is not on the Nelson's property. Mr. O'Claire said that he was not sure about this. Mr.
105 Brown stated it is on the Nelson's property but it is a piece that was acquired later than the original
106 parcel. Mr. Landry said that there is a drawing of the lot upstairs and Mr. Brown added that the lot
107 shape is strange as the second piece cuts in back of his property. Mr. Platt asked if there was any sense
108 as to how far back the septic is from the lake. Mr. Brown answered that it is in back of structure. Mr.
109 O'Claire said that the septic appeared to be by the driveway which is about 80' from the water. Mr.
110 Platt asked if the structure was being torn down and rebuilt would they need to get an updated septic.
111 Mr. Landry replied that if they were exceeding the two bedrooms they would have to do that.

112 Mr. Simpson stated that he is seriously concerned that it is more than a two bedroom based upon the
113 plans. Mr. Landry informed the Board that they could put an addition on it. Mr. Simpson said that it
114 would be fairly easy to get around. There was further discussion regarding this issue. Mr. Landry stated
115 that the Board could put a condition that he go in and inspect the structure after completion. Mr.
116 Schneider asked if the Board could place a condition that the septic be certified to be in good working
117 order for a two bedroom residence. Mr. Landry said that as it is not a failed system, he is not sure how
118 that can be done legally as it is not addressed in the Zoning Regulations. Mr. Platt said that reading the
119 actual Regulation it says "no structure shall be converted in any manner resulting in increased septic
120 flow or water utilization." Mr. Platt said that it does not talk about bedrooms, just increased septic flow
121 and water utilization, it is fairly obvious if you have more bathrooms you will have more utilization. Mr.
122 Landry said that it is not recognized by the State of NH. Mr. Platt responded that the Board is not the
123 State of NH and there is an application that clearly increases the water flow. Mr. Landry gave an
124 example of a kitchen renovation that would increase the usage of the septic system which the Board
125 would not know about which would be more severe than another bathroom. Mr. Platt asked if the size
126 of the house is doubling and Mr. O'Claire stated that it wouldn't be doubling with the vaulted ceiling,
127 they are adding about 700 to 800 sq. ft.

128 Mr. Platt said that he is still concerned about the septic. Mr. Landry said that today they put on how
129 many gallons per day are accepted, back when it was approved they did not and they don't know what
130 is approved for gallons. There was a discussion about the structure being seasonal and if the approval
131 was seasonal and Mr. Landry said that it does not say that it is seasonal.

132 Aaron Simpson made a motion to approve the Special Exception as per Article III, Section 3.50-I to raise
133 roof height within lakefront setback to accommodate higher ceilings on 2nd floor at 48 Kellswood Ln,
134 Parcel ID: 0207-0015-0000, Case 12-10 with the condition that there are no more bedrooms than are
135 permitted by any septic design approval that is constructed. There was a brief discussion regarding
136 putting the definition of a bedroom into the motion. Dick Katz seconded the motion. The motion
137 passed unanimously

138 **CASE 12-11: PARCEL ID: 0113-0023-0000. SPECIAL EXCEPTION AS PER ARTICLE III, SECTION 3.50-I. TO**
139 **RAISE ROOF HEIGHT WITHIN LAKEFRONT SETBACK TO ACCOMMODATE A FULL FOUNDATION. DAVID**
140 **HOWLAND. 56 RIDGEWOOD RD.**

141 David Lane presented the case as a representative for David Howland. Mr. Lane stated that they are
142 planning on raising the house approximately 4' and installing a full foundation, not changing any of the
143 setbacks at all and the foundation will be exactly where the existing one is. Mr. Schneider asked Mr.
144 Lane if he had applied the DES Permit for the Shoreland Protection Act. Mr. Lane and Mr. Landry
145 confirmed that there are approved.

146 Mr. Schneider said that one thing that he worries about is the house is on a very sloping shoreline and
147 very close to the lake and they are going to be digging a big hole. Mr. Lane replied that it won't be very
148 big, they are mainly going up. Mr. Lane said they have to put silt fences up. Mr. Landry said that
149 anytime they are going to be digging within 300' of the lake and are going to have any disturbance,

150 there has to be a Land Disturbance Bond submitted, it is anywhere from \$500 to \$1000 or 10% of the
151 cost of the land disturbance itself. Mr. Landry continued that the Bond is submitted to the Town and
152 put into an interest bearing account and after the project is complete Mr. Landry goes and inspects the
153 area to make sure it is stable and grassed and the Town will not get any complaints about water or mud
154 going into the Lake and then the bond is released along with the interest. Mr. Schneider asked how
155 much the bond would be for on this project. Mr. Landry said he is not sure but he believes it will be
156 about \$500.

157 Mr. Simpson asked about a section of the drawing and Mr. Lane replied that it is a room in the house.
158 Mr. Platt asked if there was a section of the house that was not being raised. Mr. Lane replied that the
159 whole building is going up. Mr. Simpson asked and Mr. Lane clarified that they were raising the house
160 approximately 4'. Mr. Simpson asked if there is currently a crawlspace under the building and Mr. Lane
161 replied. Everything else except the building going up is the same and Mr. Lane is the contractor on the
162 project. Mr. Lane said that he has already done several projects on Fernwood Point and gave examples.

163 Mr. Platt said that between looking at the map and looking at the sketch it doesn't look to be about 46'
164 from the water. Mr. Platt continued that looking at the setback, the sketch shows 46' from the water.
165 Mr. Lane said it was with his tape going downhill but it has been surveyed. Mr. Landry said that the
166 structure is within 50' and it is going straight up, as long as it is within the 50' it has no effect.

167 Mr. Landry said that the Town says there can be no digging on a more than 25% slope but you can dig on
168 a 60% slope providing that the wall on the back of the dig is not higher than 20'. Mr. Landry explained
169 this rule further. Mr. Lane said that where they are digging there is no slope.

170 Mr. Simpson asked if there were going to be bedrooms added downstairs and Mr. Lane said that they
171 are not adding anything. The basement will be used for storage and the shed on the property will be
172 removed. Mr. Simpson asked and Mr. Landry confirmed that it will be a walkout basement and
173 explained that if it is converted at any time they will need a building permit and any bedroom added will
174 need septic approval. Mr. Simpson said the property is on Town Sewer and Mr. Landry said that
175 anything over 5 bedrooms would mean another hook-up.

176 Mr. Schneider said that he thinks the approval should be subject to the conditions of the DES approval.

177 Aaron Simpson made a motion to approve the Special Exception as per Article III, Section 3.50-I to raise
178 roof height within lakefront setback to accommodate a full foundation at 56 Ridgewood Rd., Case 12-11,
179 Parcel ID: 0113-0023-0000 and that said construction will be in compliance with the Shoreland Impact
180 Permit 2012-01262 issued by the Department of Environmental Services. Dan Schneider seconded the
181 motion. The motion passed unanimously.

182 Mr. Platt said that he encourages a little more care in the sketches, there is no reason drawings should
183 be off by 10'.

184 **CASE 12-12: PARCEL ID: 0237-0029-0000. VARIANCE OF ARTICLE IV, SECTION 4:10 TO ALLOW A**
185 **CONTRACTOR YARD FOR ROOFING COMPANY, WEATHERCHECK, LLC. 110 BROOK RD.**

186 Mr. Landry stated that the applicant was before the Board about a year ago requesting a contractor yard
187 on Prospect Hill Rd for Weathercheck which was approved and it was on a much smaller piece of
188 property. The applicant has since procured this piece of property on Brook Rd and is here requesting
189 basically the same approval, for the same business just on a much larger piece, in the same Rural
190 Residential District.

191 Mike Mayo, owner of Weathercheck, LLC presented the case. Mr. Mayo said that he requested that his
192 former neighbor, Kay Yagley, be present in case anyone had any questions as to how he operated his
193 business out of the previous contractor's lot. Mr. Mayo continued that Weathercheck is a local
194 company and employs local people. He has bought the farm on Brook Rd which has 49.3 acres of land
195 and for approximately 40 years there was already a business operating there until the former owner
196 passed away. The property was run as an operating farm, slaughter house and smoke house. Mr. Mayo
197 said that what his intentions are for the property, as they are currently in the process of rebuilding the
198 barn, they would like to restore the property to like new condition. Mr. Katz asked for Mr. Mayo's
199 definition of like new condition. Mr. Mayo replied that it is going to look good.

200 Mr. Mayo said that what he is asking permission for is essentially to keep his equipment in the
201 outbuildings and to move his sheet metal operation inside the barn, which is very low key and makes
202 very little noise. Mr. Mayo continued that as far as daily operations, there won't really be any except for
203 once to twice a week one of his employees will be there bending metal. Chairman Frothingham asked
204 what the sheet metal will be used for. Mr. Mayo said it is for roofs, he does standing seam and high end
205 slate work and copper accessories. Mr. Landry asked if the trucks will be dispatched from the site and
206 the employees will go there daily. Mr. Mayo confirmed this would happen and that what they would
207 like to do, though it would typically not be more than four to five vehicles, he has asked for seven to
208 park out back as he has two company trucks. Mr. Mayo continued that there is a road that goes around
209 the barn and the intent is on either side of the barn will be a blind rail fence, though even if it wasn't
210 there you could not see properties from the road. Mr. Mayo said that the impact visually on the
211 neighborhood is positive as they will be rebuilding the entire property.

212 Mr. Simpson asked Mr. Mayo if he was going to live at the property. Mr. Mayo replied that he has put in
213 an application for a subdivision and they would like to build a house up on the hill. Mr. Landry stated
214 that the subdivision is pending approval from the Planning Board.

215 Mr. Landry asked if everyone was aware of what is next door to the site. Chairman Frothingham said
216 that there is a junk yard next door. Mr. Simpson asked if the junk yard is in Sunapee and Mr. Landry
217 confirmed it is not.

218 Mr. Platt asked how much land will be with the barn. Mr. Mayo replied that there will be 13.3 acres
219 after subdivision. Mr. Mayo confirmed that there is a house on the property already which will go with
220 the barn parcel but he hasn't decided what to do with the house yet as it is in pretty rough shape. Mr.
221 Landry asked what was part of the slaughterhouse and Mr. Mayo said that it is outback. Mr. Mayo
222 continued that there are two outbuildings outback, both of which are going to get new siding and paint

223 in the upcoming weeks. The smokehouse was in the barn and that part they are going to take off and
224 replace because of the smells.

225 Mr. Mayo said that over the last week he has gone and spoken to all his neighbors, everyone in the
226 neighborhood as well as the abutters back on Bradford Rd. Mr. Mayo presented their signatures along
227 with a copy of a letter that was sent prior to them meeting, the signatures agree that they do not have a
228 disagreement with the application. Mr. Landry stated that he has had no contrary email to the effect.
229 Mr. Mayo gave the letter to Mr. Simpson for review.

230 Chairman Frothingham asked if there were any other interested parties present.

231 Mr. Simpson asked who was applying for the permit, is it Brook Road Farm, LLC or Weathercheck LLC.
232 Mr. Mayo said that he believes and Mr. Landry confirmed that he applied as Brook Road Farm doing
233 business as Weathercheck. Mr. Simpson said that "dba" is a name you operate under that is not your
234 company name. Mr. Mayo asked if that meant he should have submitted the application as
235 Weathercheck. Mr. Simpson asked who owns the property. Mr. Mayo said that Brook Road Farm the
236 owner of the property and is a company that is going to be renting the barn to Weathercheck. Mr.
237 Landry explained that when you approve a Zoning relief it goes with the property so the application
238 should be under Brook Road Farm.

239 Mr. Platt asked if Mr. Mayo has plans for expansion beyond what is there. Mr. Landry said a limitation
240 can be added as a condition. There was a discussion about what might happen in the future as well as in
241 Site Plan Review. Mr. Mayo confirmed that he would like seven parking spaces and added that he would
242 like to park trailers behind the barn as well on a concrete pad. Mr. Landry said that Mr. Mayo should
243 identify how many trailers he would like. Mr. Platt said that he feels that his application is different than
244 the Prospect Hill Rd contractor's yard as the previous lot was small. He is more concerned about what is
245 going to happen in the back ten acres as he doesn't want to grant something that extends the
246 commercial use over a thirteen acre property. Mr. Mayo said that he has always kept work separate
247 from home and he doesn't want to look at any of the equipment. Most of the equipment will be inside
248 the barn but they might end up being left outside sometimes.

249 Mr. Schneider asked if there is any part of the property that will be used for the business other than
250 what is on the drawing. Mr. Mayo said the two outbuildings that are not on the drawing and they will
251 be used for storage only. Mr. Mayo said he submitted full plans but they may be for the Planning Board.
252 Mr. Platt asked Mr. Landry to get a copy of the plans for the Board to review.

253 Chairman Frothingham spoke about the acreage that is shown being used as the business, Mr. Mayo
254 said that he believes it is 3.3 acres that the Town does not have in Current Use. Chairman Frothingham
255 suggested to use that as the use exception with the stipulation that nothing is outside other than the
256 seven vehicles and x trailers on the concrete pad. Mr. Mayo asked if he has to make sure that the 3.3
257 acres has to work with the 13.3 acre subdivision to prevent him from getting a Current Use Penalty. Mr.
258 Simpson said that the space between the buildings will be seen as curtilage. Mr. Mayo was asked and
259 confirmed if the part of the subdivision that he will putting his house on is in Current Use as the current

260 lot is 49.3 acres. There was a brief discussion regarding Current Use and the fact that the business is
261 already out of Current Use.

262 Robert Dietel, an attorney representing HP Properties was present. HP Properties owns the property
263 directly across the street from the property. Mr. Simpson asked and it was confirmed that it is a
264 condominium development. Atty. Dietel said that it is their position that Mr. Mayo has not presented
265 sufficient facts for the Board to grant a variance. Atty. Dietel continued that they have concerns that the
266 proposed activity is presenting a new commercial use into what is right now a very rural residential area.
267 The new commercial use is going to impair the property value of HP Properties across the street.

268 Atty. Dietel went over the basic elements: the applicant has the burden of meeting each element of the
269 Variance and the Zoning Board can only grant the variance if he satisfies each of the conditions. There is
270 to be no diminution of property values. The applicants are going to change the character of the spot
271 which is going to impact the property values. Mr. Platt asked for elaboration about this point as there
272 are existing buildings. Atty. Dietel said that right now, when you drive through the area there is a little
273 farmhouse, the barn, beautiful rolling hills and is a very beautiful farm setting keeping with the rest of
274 the neighborhood. Mr. Simpson said it is run down. Atty. Dietel said that is one approach but what Mr.
275 Mayo has proposed is trucks, trailers, a machine shop, storage and employees on a daily basis which is a
276 commercial use. Atty. Dietel said that it is not a permitted use and there can be no Variance in the
277 absence of meeting the criteria and Mr. Mayo does not satisfy the criteria, the most important being
278 hardship. To get a Variance you have to show that there is a hardship. Atty. Dietel continued that this is
279 a property that was purchased in February of this year and Mr. Mayo is bringing a use to the property,
280 there is nothing unique to the property that requires there be a granting of a Variance as there is no
281 hardship that is tied to the physical characteristics of the property. Atty. Dietel stated that it is their
282 position that a Variance cannot be granted here. Atty. Dietel continued that Mr. Mayo stated that
283 there was a prior business use on the property that was commercial but what was described was a
284 farming use which is a permitted use in the Rural Residential district. Additionally, he reviewed the
285 minutes from 2010 and the prior approval relates clearly to a different property that may have been in
286 the Rural Residential district but has no bearing on this property.

287 Mr. Mayo said that he understands that Atty. Dietel is representing his clients and understands the
288 position his clients are in right now and their concerns that what he is going to do is diminish the
289 property value of the property they are having such as hard time getting rid of. Mr. Mayo continued
290 that what they are going to do is rebuild the entire property into a beautiful old farm and that is all you
291 are going to see when you go by. You are not going to see trucks and are not going to hear machinery as
292 he is not putting a machine shop in, it will be a little sheet metal folder. Mr. Mayo said that he is not
293 going to have people coming in and leaving and buying things, nothing is going to be sold from the
294 property. Mr. Mayo continued that initially they are going to double the value of the barn, clean the
295 pond up, build a house up on the hill, and either get rid of or rebuild the house. Mr. Mayo stated that
296 he is in no way going to be diminishing the value of anybody's property and he is only going to improve
297 the appearance of a neighborhood, and his property is next to a junk yard, so he can understand Atty.
298 Dietel client's position but he thinks that they are missing the big picture.

299 Atty. Dietel stated that the law is clear that each element has to be met and the burden of proving that
300 each element has been met. Atty. Dietel said that he has not heard from Mr. Mayo how there is a
301 hardship that requires a variance. A hardship that is unique to the features of the property. Atty. Dietel
302 continued that if that can't be met, by a matter of law, a Variance would be improper here and can't be
303 granted. Mr. Mayo asked for clarification if the hardship relates to the company or to the property.
304 Atty. Dietel said it is not to him to advise Mr. Mayo but hardship relates to uniqueness of the property.
305 Atty. Dietel stated that there is a case that went before NH Supreme Court that has standards in the
306 case which constitutes a hardship which has to be unique to the property.

307 Chairman Frothingham asked Mr. Mayo to go through the facts regarding his request and proposal,
308 number one being that the proposed use will not diminish the property value because. Mr. Mayo said
309 because as he mentioned, they are going to be rebuilding the property so as far as property value is
310 concerned, it is only going to increase and in fact, the preliminary budget numbers that he has done are
311 going to increase the overall value of the property by approximately three fold. Mr. Mayo continued
312 that there is going to be almost no visible activity and it is going to look like a nice old farm. The trucks
313 will not be seen, the employees are going come and leave in the morning and in the evening. Chairman
314 Frothingham asked for justification number two and Mr. Mayo asked for clarification as he does not
315 have a copy of his application.

316 Mr. Mayo said that granting a Variance will not be contrary to public interest because Brook Road Farms
317 will restore the outward appearance to a like new farm look; any operations will be safe, quiet and non-
318 invasive to the neighborhood; other than a meeting place there will be little to no daily traffic. Mr.
319 Mayo continued that denial of a Variance will result in a necessary hardship per the following: it was an
320 operating business for decades, whether it was zoned for it or not; the property abuts a recycling facility
321 / junk yard; it will not cause any hardship to the property. Mr. Mayo said that not getting the Variance is
322 going to cause hardship to all his friends and family as they have all invested everything into business.

323 Chairman Frothingham stated that obviously when he applied for the Variance at the previous location
324 there were no problems that the Board was made aware of and asked the previous abutter to comment.
325 Kay Yagley stated that Mr. Mayo says exactly what he says he is going to do. His employees come in the
326 morning, park and get instructions and leave; there wasn't anybody there during the day; they never
327 parked a car where it shouldn't have been; there were never any extra vehicles; the trailers were parked
328 where he said he would and most of the time they were on the job sites and not in the yard. Ms. Yagley
329 said that the only traffic was the employees showing up for work, getting instructions, and leaving which
330 was about fifteen to twenty minutes in the morning and they didn't always return at the same times
331 after jobs were finished. Ms. Yagley continued that Mr. Mayo explained to them what he was going to
332 do and he did exactly that.

333 Mr. Schneider said that last month there was a very similar case and he voted in opposition to the case
334 and was the only vote against it. He did that because the property is right in the middle of the Route 11
335 corridor which is zoned Rural Residential and he felt that the voters of Sunapee, who approve the
336 Zoning laws, should have the right to say what the use is for the Route 11 corridor and they were
337 essentially rezoning a part of the corridor. Mr. Schneider stated that he does not have the same

338 problem with this property as it is literally on the edge of Town and he does not feel that an approval
339 would threaten the integrity of the Zone, especially as it is next to a junk yard. Mr. Platt added that
340 there is also an auto body shop down the road that is in Sunapee. Mr. Platt said that he doesn't think it
341 would be any change in the neighborhood. Chairman Frothingham said that the applicants will pay
342 more in taxes and improve the operation.

343 Mr. Landry said that he spoke at length with Michael Marquise in regards to contractor's yards and he
344 said that he is going to submit to the Planning Board for next year's Town Warrant to have a Contractor
345 Yard One and Two. One will be an allowed use in Rural Residential and Two will be an allowed use by
346 Special Exception. This will eliminate Variance applications unless it is for something unusual. Mr.
347 Landry said that this should not have any bearing as to whether the application is approved or denied
348 but it is coming down the road.

349 Mr. Simpson asked and Mr. Landry confirmed that if Brook Road Farm, LLC is sold they can continue
350 running the business there. Mr. Landry clarified that the approval goes with the property, but if it is
351 abandoned and not run as a business similar to Weathercheck for two years, the approval is gone.

352 Mr. Schneider asked how the Board can address the issue regarding not approving the Variance for all of
353 the property. Mr. Landry said the Board can put it as a condition. Mr. Platt suggested a 400 x 400' block
354 which is roughly four acres. The condition can be added to the drawing and initialed by the Chair.

355 Chairman Frothingham asked Mr. Mayo to continue with the Variance conditions. Mr. Mayo said that
356 except for the Zoning Ordinance, there is no restricted use on the property. Mr. Mayo continued that
357 there will be no physical or audible disruptions to the immediate area and that he has already
358 mentioned how many local families his business supports. Mr. Mayo said that the use is not contrary to
359 the spirit of the Ordinance because the Ordinance permits the applicant / land owner the right to apply
360 for a Variance of property use.

361 Mr. Mayo asked if he should consider having his lawyer present for the Planning Board meeting. Mr.
362 Landry explained that if the Zoning Board approves the application and it goes to the Planning Board,
363 they can only review it in regards to hours of operation, signage and so forth. If this Board decides to
364 limit the use in certain areas or something, the Planning Board has to go along with that. This Board will
365 not discuss hours of operation, lights, signage, etc.

366 Chairman Frothingham asked if Mr. Mayo was satisfied with the 400' x 400' section as added to the
367 plan. Mr. Mayo said that he was satisfied with the section and asked if it would affect his Current Use.
368 Mr. Landry said that they don't know, the only person to answer that is the Assessor's. Mr. Platt said
369 that he didn't think a Zoning change would affect Current Use.

370 Mr. Platt asked about the little strip between this property and the Town line. Mr. Mayo said that Mr.
371 Robillard does own a piece of land in Sunapee.

372 Atty. Dietel said that this is a commercial use which is not a permitted use within the district. Atty.
373 Dietel continued that there is a substantial number of employees, there will be substantial intensity that

374 is going to be on the ground. Effectively if the Board were to approve the Variance they would be saying
375 that this commercial use is appropriate in a Rural Residential District where it is not otherwise
376 permitted. Atty. Dietel continued that it hasn't met burden under NH Law, the NH Supreme Court is
377 clear that the hardship test relates to the uniqueness to the property, you cannot bring an operation to
378 a property and claim that is a hardship. Additionally, the issue of diminution of property value, there
379 has been no showing that it will not result in diminution to the surrounding properties which are the
380 concern. Atty. Dietel stated that he understands that Mr. Mayo wants to run his business here, he
381 would like to Board to not lose sight of the fact that the other property owners in the area deserve to be
382 protected by the Zoning Ordinance. They purchased their property in this area with the understanding
383 of what the character and conditions in this area are and with the understanding of what the
384 protections the Zoning Ordinance afford them. Atty. Dietel continued that this is not a light decision for
385 the Board to enter into and is not a decision that he feels has had sufficient evidence put forward based
386 on the standards of the Ordinance and as interpreted by the State of NH.

387 Mr. Simpson asked Atty. Dietel if it was true that the legislature amended the requirements for
388 unnecessary hardship after Simplex. Atty. Dietel said that there have been changes but Simplex
389 adjusted what the unnecessary hardship test was and it pulled back a more restrictive standard but even
390 under the relaxed standard, it does not satisfy the hardship requirement. Atty. Dietel continued that
391 even under the new standard, there has to be some uniqueness to the property and there has been
392 nothing unique shown about this property that warrants a commercial use introduced into this area.
393 This is the fact and the law and the property interests of the abutting property owners need to be
394 respected.

395 Mr. Schneider stated that he did not see the document Mr. Mayo provided and asked how many
396 abutters signed. Mr. Mayo stated that it was all the people he could find, the people that actually lived
397 there. Mr. Mayo continued that if Atty. Dietel's clients had contacted him, he would have been glad to
398 meet with them and put their concerns to rest. Atty. Dietel stated that it is not their obligation to
399 contact him. It was clarified where HP Properties is located.

400 It was asked if the slaughterhouse was a commercial business. Mr. Landry explained that it has been
401 abandoned for two years.

402 Mr. Landry said that he knows about HP Properties and what is going on at the site and asked where
403 they stand in regards to the State and replacing the culverts and everything that is required of them.
404 Atty. Dietel stated that he does not represent them in that capacity, he represents them before the
405 Board tonight with this interest.

406 Chairman Frothingham read the definition of a contractor's yards that they are areas used by builders,
407 electricians, plumbers, excavators, roofers, yard maintenance, or other similar contracting service
408 establishments for the storage of materials and equipment, amended 03/09. Chairman Frothingham
409 said that it is in the Zoning Regulations to allow people in the Town to do business providing they go
410 through the proper channels and he thinks that is why Mr. Mayo is here.

411 Mr. Platt said that he thinks the existing conditions of the property do make it unique and though it has
412 been out of business for two years, it was essentially a commercial business and everything is in place, it
413 is going to be better than it is.

414 Mr. Platt made a motion to approve the Variance of Article IV, Section 4.10 to allow a contractor yard
415 for roofing company Weathercheck LLC at 110 Brook Road, Case 12-12, Parcel ID 0237-0029-0000 and
416 said Variance to be limited to a 400' x 400' area on the Southeast corner of the property abutting Brook
417 Road as shown on a Brook Road Farm Site Plan Review Map attached to this approval. Dick Katz
418 seconded the motion. The motion passed unanimously.

419 Mr. Simpson asked for clarification as it is his understanding that the Rules and Procedures permit
420 alternates to participate in discussions. Chairman Frothingham said that they can participate in a
421 discussion, they just can't vote.

422 **CASE 12-13: PARCEL ID: 0148-0024-0000: VARIANCE OF ARTICLE III, SECTION 3.40-C REDUCE**
423 **LAKEFRONT SETBACK FROM 50' TO 24' (AN IMPROVEMENT OF AN EXISTING CONDITION) TO**
424 **ACCOMMODATE A REPLACEMENT RESIDENTIAL STRUCTURE. JOSEPH & CAROL MORALDO. 8 HAMEL**
425 **RD.**

426 Joseph Moraldo, the owner of the property, presented the case. Mr. Moraldo explained that the plan is
427 to take down the old cottage, make it more conforming by straightening it out and moving it back which
428 increases the side setback and the lakefront setback as well as replacing six retaining walls with one
429 retaining wall. Mr. Moraldo continued that after extensive review by DES, they were approved 100%
430 without restrictions. They reviewed the septic system and the replacement of the retaining wall was
431 their suggestion. Mr. Moraldo explained how the lot has been sloping in to the Lake for a number of
432 years and their beach area is silt because of this. Mr. Moraldo continued that he has stopped that by
433 putting in a 6 x 6 over by the stairs last year which is already silted up. They want to replace that and
434 put in one 42" high retaining wall as one continuous wall is better than six. Mr. Moraldo explained that
435 the plan the Board is reviewing is the same one that was submitted to the State. The only thing he is not
436 sure that the Board has is the Water Management Plan which incorporates two dry wells in front of the
437 property. Mr. Moraldo continued that on the Plan you will also see a double (two) silt fence
438 surrounding the property. There was a question regarding the double silt fence which Mr. Moraldo **tried**
439 to explain.

440 Mr. Moraldo presented new packets of information to the Board with pictures of the property as well a
441 copy of the map the State has. Mr. Moraldo explained that what the Board was seeing in the packet is
442 proof that the house is of questionable construction as the left corner of the house sits on two stones,
443 the front part is a poured foundation with an addition over an addition and it has no footings. Mr.
444 Moraldo continued that advice from contractors is that it is better to do a complete tear down and pour
445 a new foundation and build up. Mr. Moraldo said that he is looking for a two bedroom home as the
446 septic system which was rebuilt in 1999 is well equipped for it. Mr. Moraldo explained that the septic
447 system is on the road side of the house.

448 Mr. Moraldo explained that the lakefront setback would increase from 23' to 24' and the side setbacks
449 would increase as well. Mr. Simpson asked if this application falls under conversion within a 50' setback.

450 Chairman Frothingham asked about the parking on the site. Mr. Moraldo explained on the map where it
451 says "Tract 2" is where they park. Mr. Moraldo continued that there are two Right of Ways: one that is
452 the paved driveway and one to the left. There is an unpaved area where they park.

453 Mr. Platt asked if this would be a two story structure. Mr. Moraldo answered that this is going to be a
454 two story structure, 30' x 30' and that it is currently a one-story and they have almost a full basement
455 now. Mr. Platt asked if two full stories would get into a problem with the height on the Lake. Mr.
456 Landry stated that he has already cautioned Mr. Moraldo that at the start of encroachment, it cannot
457 exceed 25', once he reaches the setback requirement it can be as high as 40'.

458 Chairman Frothingham asked if Mr. Moraldo was asking the Board to approve the footprint of 30' x 30'.
459 Mr. Moraldo said that he would like to square off the road side left corner. The 8' x 10' is open and he
460 would like to fill that in and square the property off. Mr. Landry explained that by squaring it off,
461 looking at the Lakefront side there is a 6' x 10' area which is technically already enclosed and then the 8'
462 x 10' on the backside which is open. Mr. Platt asked for clarification if the hatched areas on the map will
463 be the new footprint. Mr. Landry confirmed this and said that the 8' x 20' porch is proposed and is new.
464 Mr. Landry asked if this porch will meet the setback requirement on both sides. Mr. Moraldo said yes
465 and the reason is that they don't have an official design for that yet. Mr. Landry asked and it was
466 confirmed that the official request for a Variance is for the home itself. Mr. Moraldo briefly discussed
467 the porch and stated that it will not require a Variance, it will be within the setback requirements.

468 Mr. Larrow asked for clarification and it was confirmed that it is 23' to the current deck and it will be 24'
469 to the new deck. Mr. Simpson asked how tall the retaining wall will be and Mr. Moraldo replied it will
470 be 42".

471 Mr. Platt asked what the increase in square footage will be and Mr. Moraldo answered that it will be
472 increasing by 80 square feet. There was a brief discussion regarding this as well as Article 6.12 and
473 whether the applicant was getting a Variance for increasing the square footage of a non-conforming
474 structure. Mr. Landry said that he is basically doing that by coming to get the three Variances for the
475 Lakefront and side setbacks. Mr. Platt said that it seems that the 6' x 10' is an increase in living space
476 and the deck space has increased along the front. Mr. Moraldo said that the 6' x 10' is existing already.
477 Mr. Simpson stated that some of it is new. Mr. Platt asked for clarification of the drawing and Mr.
478 Moraldo explained that the 6' x 10' is an existing deck which is part of the footprint. Mr. Platt said that
479 it is not living space. Mr. Moraldo said that the State considers anything that is part of a footprint. Mr.
480 Platt agreed that they do for impervious surface area. Mr. Platt continued that he is not sure that if
481 someone came in and had a deck and wanted to put living space in it that the Board wouldn't have a
482 problem with that. Mr. Moraldo said that they want to square the house as it is more practical and it
483 keeps their costs down as it is easier to go square in construction. Mr. Moraldo continued that this will
484 square the house to 30' x 30' and increase the setbacks on all three sides. Mr. Simpson asked for further
485 clarification and Mr. Platt explained the drawing to him.

486 Mr. Larrow asked what the total square footage of the house will be and Mr. Moraldo answered that it
487 is under 1800 square feet and will probably be between 18800 and 1600 square feet, the current square
488 footage is about 780 because it is one floor with half of an attic that they don't consider living space.
489 Mr. Moraldo said that it will be no more than 1800 square feet. Mr. Larrow said that the first floor is
490 700 and the new first floor will be 900 which is an increase of 200 square feet on the first floor. Mr.
491 Larrow said that the first floor is 780 so it is an increase of 120. Mr. Platt asked and it was confirmed
492 that the upstairs will not be over 900. Mr. Landry asked and Mr. Moraldo answered that the reason for
493 the increase is that they are squaring off the structure and some of the area is already covered in deck.
494 Mr. Landry said that you can take and cover a deck with a living space without coming to the Board. Mr.
495 Simpson stated except if you are within 50' of the waterfront. Mr. Landry clarified that if there is a deck
496 that it already a footprint within the limits of the water, and it is going to be converted into a blowout
497 space to add to the structure, he does not come to the Board but if it is a new encroachment it has to
498 come to the Board.

499 Mr. Larrow asked and Mr. Landry explained the reason for the Variance as Mr. Moraldo is going to be
500 tearing down a structure and replacing it, even as the setback in increased, he still needs a Variance.
501 Mr. Larrow said that he thinks that the side setbacks are more important than the front setback.

502 Dick Katz made a motion to approve Case 12-13, Parcel ID 0148-0024-0000, Variance of Article III,
503 Section 3.40-C to reduce Lakefront setback from 50' to 24' (an improvement of an existing condition) to
504 accommodate a replacement residential structure, Joseph and Carol Moraldo, 8 Hamel Rd. which has
505 been approved subject to the conditions of the Department of Environmental Services Shoreland Impact
506 Permit 2012-00633. Daniel Schneider seconded the motion. The motion passed unanimously.

507 **CASE 12-14: PARCEL ID: 0148-0024-0000: VARIANCE OF ARTICLE III, SECTION 3.10 REDUCE SIDE**
508 **SETBACK FROM 15' TO 10' 2" (AN IMPROVEMENT OF AN EXISTING CONDITION) TO ACCOMMODATE A**
509 **REPLACEMENT RESIDENTIAL STRUCTURE. JOSEPH & CAROL MORALDO. 8 HAMEL RD.**

510 Joseph Moraldo presented the case. Mr. Moraldo stated that they are going to straighten out the house
511 which would increase it and make it more conforming. The increase on one side is from 9' to 10' 2" and
512 they would like to fill in the West side road side corner.

513 Chairman Frothingham asked why the applicant wants to go to 10' 2" and 10' 2" instead of going one
514 way or the other and then only needing to get one Variance. Mr. Moraldo said that he has two good
515 neighbors and didn't want to upset either of them so centering is safer and it works better for the little
516 piece of property they have. Mr. Landry stated that he has not received any negative emails.

517 Clayton Platt made a motion to approve the Variance of Article III, Section 3.10 to reduce the side
518 setback from 15' to 10' 2" (an improvement of an existing condition) to accommodate a replacement
519 residential structure at 8 Hamel Rd. Case 12-14, Parcel ID: 0148-0024-0000 as presented on the Plans
520 provided to the Board with the exception of the proposed 8' x 20' porch shown on the Plan and as
521 approved by the Department of Environmental Services Shoreland Impact Permit 2012-00633. Dick Katz
522 seconded the motion. Mr. Simpson asked why the DES permit effects the side setback as it only

523 addresses how far it is from the Lake. Mr. Landry replied that part of the side setback encroaches into
524 the 50' as well and they tie in together. The motion passed unanimously.

525 **CASE 12-15: PARCEL ID: 0148-0024-0000: VARIANCE OF ARTICLE III, SECTION 3.10 REDUCE SIDE**
526 **SETBACK FROM 15' TO 10' 2" (AN IMPROVEMENT OF AN EXISTING CONDITION) TO ACCOMMODATE A**
527 **REPLACEMENT RESIDENTIAL STRUCTURE. JOSEPH & CAROL MORALDO. 8 HAMEL RD.**

528 Dick Katz made a motion to approve the Variance of Article III, Section 3.10 to reduce side setback from
529 15' to 10' 2" (an improvement of and existing condition) to accommodate a replacement residential
530 structure, 8 Hamel Rd., Case 12-15, Parcel ID: 0148-0024-0000 subject to the Shoreline Improvement
531 Permit 2012-00633. Daniel Schneider seconded the motion. Mr. Platt said that the porch concerns him.
532 Mr. Schneider said that it is within the 15'. Mr. Moraldo explained that the porch is within the setbacks
533 and to get to under 30% impervious he had to shrink it down, it was an arbitrary number that worked.
534 Mr. Landry said that it would have to be in the building permit and Mr. Platt said that the exclusion was
535 on his motion. Mr. Schneider asked that unless the porch is wider than the house, how is that an issue.
536 Mr. Platt said that if Mr. Moraldo wants to build a porch and it is going to be within 15' of the property
537 line it doesn't need a Variance and feels it should be in the motion. Dick Katz made an amended motion
538 to approve Case 12-15, Parcel ID: 0148-0024-0000, Variance of Article III, Section 3.10 reduce side
539 setback from 15' to 10' 2" (an improvement of and existing condition) to accommodate a replacement
540 residential structure, 8 Hamel Rd., excluding the 8' x 20' as described on the submitted drawing and
541 subject to the Shoreline Impact Permit 2012-00633. Clayton Platt seconded the motion. The motion
542 passed unanimously.

543 There was a brief discussion regarding the inclusion of the DES Permit in the approval. Mr. Simpson said
544 that he doesn't believe that they should be enforcing the State Permit and Mr. Landry replied that they
545 he does not enforce and the Town is not liable for enforcing the conditions but they can.

546 Changes to the minutes from the May 22, 2012 meeting:

547 On Line 4 and 5, remove Bill Larrow from the list of Board members as he was not able to be an
548 Alternate. On Line 21, change the word "word" to "words". On Line 22, change "permit" to "permits".
549 Line 33, change "value" to "merit". On Line 36, change "the location" to "that location". Line 39, should
550 read "...saw this from the..." Line 56, should read "...no longer qualifies as a home occupation..." Line 58
551 should read "...possible pollutants getting into the Town's water supply..." Line 66 should read "...Mr.
552 and Mrs. Larrow said at the last meeting..." Line 96 should read "...Ms. Davis received the letter..." On
553 Line 100, change "went" to "came". On Line 120, change "three" to "there". On Line 170, change
554 "though" to "thought" and change "of bad publicity" to "the bad publicity". On Line 172, remove the
555 last word "on". Jason Hickcocks is spelled incorrectly; change "Hickcocks" to "Hickox" throughout the
556 minutes (Line 184, twice on 187, Line 200, Line 268). Line 186, should read "...the Town had on the
557 business." On Line 193 change "testimony" to "exhibits". Change Line 201 to read "...came in and..."
558 On Line 210, change "terms" to "times" and change "inform" to "informed" and it should read
559 "...process he informed...". On Line 215, change "cards" to "cars". On Line 218, change "junk care" to
560 "junk car". Line 234, change to read "...lawful use and if it was..." Line 251, change to read "...would be

561 restrictions..." Line 265 change to read "...overturned by the Supreme Court..." On Line Change
562 "incompliance" to "in compliance". Line 276 should read "...appeal includes looking at..." Line 277
563 should read "...and determine whether it is legally deficient or whether the substance is accurate. He
564 believes..." Line 311 should read "...has five requirements..." Line 369 should read "...saying that we
565 have to..." Line 384 should read "...wholesale" was in the..." Line 397 should read "Mr. Schneider said
566 what bothers..." Line 417 should read "...things that have been said..." Line 422 should read "...as there
567 is no money..." Line 471 should read "...sales on the side of the form."

568 Aaron Simpson made a motion to approve the minutes with the noted corrections. Daniel Schneider
569 seconded the motion. The motion passed unanimously.

570 Changes to the minutes from the May 30, 2012 minutes.

571 On Line 48 change "there" to "their". Line 65 & 66 should read "...supplemental to the wholesale repair
572 business should also be approved." Line 89 should read "...second driveway and that..." Line 101 should
573 read "...people that support him that there..." Line 160 should read "...Mr. Simpson asked Atty.
574 Whitelaw to confirm..." On Line 174 change "Expansion" to "Exception". Line 181 should read "...said
575 that other questions..." Line 190 should read "Chairman Frothingham said that he knows, but there..."
576 Line 205-206 should read "Mr. Simpson clarified that the repair business developed over time but
577 sometime around 2003 or 2004 it really took off and became the majority of the business." On Line 239
578 change "order" to "business". Line 280 should read "...on site is not..." On Line 284 change "year" to
579 "years". Line 331 should read "...Town's permission; that..."

580 Daniel Schneider made a motion to approve the minutes from May 30, 2012 as amended. Dick Katz
581 seconded the motion. The motion passed unanimously.

582 Aaron Simpson made a motion to adjourn the meeting at 9:40 PM. Dick Katz seconded the motion. The
583 motion passed unanimously.

584 Respectfully submitted,

585 Melissa Pollari

586

587 _____

588 Edward Frothingham

_____ Aaron Simpson

589 _____

590 Dick Katz

_____ Clayton Platt

591 _____

592 Daniel Schneider