

**TOWN OF SUNAPEE  
ZONING BOARD OF ADJUSTMENT  
MINUTES  
NOVEMBER 2, 2023, 6:30 p.m.  
SUNAPEE TOWN MEETING ROOM**

**Members present in the meeting room:** Jeff Claus, Jim Lyons, Jamie Silverstein, Michael Jewczyn, Pierre Lessard, Chris Murphy

**Also present in the meeting room:** Michael Marquise, Town Planner; Allyson Traeger, Land Use and Assessing Coordinator; Craig Heino, Code Compliance

Chairman Claus called the meeting to order at 6:30 p.m. Chris Murphy was appointed to sit in for David Munn.

#### **NEW CASES**

**Case #VA 23-12, Parcel ID 0104-0057-0000** on behalf of Hugh & Sarah McCann of 46 Oak Ridge Road, located in a Residential District, requesting a **VARIANCE** from Article III, Section 3.10 to allow an increase of 48 square feet to replace the current 6' x 8' shed with an 8' x 12' shed within the 50-foot road setback. Reducing the 50-foot setback to 30 feet.

**DECISION:** Continued until December 7, 2023, meeting.

#### **DISCUSSION:**

Hugh McCann appeared before the Board to present his variance request. He complimented the staff at the Town Hall and thanked them for their help. He would like to replace the existing shed with a larger one to protect his tools and other equipment, as he has no garage. The previous owner received approval to construct the current shed in 2005.

The Board clarified this is an expansion within the setback, which makes a non-conforming situation even more non-conforming. They discussed the impact on the front and the side setbacks. The Board considered whether this should be a special exception as opposed to a variance request.

The applicant reviewed the criteria for the variance:

1. Granting the variance would not be contrary to the public interest because this is a small change in the shed footprint.
2. If the variance were granted, the spirit of the ordinance would be observed because the new shed would not impact any environmental concerns or neighbors' property.
3. Granting the variance would do substantial justice because he will be able to better store his garden tools. There is no other place suitable on the property to place the shed. He has no other options.
4. If the variance were granted, the value of the surrounding properties would not be diminished because the proposed shed will be larger but in the same general footprint.
5. Unnecessary Hardship

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- a. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because
  - i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because there are no other location options. There are limitations from the ordinance.
  - and -
  - ii. The proposed use is a reasonable one because the new shed is for garden tool storage. The new shed would increase the non-conforming area by 48 square feet.

The Board clarified the abutters were notified by letter.

Chair Claus asked for public comment; there was none.

There was an extended discussion as to what the hardship is that requires the placement of the shed in this location. Mr. McCann described the features of his property, including a generator and sewer systems, that limit possible locations. Not having a detailed plan for reference made it difficult for the Board to determine the hardships presented by this property.

**Mr. Lyons moved to continue Case #VA 23-12, Parcel ID 0104-0057-0000 put before the Board on November 2, 2023, to December 7, 2023, as the Board needs more information. Mr. Jewczyn seconded the motion. A vote was taken, all were in favor. The motion carried unanimously.**

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**Case #VA 23-13, Parcel ID 0118-0062-0000** on behalf of Gretchen Hall, 46 Burma Road, located in a Rural Residential District, requesting a **VARIANCE** from Article III, Section 3.10 & Article III, Section 3.40 to allow a vertical expansion of a pre-existing non-conforming structure and addition within the 50-foot waterbody setback.

**Case #VA 23-14, Parcel ID 0118-0062-0000** on behalf of Gretchen Hall, 46 Burma Road, located in a Rural Residential District, requesting a **VARIANCE** from Article III, Section 3.10 to allow a structure to be 6 feet from the side setback within the 15-foot side setback.

**DECISION:** The requests for variance for both of these cases were withdrawn.

**DISCUSSION:**

The Board noted these two cases will be discussed concurrently.

The Board clarified why requests to increase the horizontal and vertical expansion of the structure were included in one case number. Ms. Traeger noted that, per Mr. Marquise's recommendation, they were combined as one could not be denied without denying both. The Board discussed the ability to go up to the maximum height when a variance is requested in the side setback of a pre-existing non-conforming lot.

Bret Allard of Shaughnessy Allard appeared before the Board, representing the applicant. The lot is located on Perkins Pond. The current structure is a one-story cottage built in approximately 1940 and sits entirely within the 50-foot lakefront setback. The structure is pre-existing non-conforming relative to the 50-foot



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lakefront setback as well as the 15-foot southerly side setback. There are three outbuildings and a gazebo that is located almost on the property line. The proposal is to replace the one-story cottage with a two-story dwelling on the existing footprint and expand a building addition off the easterly side. Ms. Hall clarified that there is a walk-out basement and attic, but it is considered a one-story structure for zoning. Mr. Allard explained why this proposal does not qualify for a special exception.

The Board discussed the definition of hardship as it relates to this application. The hardship is that a variance is needed to reduce the non-conformity. The non-conformity of the new building from the side setback is less distance- and square footage-wise than the non-conformity of the existing gazebo.

The applicant reviewed the criteria for the variance:

- 1,2. Granting the variance would not be contrary to the public interest and the spirit of the ordinance would be observed because it will not alter the essential character of the neighborhood. The property will remain consistent with the single-family residential character of the area. There is no threat to public health and safety.
3. Granting the variance would do substantial justice because granting variances for requests that are appropriate for the area does substantial justice. There is no injury to the public if the variances are granted and no gain to the public if the variances are denied. This will be an improvement of an outdated cottage.
4. If the variance were granted, the value of the surrounding properties would not be diminished because the proposal is in harmony with the neighborhood. The property will be revitalized and aesthetically enhanced, and it is a reasonable use, which will not diminish the value of surrounding properties.
5. Unnecessary Hardship
  - a. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:
    - i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because the existing structure's location and orientation are close to a situation that would permit expansion with a special exception. So, it is far from a gross deviation from the terms of the zoning ordinance.  
- and -
    - ii. The proposed use is a reasonable one because the proposed single-family residential use of the property is permitted by right and permitted uses are per se reasonable.

Chair Claus asked for Board comment. The Board asked why the existing cottage could not be rotated, which would make it less non-conforming. Mr. Allard said they hope to use the existing foundation. The Board noted the basement is not under the structure and asked how building on top of a violation will impact the variance request.

Chair Claus asked for public comment.

Tracy Applebee-Cole, 48 Burma Road, reviewed changes made to this property, mainly by the previous owner, that impact her property, including fencing, shed foundations, a well and driveway located on her property, and the gazebo. She said it will be a hardship to look at a 33-foot structure located 6 feet from her property line. She said other large houses on Perkins Pond are on 125-foot-wide lots. This lot is 62 feet wide, so a large house on this lot will change the essential character of the neighborhood. The plan does not address privacy barriers for abutters. The plan notes that this property will be for residential use,

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but she said the owners have told neighbors they plan to rent out the house over the next ten years. She is concerned it will be used as a short-term rental (STR).

Suzanne Graves, 52 Burma Road, addressed the Board as the president of the Perkins Pond Protective Association. She said the foundations under the outbuildings were done by the current owner and to her knowledge, there was no shoreline protection involved. The large houses in the neighborhood are 50 feet from the pond. She said the basement provides living space, so the house is two stories. The Board clarified for tax purposes, this is a one-story structure above grade. This structure would be taller than the other houses in the neighborhood, so it would change the character of the neighborhood.

A resident asked about the required combined amount of permeable and impermeable surfaces. The Board noted there is no shoreline permit under consideration. If the variance request is granted, then permitting would be dealt with. Chair Claus noted that if an increase in impervious surface was involved, a variance would be needed. But if the amount remains even or is reduced, no variance is needed.

In rebuttal, Mr. Allard said they have not discussed this property being used as an STR. He noted that they could build a new 40-foot building, which would be more zoning-compliant, but they are not doing this. He said this is a good balance between the rights of the neighbors and the rights of the property owner.

Mr. Royce, 35 North Shore Road, said that per Mr. Allard's statement that they could do something else within the building envelope without requesting a variance, there is no hardship. Mr. Allard responded this is legally not a test for hardship now, although it was in the past.

Ms. Silverstein expressed concern over the encroachment in the side setback, as there is a building envelope that could be utilized behind the cottage without the need for a variance. She did not see special conditions of the property that warrant building the new structure 6 feet from the side setback. Mr. Allard said the current encroachment of the gazebo is 1 foot; they are proposing to reduce the encroachment to 6 feet, with the new structure. Chair Claus noted a temporary structure is not equal. The Board discussed the difference between pre-existing non-conforming structures that existed prior to the adoption of the ordinance and structures that have been placed illegally.

Mr. Murphy noted that the spirit of the ordinance with respect to the side setback is to provide a buffer, especially in a neighborhood of small lots. He questioned if the spirit of the ordinance would be met by allowing this variance.

Mr. Allard asked for a continuance to address the concerns expressed at this meeting and then return with a revised plan. The Board discussed if it is in their purview to grant a continuance once a case has been heard. After an extended discussion, the Board agreed it would be cleaner for the applicant to withdraw the application and submit a new one, instead of requesting a continuance.

The requests for variance for both of these cases were withdrawn.

The meeting paused at 8:44 p.m.

The meeting resumed at 8:50 p.m.

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**Case #VA 23-15, Parcel ID 0104-0006-0000** on behalf of Susan Kent, 1008 Main Street, Georges Mills, located in the Village Commercial District, requesting a **VARIANCE** from Article III, Section 3.40 to allow a



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parking area to be established within the 50-foot waterbody setback, reducing the 50-foot setback to 29 feet.

**DECISION:** The variance request was denied.

### **DISCUSSION:**

Susan Kent, 1008 Main Street, appeared before the Board. She would like to install a 12 x 12 pad for parking and to manage stormwater runoff from the road that is eroding the front yard. She also would like to replace the existing steps on the side of the house, but the Board said a variance is not needed for this.

The Board clarified the definition of waterbody in the ordinance and the requirements that need to be met. They discussed widening the driveway instead of installing a pad, which would not require a variance. They also discussed the stormwater runoff and erosion problems.

The applicant reviewed the criteria for the variance:

1. Granting the variance would not be contrary to the public interest because it would improve the property.
2. If the variance were granted, the spirit of the ordinance would be observed because the parking pad will be 30 to 50 feet from the body of water and the integrity will be enhanced.
3. Granting the variance would do substantial justice because the asphalt pad should help manage stormwater runoff, prevent chronic erosion of lawn, and provide improved property appearance.
4. If the variance were granted, the value of the surrounding properties would not be diminished because the variance would allow for property improvement, thus enhancing the values of surrounding properties.
5. Unnecessary Hardship
  - b. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because
    - i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because the front yard with chronic erosion is an eyesore.  
- and -
    - ii. The proposed use is a reasonable one because it would improve the property and better manage/avoid future deterioration.

Chair Claus asked for public comment.

Muriel Bergeron, 1007 Main Street, asked to withdraw her letter asking for the request to be denied. She did not understand where the pad would be located. She reiterated there is an erosion problem on the property that needs to be addressed by a professional and expressed her support of this request.

The Board agreed that professional advice is needed to address the erosion issue and explained why parking areas are not permitted near waterways.

Ms. Silverstein read a letter from Road Agent Michael Martell expressing his concerns about this property in regards to snow removal and the right of way. He does not support approving a driveway permit.

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The applicant explained there are two residential units on the property and she would like to have separate parking areas for each. She wished the road agent had come to her with his concerns about snow removal. She pointed out this has been used as a parking area for many years.

Chair Claus closed the public comment and the Board began deliberation.

The Board agreed that a paved parking area is contrary to the general welfare of the Town, as it contributes to polluting the stream. It also interferes with navigation of the snowplow, so presents a safety issue. They felt it does satisfy the hardship criteria, as two parking areas are needed for the separate units and there are no other locations to put this parking. They emphasized the site needs to be engineered to address the erosion issues.

**Ms. Silverstein moved to deny Case #VA 23-15, Parcel ID 0104-0006-0000 on behalf of Susan Kent, 1008 Main Street, Georges Mills, located in the Village Commercial District, requesting a VARIANCE from Article III, Section 3.40 to allow a parking area to be established within the 50-foot waterbody setback, reducing the 50-foot setback to 29 feet. Mr. Jewczyn seconded the motion. A vote was taken, all were in favor. The motion carried unanimously.**

### CONTINUED CASES

Mr. Lyons left the meeting, so Chair Claus appointed Mr. Lessard as a voting member.

**Case #VA 23-15, Parcel ID 0104-0006-0000 on behalf of Sunapee Harbor Riverway Quack Shack at 72 Main Street, located in the Village Commercial District, requesting a VARIANCE from Article III, Section 3.40(c) to allow a 9.5' x 9.5' panelized freezer to be placed within the 50-foot shoreline setback of Sugar River.**

**DECISION:** Continued until December 7, 2023.

### DISCUSSION:

John Quackenbos, owner of the Quack Shack, Susan Mills, manager of the Sunapee Harbor Riverway, and Steve McGrath, Board member of the Sunapee Harbor Riverway, appeared before the Board. Mr. Quackenbos presented information from the Town water and sewer department showing a sewer line that runs through the lawn area where the Board suggested the freezer could be located. It also notes this location would interfere with the 20-foot right-of-way needed to access the dosing chamber. The Board agreed this information is pertinent to the hardship requirement.

Ms. Mills reviewed correspondence with the DES regarding whether a permit is required to place the freezer on the deck. Mr. Jewczyn noted local regulations override state regulations. A discussion followed to clarify the correspondence with DES that no permit is needed to place the freezer on the deck; however, the structure would need to be 20 feet from the setback. There was a discussion about whether the DES was defining the freezer as a structure and the Board decided clarification is needed.

The Board discussed other locations for the freezer that are 20 feet from the setback. They also agreed more information is needed as to whether there is an easement in the deed regarding the 20-foot right-of-way.



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Chair Claus called for public comment.

Mr. Royce, 5 Garnet Street, said if the structure moves, this will be a new application, which will require new fees and new postings. He said the abutters have the right to see the new plan.

**Ms. Silverstein moved to continue Case #VA 23-15, Parcel ID 0104-0006-0000 on behalf of the Sunapee Harbor Riverway Quack Shack at 72 Main Street, located in the Village Commercial District, requesting a VARIANCE from Article III, Section 3.40(c) to allow a 9.5' x 9.5' panelized freezer to be placed within the 50-foot shoreline setback of Sugar River until the December 7, 2023, meeting. Mr. Lessard seconded the motion. A vote was taken, all were in favor. The motion carried unanimously.**

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**Case #VA 23-11, Parcel ID 0237-0025-0000 on behalf of Robin Abendroth, 63 B Natures Way, located in a Rural Residential District, requesting a VARIANCE from Article IV, Section 4.90 to allow an Accessory Dwelling Unit in a two-family dwelling.**

**DECISION:** The request was approved.

**DISCUSSION:**

Robin Abendroth appeared before the Board. The Board reported that per counsel, they can legally issue a variance for a use that is approved by special exception. Ms. Traeger clarified the conditions involved for the Board to issue the variance in this situation.

Mr. Jewczyn noted an abutter brought up issues at the previous meeting regarding changes made to the condominium by the applicant that were not allowed. Mr. Jewczyn questioned the credibility of the information being presented to the Board. Ms. Abendroth said there is no evidence she transgressed, and she had done everything above board. Ms. Traeger clarified there was a complaint, the compliance officer discovered there was a misunderstanding of the ordinance regarding interior renovations, and they are working to address this. She said this variance request is a direct resolution to bring the applicant into compliance. Compliance Officer Heino verified that the applicant has done everything requested of her.

The Board discussed whether ADUs impact the occupancy requirements of a development. Mr. Marquise said an ADU does not affect the density of the development.

The Board reviewed the criteria of the ADU special exception that must be read into the variance.

Chair Claus asked for public comment; there was none.

Chair Claus closed public comment and the Board began deliberation.

The Board agreed this request meets the criteria of a special exception. They agreed the variance request should be approved, as it is not contrary to public interest. The hardship is that while the applicant owns a single-family unit, there is a common wall and shared roof. They agreed justice would be done by granting the variance to allow the accessory dwelling.

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The Board discussed the concern that this will set a precedent that all multi-family dwellings can have ADUs, as long as it meets the criteria. Ms. Traeger reminded the Board that counsel said this would be handled on a case-by-case basis, so is not setting a precedent.

Ms. Silverstein moved to approve Case #VA 23-11, Parcel ID 0237-0025-0000 on behalf of Robin Abendroth, 63B Natures Way, located in a Rural Residential District, requesting a VARIANCE from Article IV, Section 4.90 to allow an Accessory Dwelling Unit in a two-family dwelling, subject to the following conditions: the ADU will not be used as a short-term rental; owner occupancy is required; the ADU cannot be larger than 1,000 square feet, must be attached with heated space to the single-family dwelling, and must have a connecting door between the units; setback dimensions for the ADU must meet the same guidelines as a single-family unit; the ADU addition must comply with existing lot coverage standards as specified elsewhere in the ordinance; there shall be no more than one bedroom in the ADU; and proper off-street parking must be provided per Section 3.4(e) of this ordinance, recognizing that this approval will negate the need for a special exception. The Board recognizes that owing to the conditions of the land, the property has a shared roof and wall; therefore, that is a hardship, which required the variance. The variance is not contrary to public interest and the spirit of the ordinance is observed by the fact that there is a permitted use for ADUs and it meets 4.9(c)-1. Mr. Lessard seconded the motion. A vote was taken, all were in favor. The motion carried unanimously.

### REVIEW AND ACCEPTANCE OF MINUTES

The September and October minutes will be approved at the next meeting.

### ADJOURNMENT

Ms. Silverstein made a motion to adjourn. Chair Claus seconded the motion. A vote was taken, all were in favor. The motion carried unanimously.

Meeting adjourned at 10:49 p.m.

Respectfully submitted,

Beth Hangeli  
Recording Secretary

Jeff Claus, Chairman

Michael Jewczyn

David Andrews

Chris Murphy

Jamie Silverstein

Jim Lyons

David Munn

Pierre Lessard