

1 **TOWN OF SUNAPEE**

2 **PLANNING BOARD**

3 **DECEMBER 13, 2018**

4 **PRESENT:** Peter White, Chair; Donna Davis Larrow; Joseph Butler; Randy Clark; Jeffrey Claus, Alternate;  
5 Michael Marquise, Planner

6 **ABSENT:** Richard Osborne; Joseph Furlong; Michael Jewczyn, Alternate; Suzanne Gottling, Ex-Officio  
7 Member

8 Chairman White appointed Mr. Claus to sit in for Vice Chair Osborne as a voting member for the  
9 meeting.

10 **See attached sign in sheet**

11 Chairman White called the meeting to order at 7:00 pm.

12 **2019 ZONING AMENDMENTS PUBLIC HEARING**

13 Chairman White asked and Mr. Marquise said that this is the only public hearing regarding the Zoning  
14 Amendments unless changes to Amendments are made that change the intent. There was further  
15 discussion regarding this matter.

16 **Amendment #1**

17 Amend Article III, Section 3.50 (f) by clarifying that the exception allows lateral expansions only (i.e. no  
18 closer to the road) and that any expansion must be at least 10' from the Right-of-Way.

19 The full text of Section 3.50(f) as amended will be as follows:

20 If a pre-existing primary structure is non-conforming due to inadequate front setback, the ZBA may  
21 allow additions within the front setback provided that the following conditions are met:

22 1) the addition does not further decrease the front setback

23 2) the addition is at least 10' from the right-of-way at all points

24 3) the addition is no higher than the predominant ridge line of the existing building.

25 Chairman White asked and there were no comments or questions from the Board or the audience  
26 regarding the proposed Amendment.

27 Mr. Clark made a motion to approve the Amendment to the Town ballot. Mrs. Larrow seconded the  
28 motion. The motion passed unanimously.

29 **Amendment #2**

30 Amend Article III, Section 3.50 (i) by deleting provision (1) of the section to remove reference to  
31 horizontal expansion.

32 The full text of Section 3.50 (i) as amended will be as follows:

33 The ZBA may allow a pre-existing non-conforming structure to undergo vertical expansion or be  
34 replaced with a higher structure provided that:

35 1) deleted

36 2) the existing structure is a house (living space only), garage or commercial building;

37 3) the existing structure is less than 24' in height;

38 4) the vertical expansion will be no more than 10' higher than the pre-existing structure,

39 5) any roof changes are within the height requirements set forth in this Ordinance;

40 6) in the judgment of the ZBA, no abutter will be adversely affected by the enlargement (loss of view  
41 will not be considered an adverse impact);

42 7) all state and local permits are acquired to insure compliance with Article VII of the Ordinance;

43 8) such enlargement or replacement, in the judgment of the ZBA, is consistent with the intent of the  
44 Ordinance.

45 Chairman White asked and there were no comments or questions from the Board or the audience  
46 regarding the proposed Amendment.

47 Mrs. Larrow made a motion to pass Amendment #2, as printed, to the ballot. Mr. Butler seconded the  
48 motion. The motion passed unanimously.

49 **Amendment #3**

50 Amend Article VI, Section 6.12 to indicate that non-conforming structures may be replaced in a smaller  
51 envelope.

52 The full text of Section 6.12 as amended will be as follows:

53 A Pre-Existing, Non-Conforming Structure existing at the time of the passage of this Ordinance (March  
54 18, 1987) may be replaced in the same or smaller envelope by a new structure having the same purpose  
55 and use provided that the non-conformity to this Ordinance is not increased thereby. The  
56 reconstruction of any other non-conforming structure requires a Variance or Special Exception of the  
57 Zoning Board of Adjustment.

58 The replacement of a non-conforming structure with a structure that increases the nonconformity to  
59 this Ordinance, either vertically or horizontally, shall only be permitted by Variance or, if permitted  
60 hereby, by Special Exception.

61 Mr. Claus said that "special" is spelled wrong in the first paragraph of the proposed Amendment.

62 Mr. Clark made a motion to accept Amendment #3 and add it to the ballot with the amended language.  
63 Mr. Butler seconded the motion. The motion passed unanimously.

64 **Amendment #4**

65 Amend Article VIII, Section 8.21 to better define which construction activities require a Certificate of  
66 Zoning Compliance.

67 The full text of Section 8.21 as amended will be as follows:

68 8.21 Certificate Required if:

69 (a) a new structure is to be constructed or installed;

70 (b) an existing structure is to undergo expansion;

71 (c) additional dwelling units are to be added to the existing structure;

72 (d) any municipal structure is to be constructed or undergo expansion;

73 (e) a bedroom or kitchen is to be added to an existing structure;

74 (f) a structure is to be demolished;

75 (g) a Site Plan Review Approval has been granted by the Planning Board

76 (h) interior renovations in excess of \$25,000 not included in (a)-(g) above (no fee will be required for  
77 a permit under this subsection)

78 Daniel Schneider asked why a CZC is required for a bedroom or a kitchen but not for a bathroom. Mr.  
79 Marquise explained that a bedroom may trigger septic or sewer requirements and a kitchen may trigger  
80 dwelling unit requirements. The Board felt those things were directly related to Zoning but a bathroom  
81 doesn't trigger anything with Zoning. Mr. Schneider asked if there should be a definition of "bedroom"  
82 or "kitchen" in the Ordinance. Mr. Marquise said that many states have tried to adopt a definition of  
83 "bedroom" and have failed. Bedrooms relate to septic systems, which relates to the number of people  
84 using it. Typically, the only way that the number of bedrooms is regulated is when someone tries to sell  
85 a property and the number of bedrooms is questioned. There have been many discussions on how to  
86 define a bedroom, however, there has not been a determination as to what is the best way.

87 Mr. Schneider asked about the purpose of Subsection (h). Chairman White said that the Board talked a  
88 lot about this subsection. He was opposed to it because he does not see how interior renovations have  
89 anything to do with Zoning. However, at the last Planning Board meeting, the Town Manager and Town  
90 Assessor explained that a CZC is the only way that the Town knows that there is a renovation going on  
91 that may have an impact on the tax assessments. Mr. Marquise said that by having no fee there is no  
92 figure being assessed on the work that is being done. Chairman White said that the Town does not have  
93 a building inspector so this is the only way to catch renovations.

94 Mr. Butler made a motion to approve Amendment #4 as is. Mrs. Larrow seconded the motion. The  
95 motion passed.

96 **Amendment #5**

97 Amend Article XI by adding a definition of Land Clearing which will include activities associated with  
98 forestry operations.

99 The full text of the definition of Land Clearing will be as follows:

100 Land Clearing – The removal of vegetation associated with forestry or agricultural operations. This  
101 includes only the removal of trees and vegetation but not stumping or other activities included in the  
102 definition of Land Disturbance.

103 Chairman White asked and there was were no comments or questions from the Board or the audience  
104 regarding the proposed Amendment.

105 Mrs. Larrow made a motion to move Amendment #5 to the ballot. Mr. Butler seconded the motion.  
106 The motion passed unanimously.

107 **Amendment #6**

108 Amend Article XI by adding a definition of Land Disturbance which will include activities related to  
109 excavation and earth moving.

110 The full text of the definition of Land Disturbance will be as follows:

111 Land Disturbance – Any activity which disturbs the ground surface. This includes but is not limited to  
112 excavation, grading, cuts/fills, grubbing, and other earth moving activities.

113 Chairman White asked and there was were no comments or questions from the Board or the audience  
114 regarding the proposed Amendment.

115 Mr. Claus made a motion to include Amendment #6 as is. Mr. Clark seconded the motion. The motion  
116 passed unanimously.

117 **Amendment #7**

118 Amend Article XI by adding a definition of Living Space that includes areas of a house used for gathering,  
119 eating, sleeping or hygiene.

120 The full text of the definition of Living Space will be as follows:

121 Living Space – The area of a structure that is used primarily for gathering, eating, sleeping, or hygiene. It  
122 includes enclosed porches but does not include decks.

123 Chairman White asked and there was were no comments or questions from the Board or the audience  
124 regarding the proposed Amendment.

125 Mr. Clark made a motion to approve the wording of Amendment #7 to go to the ballot. Mr. Butler  
126 seconded the motion. The motion passed unanimously.

127 **Amendment #8**

128 Amend Article XI by adding a definition of Primary Structure which will include structures such as homes,  
129 garages, commercial buildings, and institutional buildings.

130 The full text of the definition of Primary Structure will be as follows:

131 Primary Structure – A primary structure includes homes, garages, commercial buildings, and institutional  
132 buildings. It does not include sheds, decks, or similar structures.

133 Chairman White asked and there were no comments or questions from the Board or the audience  
134 regarding the proposed Amendment.

135 Mr. Butler made a motion to approve Amendment #8 as is. Mr. Claus seconded the motion. The motion  
136 passed unanimously.

137 Mr. Butler asked and Mr. Marquise explained that the Amendments will now go to the Town Manager  
138 and Town Clerk to go on the ballot. They will be published in the Deliberative Booklet and the Town  
139 Report as written. Additionally, they cannot be altered between this public hearing and the Town vote  
140 in March.

141 **PARCEL ID: 0215-0013-0000: SUBDIVISION / LOT LINE ADJUSTMENT; THE PROJECT PROPOSES TO**  
142 **SUBDIVIDE A 3 +/- ACRE PORTION OFF THE EXISTING 14.5 +/- ACRE PARCEL 436 NORTH RD. BETSY J.**  
143 **WIGGINS REVOC TRUST OF 1997.**

144 Mr. Marquise said that the application was filed in advance, fees were paid, notices were posted, and  
145 abutters were notified. The application falls under Section 6.04 of the Subdivision Regulations and is a  
146 minor subdivision so it is eligible for waivers under Section 6.05 (b). The eligible waivers for this  
147 application are the existing and proposed utility lines and the plans for storm water drainage. Mr.  
148 Marquise said that part of the final approval has to include State septic approval from NH DES. Mr.  
149 Eckman said that they would appreciate a conditional approval; if the Board approves the application  
150 then they will file with the State.

151 Mrs. Larrow made a motion to accept the application as complete for Parcel ID: 0215-0013-0000 for a  
152 subdivision for Betsy Wiggins Revoc Trust of 1997 with the waiver of the utilities and plans for storm  
153 water drainage. Mr. Clark seconded the motion. The motion passed unanimously.

154 David Eckman, surveyor, Betsy Wiggins, and Rebecca Hemingway presented the merits of the case.

155 Mr. Eckman explained that they are proposing a small subdivision of approximately 3 acres off the  
156 parent parcel. There is an existing access where they used to bring a tractor on to the property to mow  
157 the field which they will be using as the entrance. They have included the Town required setbacks on the  
158 plan as well as the required test pit areas for the State as well as the 75 ft well radius and the 25 ft  
159 setback from the cemetery for the septic system that is required by the State.

160 Mr. Marquise asked if Mr. Eckman has spoken with the Highway Director, Scott Hazelton, regarding the  
161 proposed driveway location. Mr. Eckman said that they did not because it has already been used as an  
162 access for mowing and they assumed it would be the most logical spot. Mr. Marquise said that they  
163 discussed the driveway at the Peer Review meeting and Mr. Hazelton was going to check on it but has

164 not gotten back to him yet; a motion for an approval of the proposal should include a condition that the  
165 Highway Director approve the driveway location. There was further discussion regarding this matter.

166 Mr. Marquise asked if there are any issues for private wells being near a cemetery in New Hampshire.  
167 Mr. Eckman said that he does not know any issues for wells; they only know about the State's  
168 requirement for a 25 ft setback off the boundary for the septic system. Mr. Claus asked and it was  
169 explained that this lot abuts the cemetery on North Rd.

170 Mr. Butler asked and Mr. Eckman confirmed that there is an existing house on the parent lot. Mr.  
171 Eckman explained on the plan where the house is located. Mr. Butler asked and Mr. Eckman explained  
172 the locations of the existing driveway and proposed driveway for the properties.

173 Mr. Eckman said that if the application is approved he will apply to the State for the DES septic system  
174 permit and email Mr. Hazelton regarding the driveway location.

175 Mrs. Larrow made a motion to approve the subdivision for Parcel ID: 0215-0013-0000 for Betsy J.  
176 Wiggins Revoc Trust of 1997 conditioned upon the requirement of receiving the State approval from DES  
177 for the septic system and conversation with the Highway Director regarding the driveway placement.  
178 Mr. Claus seconded the motion. The motion passed unanimously.

179 Mr. Marquise said that the Town will file the Mylar with the Sullivan County Registry of Deeds after the  
180 Board signs it and there will be two fees associated with it. The Mylar will be signed after the conditions  
181 are met.

#### 182 **CONSULTATION – JAMES WOODLEY – DISCUSSION FOR CLASS VI, RSA 674:41**

183 Mr. Marquise said that this subdivision was approved by the Board and there is frontage on Sunny Lane  
184 so the driveway was proposed to be off Sunny Lane. The subdivision will stay the same but it has been  
185 requested that the driveway come off the Class VI road. This is allowed, but under RSA 674:41, the  
186 Planning Board must comment that they are OK with the proposal. Then the Board of Selectmen have  
187 to issue a CZC off the Class VI road subject to a list of waivers that the home owner has to agree to  
188 saying that the Town is not liable for maintenance of the road. Additionally, the Board may want to ask  
189 that Mr. Woodley to amend his subdivision to show that is where the driveway is coming in.

190 Mr. Woodley said that the Town has a standard waiver form for driveways off of Class VI roads. Mr.  
191 Marquise said that this form is recorded at the Registry of Deeds. Mr. Woodley said that it reduces the  
192 Town's liability.

193 Chairman White asked and Mr. Woodley confirmed that the access to the property will be off Cary Farm  
194 Rd. Mr. Woodley explained that Cary Farm Rd is Old Route 11 and the driveway will be approximately  
195 250 ft up the road. The access is flatter, and it will be easier to get to the house site than it would be  
196 coming off Sunny Lane.

197 Mrs. Larrow asked and Mr. Woodley explained that under the waiver that he will have to sign he would  
198 maintain that portion of Cary Farm Rd. Mrs. Larrow asked and Mr. Woodley explained that the abutter  
199 maintains Cary Farm Rd up to his driveway and then he will maintain the road beyond that.

200 Mr. Marquise asked and Mr. Woodley explained the proposed location of the driveway on the plan.  
201 Mrs. Larrow asked and Mr. Woodley said that it is approximately 260 ft further down Cary Farm Rd. Mr.  
202 Butler asked and Mr. Woodley explained that Cary Farm Rd (Old Route 11) is wide enough for fire trucks  
203 to easily go down the road.

204 Chairman White asked and Mr. Woodley said that he does not think that the Town maintains any part of  
205 Cary Farm Rd. Chairman White asked and Mr. Marquise explained that the abutters signed a waiver to  
206 build their house many years ago.

207 Mr. Butler asked and Mr. Woodley explained that when he originally did the subdivision he spoke with  
208 Mr. Hazelton who told him that he could not have the driveway off the Class VI road. Mr. Woodley said  
209 that he wanted to put the driveway on Sunny Lane closer to Route 11 but Mr. Hazelton wanted it further  
210 in from Route 11 and it was close to the other lot and would need to go up a hill to get to the house site.  
211 Mr. Butler asked and Mr. Woodley said that he thinks that the access off Old Route 11 made Mr.  
212 Hazelton nervous. Mr. Marquise said that the next step that Mr. Woodley will have to do is get the  
213 Board of Selectmen to sign the waiver and they will probably ask Mr. Hazelton for his opinion. Chairman  
214 White asked and Mr. Marquise said that he does not think that Mr. Hazelton is concerned about liability  
215 because he signed off on the plan. Chairman White said that this road is the best Class VI road to have a  
216 driveway off of it, it is an old paved road and probably has a good base.

217 Mr. Butler asked and Mr. Marquise explained that the Planning Board has to comment on the proposal  
218 to let the Board of Selectmen know if the Planning Board thinks that it is OK or not. It is then up to the  
219 Board of Selectmen to determine if they want to sign the waiver. If the Board of Selectmen sign the  
220 waiver then Mr. Woodley will need to return to the Board to update his subdivision plan.

221 Mr. Butler asked and Mr. Woodley said that just one other neighbor will share the road with his  
222 property.

223 Chairman White asked and the Board agreed that they think that the proposal is fine.

224 Mrs. Larrow made a motion on Tax Map 114 Lot 1, Sunny Lane, property of James and Elizabeth  
225 Woodley, that the Board comment to the Board of Selectmen that they have no objection to the  
226 driveway placement as presented off a Class VI road and subject to amending the subdivision to  
227 properly show the driveway per RSA 674-41. Mr. Butler seconded the motion. The motion passed  
228 unanimously.

229 **OTHER BUSINESS – STATEMENT OF PROPERTY USAGE – SUNAPEE HARBOR RIVERWAY – ANCHORAGE**  
230 **RESTAURANT**

231 Mr. Marquise said that he just received a Statement of Property Usage for the Anchorage. There are  
232 talks about doing some renovations and making it a year-round operation. The Board typically approves  
233 new seasonal operations as though they will be used as full year operations. However, this building's  
234 use has been grandfathered and he would suggest the Planning Board ask for a Site Plan Review as there  
235 are various things that might need to be discussed, such as snow removal, the dumpster location in the  
236 winter, etc. Chairman White asked and Mr. Marquise confirmed that the building would be used as it is  
237 currently being used, it would just be year round. Chairman White and Mr. Butler both said that they

238 think that a Site Plan Review is necessary to see what is proposed. Mr. Marquise said that a Site Plan  
239 Review could also answer questions that the Department Heads might have.

240 Mr. Clark asked and Mr. Marquise said that the restaurant has been there for a long as he can  
241 remember. Mr. Marquise said that he does not know if it was ever not seasonal but has been for more  
242 than 30 years. Chairman White asked and Mr. Marquise said that there has never been a Site Plan  
243 Review as the use is grandfathered.

244 There was a brief discussion regarding the proposed renovations for the building.

245 The Board determined that they would like to have a Site Plan Review.

## 246 **MISCELLANEOUS**

247 Chairman White shared copies of The Beacon, a booklet printed by the LSPA, with the Board.

248 Mr. Marquise said that starting in January the meetings packets will be in pdf format and uploaded to  
249 the website. The Board requested that the Town Office send an email to them when the packets have  
250 been uploaded and are ready for review.

251 Mr. Clark said that there will be two more Capital Improvement Program (CIP) meetings. He thinks that  
252 one will be to discuss the school and the other will be to wrap things up. Chairman White asked and Mr.  
253 Marquise confirmed that the CIP make recommendations directly to the Board of Selectmen for Capital  
254 Improvements. The Board continued discussing this matter.

255 Mr. Butler asked why the Town has been reluctant to hire a building inspector. Mrs. Larrow said that  
256 the Town has been reluctant to even have Zoning as there are still some people do not want  
257 government in their business. However, there is a fine line when a neighbor is doing something  
258 someone does not like. Mr. Marquise said that the practical answer is also that the position is difficult  
259 in a small town because it is part time and the salary and benefits are not as good as in a bigger area. The  
260 only way it might work is if Sunapee got together with other towns to hire someone. There was further  
261 discussion regarding this matter as well as about building codes.

262 There was a brief discussion regarding the Dunkin Donuts barrier between their parking lot and the Old  
263 Abbott Library.

## 264 **MINUTES**

265 Changes to the Planning Board minutes from October 10, 2018: Change Line 78 to read "...that the cost  
266 will be updated..." Change Line 201 to read "It allows development in those areas..." Change Line 304  
267 to read "Vice Chair Osborne asked if they remove..."

268 Mr. Clark made a motion to accept October's meeting minutes. Mr. Butler seconded the motion. The  
269 motion passed unanimously.

270 Changes to the Planning Board minutes from November 8, 2018: Change Line 233 to read "The BOS  
271 have the..." Change Line 257 to read "...with Zoning in the Zoning Ordinance..."

272 Mr. Claus made a motion to approve the minutes from November 8<sup>th</sup>. Mr. Butler seconded the motion.  
273 The motion passed unanimously.

274 Mr. Clark made a motion to adjourn the meeting at 8:16 pm. Mr. Butler seconded the motion. The  
275 motion passed unanimously.

276 Respectfully submitted,

277 Melissa Pollari

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284 Planning Board

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286 Peter White, Chairman

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288 Donna Davis Larrow

289 \_\_\_\_\_

290 Joseph Furlong

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292 Michael Jewczyn, Alternate

293 \_\_\_\_\_

294 Suzanne Gottling, ex-officio member

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Richard Osborne, Vice Chair

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Joseph Butler

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Randy Clark

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Jeffrey Claus, Alternate