

1 **TOWN OF SUNAPEE**

2 **PLANNING BOARD**

3 **JULY 8, 2021**

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

5 **MEMBERS PRESENT BY VIDEO:** Richard Osborne; Sue Gottling, Ex-Officio Member;

6 **MEMBERS PRESENT IN THE MEETING ROOM:** Peter White, Chair; Michael Jewczyn, Vice Chair; Jeffrey
7 Claus; Joe Butler; Randy Clark; Gregory Swick, Alternate Member; Michael Marquise, Planner

8 **ALSO PRESENT IN THE MEETING ROOM:** Carol Wallace; Deb Pasculano

9 **ALSO PRESENT BY VIDEO:** Aaron Simpson

10 The Board had issues with the microphone for the Zoom meeting.

11 **ZONING BOARD AMENDMENTS**

12 Mr. Marquise gave a brief outline of the Zoning Amendment process. Most Amendments come through
13 the process and are refined and voted on in a Planning Board public hearing to go the Town's Warrant to
14 be voted on by the public.

15 Mr. Claus had a presentation for the Board with his Zoning Ordinance questions and said that he is not
16 necessarily asking for Amendments, he wants to better understand the intent.

17 *3.40 (I) - There shall be no construction on slopes which exceed 25%, and have an elevation change of*
18 *more than 20'. Driveways, utilities, and stairways would be exempt from this requirement provided a*
19 *drainage and erosion control plan is prepared by a licensed professional engineer. (Adopted 3/9/2004)*

20 Mr. Claus spoke about his concerns with this Ordinance and gave an example from Newbury's Ordinance
21 as to how it could be clearer.

22 There was a discussion about the topography of Sunapee and building houses and having buildable lots
23 and if someone owns a lot if they are entitled to build on it. There was further discussion regarding the
24 Slope Ordinance and its intent and the way it has been interpreted and variances that may be requested
25 for this Ordinance and about not taking away development rights. The Board agreed to add this
26 Ordinance to the list to be discussed at future meetings.

27 *Definition (pg.53) – Dwelling Unit - One room, or rooms connected together, constituting a separate,*
28 *independent housekeeping establishment for owner occupancy, rental or lease, and physically separated*
29 *from any other rooms or dwelling units which may be in the same structure. For the purpose of this*
30 *definition, an independent housekeeping establishment includes the following minimum attributes:*
31 *space devoted to kitchen facilities for the storage, preparation and consumption of food (including*
32 *counters, cabinets, appliances, and a sink for washing dishes), space for one or more bedrooms for*
33 *sleeping, and a bathroom with a tub and/or shower. (A bar equipped with a bar-sink and an under-the-*
34 *counter refrigerator shall not constitute kitchen facilities.) (Amended 3/10/2020)*

There was a discussion regarding this Ordinance as the bar area allows for easy conversion to a dwelling unit and having multiple dwelling units on one lot and that these cannot be policed. There was a discussion about these units becoming Airbnb's and potentially adding language about renting these spaces. There was a discussion about Airbnb complaints. There was a discussion about not having a Building Inspector and the Board thinks that there should be one and about the Assessor's role in helping with Zoning violations as well as the Selectmen's.

3.50 (I) - The ZBA may allow a pre-existing non-conforming structure to undergo vertical expansion or be replaced with a higher structure provided that:

1) (Repealed 3/12/2019)

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

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

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

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

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

7) all state and local permits are acquired to insure compliance with Article VII of the Ordinance; 8) such enlargement or replacement, in the judgment of the ZBA, is consistent with the intent of the Ordinance. (Adopted 3/10/1992) (Amended 3/12/1996) & (Amended 3/14/2000) (Amended 3/13/2007) (Amended 3/11/2014) (Amended 3/12/2019)

Mr. Claus said that he had an engineer friend bring up an issue with this Ordinance and he was not able to speak with his friend again so he would like to table the discussion until he is able to better understand the concerns.

The Board decided to have the consultation regarding the Farmer's Market before continuing with the Zoning Amendments (see below).

Undersized lots in Zones

Mr. Marquise said that the Zoning Board has been concerned about Zones with undersized lots that were created prior to Zoning. Ms. Wallace explained her concerns with an undersized lot that is not developed being built on as it is a pre-existing non-conforming lot and if owners are entitled to build on lots. There was a discussion about pre-existing non-conforming lots and setback requirements and that there are variances and special exceptions available for owners to be able to develop lots as government taking of land is unconstitutional. There was a discussion about voting on variances and special exceptions for these lots and how others think about these lots as well as about setting or not setting precedence and that each case is individual. There was a discussion about reasonableness and how it can be interpreted differently as well as about cumulative impact.

Parking spaces for dwelling units

There was a discussion that a garage counts towards parking spaces as it is off street and adding this to the definitions.

Pre-existing Height

There was a discussion about pre-existing height and how people get around the height requirements by excavating or adding fill and if this is changing the envelope. There was a discussion regarding the purpose of height and that it is for safety and fire access and that if everything is done within the setbacks changing the grade to be within the height requirements does not affect safety and that aesthetics is not something in the purview of Zoning. There was a discussion regarding a property on Garnet St that is under construction. There was further discussion about grade changes and existing topography. There was a discussion about if there is a flaw in the process such as the height in the Shoreline District. There was a discussion about the maximum height of a structure in a reduced side or rear setback and that there are not separate setbacks for the Overlay Districts. There was a discussion about Section 3.50(k) that allows a pre-existing house partially or entirely within the 50 ft water body setback being only allowed a maximum height of 25 ft from the finished grade and that this is for additions.

Section 3.50(i)

There was a discussion about Section 3.50(i) and Section 6.13. Section 3.50(i) is only relative to the non-conforming area and Section 6.13 allows expansion of a non-conforming building in the conforming area and that Article VI is for the administrative staff, not the Zoning Board, as variances and special exceptions cannot be granted from Article VI and if an applicant can request a variance from any special exception criteria.

Section 4.33

There is a typo in Section 4.33 that can just be corrected.

Height Definitions

Mr. Marquise said that a member of the Zoning Board requested that he give them a brief description of the height definitions in the Ordinance. Height is defined many different ways but for many different applications. There was a discussion about maximum height about special exceptions. There was also a discussion about small neighborhoods and the height of structures.

Section 4.33

There was a discussion about a family with three properties that wanted to subdivide and annex to each of the lots and that the Zoning Board could not find a hardship to permit them to do this. There was a discussion if language can be added for reallocation of land and that there is not a way to circumvent Zoning if parcels are made smaller than allowed.

Food Carts & Pop-Up Stores

There was a discussion regarding food carts and food trucks and if they fit into the Ordinance under retail or restaurants and how other towns handle food carts and food trucks. There was a discussion

106 about food trucks and food carts being permitted to be on public property and designating areas where
107 they would be allowed.

108 There was a discussion regarding pop-up stores as, administratively, this is trading a business for a
109 business as long as there are not significant changes.

110 There was a discussion about special events that have been held in Town and food carts and such at
111 these events and that special events are not regulated through Planning or Zoning.

112 There was another discussion that the Town does not permit food carts or food trucks on public
113 property. There was a discussion about competition to local restaurants if someone has a food truck or
114 food cart.

115 The Board agreed they would like to talk more about the food truck and food cart topic at a future
116 meeting.

117 *Fence Height*

118 There was a discussion about raising the height of the fences permitted to 6 ft and what can be
119 purchased as a standard section and thoughts about spite fences and about the reliefs available in the
120 Ordinance. The Board agreed to not change the permitted height of fences.

121 *Lot Coverage*

122 There was a discussion regarding adding lot coverage for pervious surfaces in the Aquifer Overlay
123 District similar to the Shoreline Overlay District. There was a discussion as to where the Aquifer Districts
124 are located and which Zoning Districts they are in and that they are where commercial development is
125 encouraged so the coverage may not be as strict. There was a discussion regarding permeability and
126 people's understanding about permeable surfaces.

127 **CONSULTATIONS – FARMERS MARKET – MUSIC OPTIONS**

128 Deb Pasculano said that when she presented the Site Plan for the Farmer's Market she did not mention
129 having live music. It is somewhat standard at most Farmer's Market to have live music as
130 entertainment, however, when she asked the Town she was told it was not part of the approval. She did
131 a survey and 50% of Farmer's Markets in NH have some sort of music. She has one man who wants to
132 come to the Farmer's Market and play guitar.

133 Chairman White asked and Ms. Pasculano said that the Farmer's Market is doing outstanding and they
134 have maxed out renting their available spaces. There was a brief discussion about how the Farmer's
135 Market has been doing.

136 Mr. Clark asked and Ms. Pasculano said that the music would be set up where there is space. Mr. Butler
137 asked if the music will be amplified and she said that it is up to the Board. Ms. Wallace asked and Ms.
138 Pasculano said that for right now they will have the same person playing every week.

139 Mr. Claus asked and Mr. Marquise said that it is up to the Board if this change is enough to require an
140 amendment to the Site Plan. Mr. Marquise said that it does not seem like it needs an amendment to
141 him, however, he understands the issues with the Farmer's Markets being held on Saturday mornings

142 and people liking it quiet. Ms. Pasculano said that there are not many residences close to the Farmer's
143 Market. Mr. Marquise said that if the music was loud there are still houses that could hear the music.

144 Mr. Marquise asked and Ms. Pasculano said that she thinks the musician only wants to play for a couple
145 of hours. Ms. Pasculano said that as part of their rules, people cannot leave in the middle of the event,
146 however, this would be an exception.

147 Mr. Butler asked and Ms. Pasculano said that at this time it will only be one musician.

148 Mr. Clark said that he does not have any issues with the music, however, he would be worried if there
149 was amplification. Mrs. Gottling and Mr. Osborne said that they do not have an issue with what has
150 been described. Mr. Claus said that if the noise becomes an issue it is policeable. Chairman Simpson
151 said that he would be more concerned with music starting at 8:30 and that it would be better for it to be
152 starting at 9:30.

153 The Board agreed that they do not require an amendment to the Site Plan as long as the music is as
154 presented.

155 **OTHER BUSINESS – BLUEBERRY RIDGE SUBDIVISION**

156 Mr. Marquise said that there is road construction happening on the Blueberry Ridge subdivision and
157 layout. There have been some concerns from the engineers doing the construction oversight that there
158 have been changes made to the roads and it might not be in the right place; there were also concerns
159 about wetland, which he believes the State is addressing. If the layout changes, the Planning Board can
160 be asked to do something about it, however, the only thing that can be done is to revoke the
161 subdivision, which is a drastic step. His feeling is that if the road layout changes, the owners can do an
162 "as-built"; he does not think that it is a big change as they are trying to move around some rocks. He
163 was asked to talk to the Board to see if they feel as though there should be steps taken. Vice Chair
164 Jewczyn asked if the changes to the road will affect the layout of the lots and Mr. Marquise said that he
165 does not think the changes are that big, just a deviation of several feet.

166 Mr. Swick asked and Mr. Marquise said that he believes that they are approved for nine lots for this
167 phase of the subdivision.

168 Mr. Clark said that he thinks it would be a shame to do something drastic if they have not done
169 something very wrong. Mr. Marquise agreed that it would be drastic to revoke the subdivision. Mr.
170 Marquise said that there is also a bond that can be used if needed.

171 Mr. Claus said that if the road deviates a lot then they will have to adjust the lot lines. Mr. Marquise
172 agreed and said that there will need to be an amendment and a Mylar will need to be signed. Mr. Claus
173 asked and Mr. Marquise said that they are not adding additional lots.

174 Mr. Marquise was asked and said that there is construction oversight being done as the owners want to
175 make the road a Town road and that is where the issue is. He does not think that it is a Planning Board
176 issue, it is an issue to do with if the Town will accept the road. He suggested that the owners get the
177 road re-staked and then he will go out with the engineers and owners and see how far off the road is.
178 There was further discussion regarding this matter.

179 There was a discussion about the wetlands and the wetlands scientist the owners hired and the
180 engineer's thoughts.

181 Chairman White asked and Mr. Marquise said that Mr. Hazelton has asked him to talk to the Planning
182 Board regarding this issue as the road deviated from the plan.

183 There was further discussion regarding this matter and the Board agreed that this is not an issue as
184 there is a bond if needed.

185 **MINUTES**

186 Changes to the Planning Board minutes from March 11, 2021: The minutes were continued to the next
187 meeting.

188 Changes to the Planning Board minutes from March 18, 2021: The minutes were continued to the next
189 meeting.

190 Changes to the Planning Board minutes from April 8, 2021: The minutes were continued to the next
191 meeting.

192 Changes to the Planning Board minutes from May 13, 2021: The minutes were continued to the next
193 meeting.

194 Changes to the Planning Board minutes from June 10, 2021: The minutes were continued to the next
195 meeting.

196 **Vice Chair Jewczyn made a motion to adjourn at 10:27 pm. Mr. Butler seconded the motion. The**
197 **motion passed unanimously.**

198 Respectfully submitted, Melissa Pollari

199 Planning Board

200 _____

201 Peter White, Chairman

Michael Jewczyn

202 _____

203 Joseph Butler

Randy Clark

204 _____

205 Jeffrey Claus

Richard Osborne

206 _____

207 Suzanne Gottling, ex-officio member

Gregory Swick, Alternate