

1 **TOWN OF SUNAPEE**

2 **PLANNING BOARD**

3 **AUGUST 12, 2021**

4 Chairman White called the meeting to order at 7:18 pm.

5 A roll call was taken:

6 **MEMBERS PRESENT IN THE MEETING ROOM:** Peter White, Chair; Michael Jewczyn, Vice Chair; Jeff
7 Claus; Suzanne Gottling; Joseph Butler; Michael Marquise, Planner

8 **ALSO PRESENT IN THE MEETING ROOM:** Greg Grigsby, April Royce, Terry Royce

9 Vice Chairman Jewczyn recused himself from case 0140-0022-0000.

10 **PARCEL ID: 0140-0022-0000: TREE-CUT & VEGETATION CLEARING; 68 BURKEHAVEN ROAD; COMPASS**
11 **POINT, LLC**

12 Greg Grigsby presented the merits of this case.

13 Mr. Grigsby stated that this is part of a re-development of the property. This is relative to cutting for the
14 main dwelling of the residents. They want to protect the lake environment. Most of the house sits well
15 behind the woodland buffer. A shoreline application had been sent to the state. The state came back
16 with questions about loons. Fish and Game was contacted, they approved that the loons would be ok
17 regardless of this project. There was a question about the boardwalk that they are addressing with DES.
18 They are anticipating approval from DES within the week.

19 Mr. Grigsby then goes over the blueprint of the cuttings, stating there are three separate areas that they
20 are looking to cut within. The trees have been flagged to identify the different levels of exemption or
21 exclusion. The first level is the set of trees that are considered excluded in accordance with the zoning
22 Ordinance: Section 433(b) 8.bve. These are trees that fall within the footprint of a driveway or building.
23 There are a total of six trees that they are proposing being cut between the three areas that are flagged
24 under this level of excluded trees. Although these trees are excluded from the total calculations, they
25 will provide about 15 square feet of basal area.

26 The next category of flagged trees that Mr. Grigsby discussed are considered exempt trees in
27 accordance the zoning Ordinance: Section 433(b) 8. bvii. There are 15 trees on the plan for removal
28 within this category. The 15 trees equal a total of 21 square feet of basal area.

29 Lastly, Mr. Grigsby talked about the last category, non-exempt trees that fall outside the limits of the
30 setbacks. They requested a total of 51 trees within this category be removed. The basal area of those
31 trees would equal 76 square feet. If you include the exempt and excluded trees in the proposed plan,
32 they would be removing a little more than 17% of the overall basal area. If they are only talking about
33 the non-exempt trees, that would be about 14% of the basal area. Those numbers are much less than
34 the 50% town requirement.

Mr. Grigsby talked about the overall plot, the property is approximately 14.16 acres of land, 10 of which is completely untouched. As part of the property, anything over 50,000 square feet requires an alteration of terrain permit. Mr. Grigsby stated that they are working on that permit currently.

Chairman White thanked them for the thoroughness and readability of the plan.

Mr. Jewczyn stated they worked for a month and a half to save as many trees as they could. Most of the proposed trees that they want to cut down are hazardous due to their age and size. Many of the non-exempt trees are white pines that are to the west of the structure, where there can be strong winds. Mr. Grigsby followed up that the property will still be in use, and they are working to stay within the current use regulations as well.

Mr. Butler asked if all the stumps will be removed. Mr. Grigsby replied that yes, the three stumps in the footprint and any outside of the 50-foot water line setback will be removed. Any stumps within the 50-foot water setback will stay in accordance with DES regulations. They have taken into consideration how this would impact the other surrounding trees and many of the trees they are proposing to take out are evergreens that could also become hazardous, whereas many past that are deciduous species.

Mr. Grigsby then talked about the potential wetlands on the property and if they are formally considered wetlands. He then stated that he would be working with Mr. Jewczyn on a wetland's application for the town, as the state does not have setback guidelines. They plan to get a soil scientist come back out and re delineate the area at the shoreline.

Mr. Claus made a motion to approve Parcel ID: 0140-0022-0000: Tree-cutting and vegetation clearing at 68 Burkehaven Rd. Seconded by Mr. Butler; the motion passed unanimously.

Mr. Marquise informed the board that they would be skipping the next cases for Sally Eldredge, as the presenter was not present. They would return to after the other cases.

PARCEL ID:0133-0026-0000; STATEMENT OF PROPERTY USAGE; 5 GARNET STREET; ROYCE ENTERPRISES, LLC.

Mr. Marquise gave a brief history of the applicant's usage, stating that they had been approved to build the structure, when the structure was built, they decided to build it with a flat roof rather than a peaked roof. It was noted that they needed to get approved for any sort of usage of the roof. It was then noted that they had put down AstroTurf and acquired furniture on the roof. A cease-and-desist order was put in place on July 16th, to stop using the roof until they spoke with the board about their usage of the space. The applicant was present and wanted to give their narrative at the meeting. Ms. Gage had signed off on the change to the flat roof with the note that to have any roof usage they needed to come back to the board to get a usage amendment. They did return to the board for the usage amendment, however, the board stated they needed more information. The applicants never came back with more information.

Mr. Royce asked to clarify that Mr. Marquise had asked them to file a statement of property usage at this meeting to address why they had filed with no change in use as they feel that their use has not changed, and therefor there is no need for a site plan amendment.

Mrs. Royce then stated that they were eager to understand what they were in violation of. They had spoken to Mr. Marquise and their attorney which had stated they were not in violation, however, the cease-and-desist order stated clearly that they were in violation of the site plan approved by the planning board. They did submit a statement of property usage in November, where they had debated adding a deck. When the Board responded to this change by saying they needed more information, Mr. and Mrs. Royce decided they did not want to add a deck. They were looking for clarification on what they deviated from that was on the original site plan.

Mr. Marquise then stated that it was made clear by the Board at their last meeting on this case in November that an amendment was needed before there was any use of the roof. He then went on to state that he struggled with what to call the space as there is not a built deck, however, it is a flat surface that they are using.

Mr. Royce replied that they specifically stated that they proposed to build a deck on the roof and that when it got brought in front of the board and it was decided that that would need a site plan amendment. Therefor they never built the deck.

Mr. Claus brought up his concern that it is a commercial property, and thus accessibility was a concern, under state building code they would need two means of egress from the roof. Mr. Claus wondered how they are going to build that without violating setbacks. Mr. Royce stated that they have built a set of free-standing stairs much like those that go into residents' pools. Mr. Claus then responded that this isn't a residential property though, it's a commercial property. Mr. Royce asked if it is part of the planning board purpose to apply building code. Mr. Claus replied that he thinks they could bring in the state fire department because there are a lot of violations going on with this occupied roof.

Chairman White stated that, for the Board, they are focused on the usage, that's the concern.

Mr. Royce asked again, what they should ask for as an amendment of use, as they felt that it is an extension of their current professional use of the property. They use it as a break space, as many businesses have those, therefore it is an extension of their business use.

Mr. butler then brought up that the original site plan brought to the board was an A-frame structure. Mrs. Royce replied that the change in plan was approved by Mr. Marquise.

Vice Chairman Jewczyn raised the concern about the usage by the general public. Mrs. Royce replied that they had put in the application of statement of use that it will not be open to the general public, it is only used by the owners, tenants, and anyone who is specifically invited. Chairman White then states that they could invite anyone they want to though, and that is a concern. Mrs. then asked where it says in the regulations that they can't do that, and they specifically state in the site plan that they may use the property for special events and gatherings.

Vice chairman Jewczyn brought up the point that this is not directly about them but the longevity of the property, if the current owners were ever to sell the property, they need to think of how anyone would use this property in the future.

Chairman White continued that the last Board approved plan was an A-frame roof, Mr. Marquise correctly advised them that changing the roof shape doesn't adversely change the structure, and many

110 other properties in the area have flat roofs. The issue was with the use of that space. The Board wasn't
111 specifically saying in the meeting in November they needed more information on a construction of a
112 deck, but that it was the use of the roof that they wanted more information or an amended site plan on
113 so that it was part of the application.

114 Mr. Royce then read the minutes from the November meeting. He read "Mr. Butler asked how the
115 board could stop this". They were advised not to come to that meeting as it would not be a public
116 discussion. That was why they asked to come in for this submittal. They would like to know, in the
117 specification of town usages, what use should they be applying for. Mr. Royce then stated that there is
118 a difference between using something and its use.

119 Chairman White replied that all the uses they applied for where to happen within the building. Mrs.
120 Royce replied that they have not changed the square footage of the building limits. Chairman White
121 interjected that they have doubled their square footage. They had doubled the intensity of the use of
122 the building. There was further discussion on what intensity of use meant.

123 Chairman White stated that the issue at hand is that the board needs to decide whether they need to
124 come back in for a site plan amendment. He then stated that he would read a comment from Richard
125 Osborne, a board member that was unable to attend. "Sorry I can't be there tonight, I noticed on the
126 agenda tonight that Royce Enterprise is on the agenda, and I would like to offer my opinion. I still feel
127 like there is no change in use, as there is no business being conducted on it. The only issue with using
128 the roof is access which has been addressed by using a portable ladder. I am reiterating my previous
129 opinion that there is no change in use, therefore there is no need to review it." Chairman White goes on
130 to state that this is Mr. Osborne's opinion. They are using the roof as a deck.

131 Mr. Claus clarified that it's not technically a deck, however, it is an occupied roof. He had a concern that,
132 as a commercial building, he knows the building code that goes along with that. He also agreed with the
133 intensity of the use. When a site plan is brought to the board and you give a set square footage of that
134 use, by occupying the roof you are duplicating your usage. That would also go in to calculating the
135 digress as well.

136 Vice Chairman Jewczyn acknowledged everyone's frustration. The board thought they were faced with
137 one thing, now it is something different. The applicant felt that they should be allowed to do what they
138 are doing. This whole situation has changed, and the Board has the responsibility to think of 40 to 50
139 years from now. The board must be the caretakers of the rules made by and for the people of the town.
140 So will the town have them come back. Vice Chairman Jewczyn raised the question of how to make the
141 situation productive for all parties involved.

142 Chairman White replied that the board needed to decide whether they would let things continue the
143 way they were or do they want to request an amendment to the site plan.

144 Ms. Royce then asked again what amendment they would suggest. They had offered to come back to
145 the Board when the decision was made to go with the flat roof, however, they were advised that it was
146 not necessary. Chairman White responded that if the plan had been brought to the board, with a flat
147 roof and a railing around it, there would have been a very different conversation about the use of that
148 space.

149 Chairman White brought up the fact that the abutters where never notified and had the chance to speak
150 on the concerns of the changes to the structure or the usage of the structure. He went on to state that it
151 is how the structure is being used, they aren't doing anything different then what they said in the
152 original plan, however it is the location of where the use is happening and the intensity of that use.
153 Anyone, such as abutters, have a right to express their concern and should have a chance to do so. The
154 applicant would not be applying for a new use, but an altered use. When they put the railing up and
155 started occupying the roof, how they used the structure was different then what was proposed in the
156 plan that was presented to the Board.

157 Mr. butler then asked a question to Mr. Marquise asking about the timeline and when they made the
158 architectural changes to the roof. Mr. Marquise responded that there was a call that winter where he
159 told them that it would not make an architectural change so long as they stayed within the height
160 agreed upon in the site plan, at this time, there was no discussion about using the roof. Then they did a
161 site visit in October of 2020 before the sign off. Concerns were brought up at the site visit that the flat
162 roof could be used for other things and for that reason the note was made upon signing that the
163 applicants would need to come back for a site plan amendment to use the roof. As a minimum they
164 would need to bring the statement of usage to the Board. They went to the Board in November, and
165 they were told they needed a plan amendment.

166 Mrs. Royce replied that she was told that they would need a site plan amendment if they were to build a
167 deck, which they didn't. Mr. Marquise responded that the planning board doesn't focus on the structure
168 per say, but the use of the structure. It didn't matter if the roof has a constructed deck on it or not, it is a
169 space that is being occupied that was not part of the original plan.

170 Mr. Royce then asked if they could add the use of single-family dwelling. If they did that, it would be ok
171 for them to stand on their roof. Mr. Marquise responded that that would not work as that would make
172 the property a mixed-use building. If they made it strictly a single-family dwelling, then yes, they could
173 stand on the roof, but that was not the case for this property. Mr. Royce asked that if they applied for
174 an amendment on the usage, that they would request a change of intensity of the usage. Chairman
175 white replied that that was correct.

176 Vice Chairman Jewczyn stated that he feels they should vote for the applicants to come back with an
177 amendment as there were to many unknowns about the changed usage of this property.

178 **Mr. Claus made a motion to approve Parcel ID: 0133-0026-0000; a site plan amendment for the use of**
179 **the rooftop area at 5 Garnet St. Mr. Butler seconded the motion; the motion passed unanimously.**

180 It was then discussed that there was no site plan to approve, thus making the motion moot. The Board
181 chose to clarify the motion. The intent of the motion was to require a site plan amendment.

182 **Mr. Claus made a motion for Parcel ID: 0133-0026-0000; a requirement of a site plan amendment for**
183 **the use of the rooftop area at 5 Garnet St. Mr. Butler seconded the motion; the motion passed**
184 **unanimously.**

185 **PARCEL ID: 0140-0025-0000; SUBDIVISION/ ANNEXATION. 10 BURKEHAVEN LANE; JOHN C MCCRILLIS**
186 **FAMILY STRUST, SALLY M. ELDREDGE 1997 REV. TRUST**

187 **PARCEL ID: 0140-0026-0000; SUBDIVISION/ ANNEXATION. 12 BURKEHAVEN LANE; JOHN C MCCRILLIS**
188 **FAMILY STRUST, SALLY M. ELDREDGE 1997 REV. TRUST**

189 **PARCEL ID: 0140-0029-0000; SUBDIVISION/ ANNEXATION. 18 BURKEHAVEN TERRACE; JOHN C**
190 **MCCRILLIS FAMILY STRUST, SALLY M. ELDREDGE 1997 REV. TRUST**

191 Mr. Marquise stated that these cases were reaching out just for a consultation, they wanted to be
192 advised by the planning board before going back to the zoning board. These applicants went before the
193 zoning board a while ago and applied for 4 variances. They were denied. They have created a new plan
194 and will only be applying for 1 variance. The half cottage and cross cottage will stay the same. The
195 orchard house would get a bit smaller but would still be an acer and a half. They want to annex a red
196 dashed line that kind of zigzags all the way to the lake so that the cottage has lake front access. They
197 would be asking the zoning board for a variance on the lakefront side. There question pertains to the 4
198 times length vs. width of the property. This doesn't meet that requirement the planning Board can
199 waive that. But they want to know if this is something the Board would even consider.

200 Vice Chairman Jewczyn pointed out that this proposed access crosses 3 rights of way. He went on to
201 point out where the path crosses the right of ways. Also, they proposed a private way that crosses a
202 public road. Vice Chairman Jewczyn then asked if this change would make the lot more non-conforming.
203 Chairman White then stated that there are some concerns with this application that should be
204 addressed. They can't close that road.

205 Mr. Marquise then clarified that they are proposing this so that they have lake frontage and access to
206 the boathouse. He then suggested that we take all the roads out of consideration. Mr. Marquise
207 reiterated that this is just a consultation. This is the one spot where the planning board can waive the 4
208 to 1 line. He did feel that this was a bit of a stretch though. There was further discussion on this. Mr.
209 Marquise then stated that the lakefront is non-conforming.

210 Vice Chairman Jewczyn pointed out that this whole sliver to the lakefront would be on a 25-degree
211 slope. Mr. Claus replied that they wouldn't be building on this strip, it would simply be for access to the
212 lake. Chairman white stated that at this point in the consultation they would need more reasoning to
213 waive the 4-to-1 ratio, he would want some sort of plan or reasoning. Mr. Marquise said he would relay
214 this information to the property owners.

215 Then there was a discussion about the importance of the 4-to-1 ratio and why it was created in the past.
216 It was originally created so that properties weren't created in a "bowling alley" type manor.

217 Chairman White started the Master Plan Discussion

218 Mr. Marquise stated that he had a few updates. They have not received the census data yet. He has not
219 finished the survey yet as he needs the census data to complete it. They now have a new administrative
220 assistant so once the census information comes in, he is hoping to get that done and out, as they are
221 three months behind on that. One of the major parts of the survey is land use. He then directed them
222 to "Old Master Plans" Maps that are on the town of Sunapee webpage. Mr. Marquise brought up
223 conservation. They are currently at 20% conserved land, and the goal is about 25%. There are no state
224 mandates on conservation, however there are state organizations that have recommendations of 25%.
225 There was then further discussion of how large Sunapee could get, and how that would affect

226 infrastructure and many other things. Chairman White stated that in the master plans for the past few
227 years, the public has stated that they like the small town feel of Sunapee, and that expansion of the
228 town and adding additional duplexes could jeopardize that.

229 Mr. Marquise stated that he just wanted the Board to be thinking about it and that he would be making
230 some updates to the calendar. Chairman White asked if it would be beneficial to identify areas that may
231 be more suitable for development. Vice Chairman Jewczyn replied that he was unsure that they could
232 grow the town. Mr. Marquise responded stating that they could have maps created that show why
233 certain sections can or cannot be developed. There are a few 100 acre lots that could be developed.
234 There was further discussion on multiple lots around Sunapee that are not developed.

235 Chairman White stated that the challenge with some of these lots is that they are view lots or they are
236 highly expensive to get in to. Mr. Claus added that many of these lots may be five to ten acres but there
237 is minimal building space due to setbacks to build within those lots. Ms. Gottling added that Sunapee
238 struggles with workforce housing. Mr. Marquise responded that the ordinance allows for development
239 for workforce housing, but no one has come in to create it. Most of the land that is owned by the town
240 is conservative land, not easily developed land, so building low-income housing is very hard to develop.

241 Vice Chairman Jewczyn brought up the oversight of construction. Mr. Marquise responded that if that is
242 something that the Board feels strongly about, it can be put in as a recommendation within the
243 masterplan.

244 Mr. Marquise brought up that the November meeting is scheduled be on veterans' day. No one on the
245 Board had any conflict with that date. It was agreed that they would still hold the meeting on that day.

246 The next meeting will be September 8th, 2021.

247 **Mr. Claus made a motion to adjourn the meeting at 10:04 pm. Mr. Butler seconded the motion; the**
248 **motion passed unanimously.**

249 Respectfully submitted, Sarah Liang

250 Planning Board

251 _____

252 Peter White, Chairman

Michael Jewczyn

253 _____

254 Joseph Butler

Randy Clark

255 _____

256 Jeffrey Claus

Richard Osborne

257 _____

258 Suzanne Gottling, ex-officio member

Gregory Swick, Alternate