

1 **TOWN OF SUNNAPEE**

2 **PLANNING BOARD**

3 **OCTOBER 20, 2022**

4 **Chairman Peter White called the meeting to order and Roll Call at 7:00 PM.**

5 **MEMBERS PRESENT BY VIDEO:** None

6 **MEMBERS PRESENT IN THE MEETING ROOM:** Suzanne Gottling, Richard Osborne, Chairman Peter
7 White, Joseph Butler, Randy Clark, Jamie Silverstein (Zoning Board), Jeff Claus (Planning & Zoning
8 Board), Gregory Swick, David Andrews (Zoning Board).

9 **MEMBERS ABSENT:** None

10 **ALSO PRESENT IN THE MEETING ROOM:** Michael Marquise - Town Planner, Laura Spector-Morgan -
11 Town Attorney.

12 **ALSO PRESENT BY VIDEO:** Shannon Martinez - Town Manager, Scott Hazelton – Highway Director.

13 Chairman White announced it as a Joint meeting of the Planning/Zoning Boards to discuss Zoning
14 Amendments and said that there is a slight change to the agenda. He introduced the UVLSRPC
15 representative who was going to talk briefly about the Master Plan survey, which they have been
16 engaged with to help them and to provide them with some feedback.

17 The representative gave the board a quick rundown preview on the first draft of the survey.

18 Mr. Marquise had a question about the recreation input to the survey that he did not see in this
19 presentation. He mentioned certain types of courts that came as recommendation from the rec
20 department.

21 The representative showed the part of the public funds and said that he could break them up and do
22 something about the recreation type of questions and add the courts.

23 Mr. Claus asked about the timeframe for them to get the edits of the suggestions and the answer was
24 that they have a couple of weeks.

25 Chairman White asked how the expand part of the questions online will translate into the physical copy
26 of the survey and the answer was that it will have add on and will be explained in the instructions.

27 Mr. Andrews asked how they are going to ensure that they will get a good distribution and honest
28 response. The answer was that the survey registers to an email address. It is a relatively long survey, and
29 they are not too concerned about people from outside answering the survey, because you would have
30 to know about Sunapee to be able to answer some of the questions. The distribution is going to be
31 through mail and postcard with a link on it and a QR code.

32 ? from the audience asked when the survey is going to be available and will some of the questions have
33 to do with the ordinances and what the population wants. The answer was that the survey will be
34 available by the end of the year and there will be questions connected to the ordinances.

35 Mr. Clark asked whether, in case the survey gets started on the phone, it would be able to be picked up
36 from where it was left off. The answer was that it probably would get kicked out and must be started
37 over from the beginning.

38 Revisions to Agenda:

39 Other Business: Joint meeting of the Planning/Zoning Boards to discuss Zoning Amendments.

40 Mr. Marquise said that they have been talking about these amendments for 3-4 months and they are
41 familiar with them, but he wanted to talk more about Section 6.12 and 6.13 and 3.50(k). He has not
42 made any major changes and it is up to the board's and town attorney's comments on the changes. The
43 other thing they have done is they have kept 6.12 the way it is but created a requirement that the
44 envelope stays within the horizontal footprint.

45 Chairman White said that they have had a lot of input about 6.12 along with Town Attorney's email that
46 was sent to them earlier and they have addressed this issue over in 2014, 2017, 2018, 2019 and it looks
47 like they are going to address it again this year. The intent is to try and make it clearer what the intent of
48 that portion of the ordinance was meant to say. He believes that it is there to basically allow folks that
49 have a preexisting non-conforming structure the ability to voluntarily tear it down and rebuild it in the
50 exact same footprint, without needing a special exception or a variance.

51 Mr. Marquise confirmed the intent that they had been working with and added that the question had
52 come up whether they could rebuild that envelope somewhere else. They have pinned it down for this
53 matter that it must go to the same place.

54 Ms. Silverstein asked for clarification if they want to maintain that policy or vote and decide that if you
55 rebuild, you must be more conforming. She was not sure if they were asking questions at this meeting,
56 or they were just simply saying this is what it is and moving forward.

57 Chairman White said that they do not have to vote tonight because they have plenty of time, they are
58 meeting tonight to sort of shift through them and see which ones are worthy for further discussion.

59 Mr. Osborne asked if the issue was that the town attorney interpreted it differently.

60 Ms. Spector-Morgan replied that it was not that provision, it was the interplay of that provision and
61 something over in 3.50 about structures in the water setback and whether those could be raised and
62 reconstructed. Her interpretation was that in that setback it cannot be. The general non-conforming
63 structure provision is fine and applicable for the town and the Zoning Board have had some policy
64 questions about whether they want to allow people to raise and rebuild in the same footprint.

65 Mr. Andrews asked Ms. Spector-Morgan why the interpretation is different within the water setback
66 and whether that is a state issue.

67 Ms. Spector-Morgan quoted 3.50(k) "If a preexisting house is located partially or entirely within 50-
68 water body setback, additions may be made to the structure provided that the house is at least 40 feet
69 from the waterbody, the proposed addition is only on the structure away from the water body and the
70 proposed addition is no higher than 25 feet from the finished grades". She said that when they look at
71 that and look up at (l) which talks about preexisting non-conforming structures that further go vertical
72 extension or be replaced with a higher structure, was her interpretation and she understood that Mr.

73 Cordell agreed that if you are within 50-foot waterbody setback, you can expand your structure away
74 from the water, but cannot raise and reconstruct it. She does not think that is what they meant and
75 have been doing. From her perspective they can tweak or eliminate that, and it can solve the confusion
76 that she had created.

77 Chairman White said that he is still confused because they had a case where 6.12 was in question but
78 the town attorney still referenced 3.50(k) and he is still trying to connect those dots, where the special
79 exception that allows you to do something, to him is a separate issue then if you have a preexisting
80 piece of structure and you want to rebuild it.

81 Ms. Spector-Morgan said that if you have conflicting provisions, the more surgical one prevails. Section
82 6.12 allows to raise and rebuild and 3.50(k) allows to expand by special exception. Because they were
83 not sure that in the 50-foot setback what you can do is limited by special exception to expansion, it was
84 her interpretation that meant particularly when you looked at (l), which allows the replacement and (k)
85 does not allow it, that (k) was stricter and said that if you raise your structure within 50-foot setback,
86 you have got to get out of that setback, but if you want to expand it away from the waterbody, you can
87 do that by special exception.

88 Ms. Silverstein said that everyone and all the cases that come in front of them want to rebuild and
89 expand, build in the side setback and seek for special exception, so to Ms. Spector-Morgan they are in a
90 loop here and she was kind enough to have a discussion with them, but they were given some questions
91 to ask themselves, in terms of where do they want the ordinance to go.

92 Ms. Spector-Morgan said that she had focused the questions on structures and of course non-
93 conforming uses are different from non-conforming structures and different from non-conforming lots.
94 So, she had gave them five questions about non-conforming structures, whether they want to allow
95 them to be raised or replaced in a still non-conforming location. If so, where are the perimeters of the
96 relocation, same or smaller footprint, as conforming as possible. Do they want to allow them to be
97 expanded, if the expansion complies with the zoning, or allow them to be raised and replaced, and
98 expanded in the conforming matter, all at the same time? What happens if they get destroyed by fire or
99 flood or any other natural disaster? Do they want to have different standards for different districts,
100 which they do now, and do they want to allow this by right or special exception? She was thinking that
101 these are the issues that they all are struggling with and there is where she wanted to focus the boards
102 attention.

103 Mr. Andrews asked Ms. Spector-Morgan does she has a proposed language for the easy fix of the water
104 issue in 3.50.

105 Ms. Spector-Morgan said that the preexisting structure is located partially or entirely in the 50-foot
106 waterbody setback, and they get to decide what they want to do. Before she could write anything, she
107 needed to know what direction the board wants to go in.

108 Mr. Marquise said that they have something that Chairman White had written up to update 3.50(k) and
109 referred to the amendment no. 5.

110 Chairman White said that it was an attempt to allow somebody with a preexisting non-conforming
111 structure predominately within the waterfront setback, may be within a side setback or within a front
112 setback. The thought being more closely with the line of thinking of the state, especially in the

113 waterfront setback, they have a term which is more nearly conforming. The expectation of it is for
114 example, if somebody buys a preexisting non-conforming structure and say half of it is in the side
115 setback and it is totally within a water front setback and they want to take that square footage of non-
116 conformity and tear it down, but they want to shift and slide it out of the side setback. To make that
117 situation better and at the same time, if it is too close to the water, to pull it back. He said historically,
118 that was done for many years, whether it was done rightfully or not.

119 Ms. Silverstein said that some of the cases maintain that they are preexisting non-conforming, but they
120 are new houses. If they use that card to make the shift slide adjustments and the house is sold
121 afterwards, somebody can come back and claim it is a preexisting non-conforming and ask to make
122 another adjustment. The board will not have a way of knowing if it is a truly preexisting non-conforming
123 structure.

124 Ms. Spector-Morgan said that preexisting non-conforming is a step and legal when the zoning ordinance
125 was adopted or maybe illegal. It is the burden of the owner to demonstrate that, and if they do not, the
126 board should not accept that it is.

127 Mr. Marquise added that they have tax card records over the years of when these structures were built.

128 Mr. Clark asked about the deck situation and the changes, Chairman White replied that there should be
129 some sort of documentation, and all kept in record.

130 Ms. Silverstein asked about the period of preexisting structures, Chairman White responded that they
131 are defined in the ordinance as if they have existed before the pass of the ordinance.

132 ? (40:00) from the audience asked if the board could consider if it really matters if the structure is
133 preexisting. He added that the state does not make the distinction of preexisting.

134 Mr. Claus asked why was preexisting put into these structures, what was the safeguard and intent of
135 adding that specific language because it limits the owners.

136 Mr. Marquise sees three issues that the board would have to agree on in terms of philosophy and he
137 thinks that he can work with the Town's Attorney in terms of the language. The first one was the ability
138 to tear the structure down and rebuild it in the same envelope. The second was the one that Section
139 6.13 allows, if you have a non-conforming building which stays there, you can add on to it in a
140 conforming area. The third one was how to shift and slide without a variance.

141 The next amendment was about the short-term rentals. It included the revision of several sections of
142 the ordinance including 4.10, 4.95 and the definitions. Section 4.95 would establish their standards. The
143 approach is to apply the short-term rentals to a single-family or two-family, something that is basically
144 two units. Anything beyond that would be a commercial bed & breakfast. The first standard was that it is
145 allowed in zoning district, occupancy limited to two persons per bedroom plus one additional person in
146 the unit. The number of bedrooms used would have to conform to the requirements from the DES or
147 the Water & Sewer Department. If it is a single-family dwelling, it would not require a site plan review.
148 An owner-occupied single-family dwelling with an additional room for rent or a two-family dwelling that
149 has one owner occupied unit would also not require a site plan review. Anything else would require a
150 site plan review and it would go through Home Business Requirements. The short-term rentals must

151 comply with a registration process that the Board of Selectmen might set forth. Travel trailers, boats and
152 other mobile structures may not be used as a short-term rental.

153 Ms. Silverstein suggested the requirement of one parking space per bedroom.

154 ? (1:08) said that the work of the task force included their vision and at the end they all agreed and
155 together had produced a list of things that the boards should consider. The number one thing was that
156 the short-term rental should be regulated and allowed, in merely existing zoning. If they allow
157 something like STR, like an inn or motel today, STR fits into that general category, so tomorrow when
158 the board writes the ordinance, those should be allowed by right in that zoning district. If it gets allowed
159 by special permit only, they should consider allowing it by special permit only. If it is in a district like
160 rural, it is not even allowed by special permit, and it should not be allowed tomorrow. That way they
161 keep the fabric of the community the way the Master Plan has had it.

162 ? (1:16) asked if section 4.95 mitigates section 8.21.

163 Mr. Marquise replied that those are two separate things. Section 8.21 is just a CZC and goes through the
164 Zoning Administrator and the Board of Selectmen. Site Plan Review goes through the Planning Board,
165 which is much higher level.

166 Lisa Hoekstra said that the map shows 75 STR's and that is from January 2022 and there is a number
167 floating of 180 and both numbers are wrong. Based on evidence-based recourses, one a STR
168 management company and the other Air DNA, there is closer to 108-110 STR's. Out of those, they really
169 do not know how many are owner-occupied. The way to find that out is through a registration process
170 and she is very much in support of the registration process. The other thing that she asked was about
171 two persons per bedroom plus one additional person per unit and would that be just for short-term
172 rentals or would that be all across Sunapee, because if it going to be for all of Sunapee, there is no way
173 to enforce that, and she asked if that was discriminatory against STR's. She was part of the task force
174 right from the start, it was terrific, and she has PTSD from it. The comments about the task force being
175 collaborative, that everybody contributed to the original draft, which was so restrictive and so punitive,
176 she said that STR owners were not part of the development of those drafts and the other recourses that
177 were put forward. She asked that to be taken into consideration and there were really two sides of that
178 task force and the STR owners have a voice with the Lake of Sunapee STR owners' association.

179 Chairman White had a question as well about the limitation of people per bedroom, he was assuming it
180 was just for STR's.

181 Mr. Marquise confirmed that the limitation is only for STR's, and it is under Section 4.95, which is strictly
182 STR requirements. The two people per bedroom is a rule of thumb standard. He wanted to mention
183 again that it is up to the board how they want to present it, whether STR's will be allowed in all districts
184 or be restricted, but part of what they have discussed before and said that for the record, if they look at
185 the zoning map, the area in the upper left corner in beige would not be allowed for STR at all under the
186 proposal that was brought forth, and everything in white, which is most of the town, if you look at the
187 map, would need to go to the Zoning Board for exception. And his concern was that when that concept
188 gets out and gets presented to the voters, even though the exception is easy to get, but still, it requires
189 that step of getting an exception, and his main concern was that it might not be acceptable to the
190 voters, and this must be approved.

191 Ms. Silverstein proposed a change of the word dumpster to (trash) receptacle at number 12.

192 Mr. Hazelton proposed add of "parking plan shall be required" at the end of the sentence at number 8,
193 Section 3.40(b).

194 Ann Bordeianu (via ZOOM) said she was a moderator for the Short-Term Rental Task Force and listening
195 to what Lisa Hoekstra had to say about the group, wanted to set the record straight that there was equal
196 representation from the group. The other thing she mentioned was with regards to the rural residential
197 area. With a calculation of the number of STR owners vs. the number of residents in the town, it looks
198 like the number of owners are 4-5% of the total population of the town. She said that they should keep
199 in mind that the residents are going to be the ones voting on this ordinance and what some of these
200 residents might think of having a business-like operation being approved in the areas which are not
201 approved in right now, meaning rural and rural residential areas.

202 Chairman White said that one of the things they need to think is how do they feel about the districts
203 that the STR's should be allowed.

204 Mr. Osborne said that a useful source for that discussion would be the survey for the Master Plan and
205 that they can address that next year. He thinks that this year they got this proposal on board and that
206 they got something. If they try and make it overly restrictive, it is going to get rejected and they will have
207 nothing. He also asked if lodging and boarding would be considered the equivalent of short-term rental.

208 Ms. Spector-Morgan replied that they are not since they would have gone through site plan review. The
209 concerns they would hear about short-term rentals are that they are in the middle of residential
210 neighborhoods, the houses are built for single families and people live there throughout the entire year.
211 So, when you take twelve strangers and put them in a six-bedroom house, they do not know where the
212 emergency numbers are, where the fire extinguishers are, they do not necessarily know where the
213 smoke detectors are, and those things now need to be addressed for that structure. So, whether it is
214 considered residential, commercial, business or whatever, there is that slight change of use and the Fire
215 Chiefs have a real concern about those issues.

216 Chairman White said that to him it comes to two elements: owner-occupied and in what district should
217 they be allowed. Those are the most debatable.

218 Ms. Silverstein said that her thought was about what is to the benefit of the town and for her that is a
219 priority.

220 Mr. Osborne said that the town of Sunapee has always been a resort town, so the businesses in town
221 rely on tourism that has always been a part of the town. The hotels and motels used to be right on the
222 water and around the lake which now are bought and turned into single-family residential homes, which
223 some people rent to pay their taxes. The hotels are gone, so there must be some places for people to
224 stay for business to survive in the town. He feels that STR's should be allowed in all zones, because he
225 thinks it is discriminatory to say to somebody that has a house in a residential area that they cannot rent
226 their house.

227 Mr. Butler agreed with Mr. Osborne on allowing and opening to everybody for STR in all zones. He also
228 asked if they must be owner occupies, to which the answer was negative. He expressed concerns that it
229 might change the fabric of the town.

230 Mr. Clark agreed as well, with a registration process.

231 Mr. Claus talked about the intention of use in the aspect of planning and looked at them in the same
232 group as single- and two-family dwellings and saw them in all the zoning districts.

233 Mr. Swick said that the differences between STR's and people renting summer houses are obvious. A lot
234 of people do not like the different use and the high intensity and there is also the environmental issue
235 which is the introduction of invasive species to the water bodies from moving boats in and out. But he
236 can see the benefit of the town from the financial perspective.

237 ? (1:44) talked about Perkins Pond where she lives, a rural residential district where out of 100 houses,
238 30 are STR's, which had changed the complexion of Perkins Pond. She lives on emergency access road
239 only; the parking is horrific, and the vehicles are blocking the access of the emergency vehicles. Many of
240 them had moved to this district because of the peace and quiet, but now they have noise and pollution
241 on Perkins Pond because of the boats that people bring in and the character of the town is changing in
242 that area. She thinks that it is the boards job to protect the rural nature of Sunapee and if you put a
243 commercial business in a rural residential area, they are going to change the complexion of the town.

244 Lisa Hoekstra asked if they are going to grandfather tourist homes because they are currently
245 permissible and if administrative gloss applies in the situation where they have allowed STR for many
246 years without any registration, restriction, or guidelines.

247 Ms. Spector-Morgan said that any use that is legal and existing at the time that this is adopted, even if
248 that use is not technically permitted under the changes, would be grandfathered. Administrative gloss
249 would not apply here because what she talked about was not administrative gloss but lax enforcement.

250 Susan (via ZOOM) said that she had been renting her house for 27 years in a rural residential area, in
251 Perkins Pond and she did not know that she was not in compliance. She said that there are a maximum
252 of 20 houses that are STR there, several of them would be considered as businesses that rent over and
253 over and have been STR for a long time.

254 ? (1:50) said that people that had made the plans have tried to protect the rural areas by asking
255 permissions from people that do want to rent or hotels and that is why they were concentrated on the
256 harbor. Now that is all changing, and people are starting to rent in rural areas.

257 Peter ? said that this summer he did a little research and started to ask people if they are renting from
258 out of the town or Sunapee and ask them if somebody had told them not just about the hot dog stand
259 but anything else that happens in this town. Over 50% of people that had purchased something from
260 him were not from this town and were renters. So, the business impact is enormous because people are
261 coming here and spending money in their town. He expressed support for the registration process.

262 Mr. Marquise continued with amendment number 1: Article II, Section 1.42 – Filing of Zoning Ordinance
263 Amendments, number 2: Article II, Section 2.41 – Location of District Boundaries, number 3: Article III,
264 Section 3.40(m) – Additional Requirements.

265 Lisa Hoekstra asked why travel trailers should not be allowed to be used for long-term or short-term
266 rentals. It is the most impact short-term rental that they will have in Sunapee based on location and
267 based on what restrictions they have in place. Further, in December of 2020, the Zoning Board agreed to
268 have a travel trailer on wheels, a tiny house on wheels to be rented more than 90 days. So, the

269 precedent was already set. So, her feeling was that if they are adding this, then they are saying that
270 what already exists is permissible.

271 Mr. Clark and Ms. Silverstein argued that this case was for a tiny house which has a parcel ID, and it is
272 different than a trailer travel.

273 Mr. Marquise answered that it is there for consistency and went back to the short-term rental standards
274 and read number 11: A travel trailer, boat, or other mobile structure may not be used as a short-term
275 rental. To keep this internally consistent, they would have to say that also in the travel trailer section. He
276 also argued that tiny homes do not fall under this category.

277 Mr. Claus said that they have had a case in the Zoning Board where an applicant had brought forth
278 previous decisions that were in complete violation of their Zoning Ordinance and tried to say that they
279 had done that, so they must do it again. They were told that the case was basically someone making an
280 error and just because it happened in the past, does not mean they can allow it.

281 Town Manager Martinez (via ZOOM) suggested that this conversation should probably stop there.

282 Chairman Trow said that the question now should travel trailers, campers, RV's, things that you can
283 hook up and pull away or drive away be used for long-term or short-term rentals.

284 The board decided that they should not be allowed and accepted the amendments.

285 Mr. Marquise moved to amendment number 4: Article III, Section 3.50(b) – Special Exceptions. He said
286 that at the last meeting they were trying to possibly establish an average distance and discuss a
287 hierarchy of structures.

288 Mr. Claus had material in writing from the attorney Mr. Cordell and they have discussed this matter with
289 Ms. Spector-Morgan as well and basically once the structure is connected, it becomes the hierarchy of
290 the higher structure or the extension of it. He said that the lawyer had suggested if that structure has
291 multiple uses, it should be considered at the highest appropriate use.

292 After a discussion about different cases and scenarios, Mr. Osborne suggested that they should put
293 similar uses instead of hierarchy, for the connecting structures.

294 Mr. Marquise suggested that to address it, they should say “contain within” instead of “connected.”

295 The board agreed to these amendments.

296 Mr. Marquise continued with amendment number 5: Article III, Section 3.40(k) – Special Exceptions and
297 the board agreed to take the number 4 out and keep the number 2, 25 feet from the waterbody and 25
298 feet height within the setback.

299 Amendment number 6: Article IV, Section 4.33(B)(8)(b)(I) – Cutting and Removal of Natural Vegetation
300 within the Natural Woodland Buffer was accepted by the board.

301 Amendment number 7 and 9 were skipped since they were discussed earlier with the STR's.

302 Amendment number 8: Article IV, Section 4.90 A & B – Accessory Dwelling Unit was accepted with a
303 possibility to discuss further about the detached ADU's.

304 Amendment number 10: Article X, Section 10.50 – Decision, amendment number 11: Article XI -
305 Maximum Structure Height and amendment number 12: Article XI – Definitions were accepted by the
306 board, but need to establish the grade, the slope, and the angle to accommodate the use of the firefight
307 ladders.

308 Interview with David Neville for an alternate position on the Planning Board.

309 David Neville was not present for the interview.

310 Review of Minutes: No minutes were reviewed.

311 Signing of Mylar's:

312 **The meeting was adjourned at 10:30 PM.**

313 Respectfully submitted: Rajmonda Selimi

314 Planning Board

315 _____

316 Chairman Peter White Suzanne Gottling

317 _____

318 Joseph Butler Jeff Claus

319 _____

320 Gregory Swick Randy Clark

321 _____

322 Richard Osborne