

1 **TOWN OF SUNNAPEE**

2 **PLANNING BOARD**

3 **NOVEMBER 17, 2022**

4 **Chairman White called the meeting to order and conducted a roll call at 7:05 PM.**

5 **MEMBERS PRESENT BY VIDEO:**

6 **MEMBERS PRESENT IN THE MEETING ROOM:** Suzanne Gottling, Randy Clark, Chairman Peter White,  
7 Gregory Swick, Jamie Silverstein (Zoning Board), Jeff Claus (Planning & Zoning Board) Michael Jewzcyn  
8 (Zoning Board), Pierre Lessard (Zoning Board).

9 **MEMBERS ABSENT:** Richard Osborne, Joseph Butler

10 **ALSO PRESENT IN THE MEETING ROOM:** Michael Marquise - Town Planner.

11 **ALSO PRESENT BY VIDEO:** Scott Hazelton - Highway director.

12 7:00PM - Review of Zoning Amendments

13 Chairman White announced it as a Joint meeting of the Planning/Zoning Boards to review the proposed  
14 Amendments and said that they will discuss the Amendments and hopefully come to a consensus.

15 Mr. Marquise started with Amendment 1, which is simply for town Amendments to be placed on the  
16 Town website. Chairman White asked if there is any discussion or comments on the proposed  
17 Amendment number 1.

18 Since there were not any, Mr. Marquise continued with Amendment 2 which says that the vacation of  
19 roads shall not affect location of district boundaries, i.e., discontinuance.

20 Mr. Jewzcyn addressed the question: how is discontinuance defined; is the town maintaining ownership  
21 or just discontinuing maintenance? Mr. Marquise answered that discontinuance is a legal process which  
22 means that the town road goes through a process right through a town meeting and then the town  
23 vacates the rights to that road. Mr. Jewzcyn asked whether the road becomes private. Mr. Marquise  
24 answered that usually the rights go to the abutters. The town only has the right to cross the road. Mr.  
25 Jewzcyn presumed that discontinuance means that it is not going to be maintained. Mr. Marquise  
26 explained that when the town discontinues the road, the town will lose all rights from that road. The  
27 member discussed that the road is not in use anymore and it no longer exists. The boundaries are still  
28 going to be down in the middle of the road. Mr. Jewzcyn asked what that means to the town exactly.

29 Chairman White asked if there are any comments regarding Amendment 2.

30 Since there are not any Mr. Marquise continued with Amendment 3, which is Amendment for travel  
31 trailers. He said that they discussed it in the past and reminded the members that they talked about the  
32 number of days, which originally were 90, but today they put 90 total days. They commented that if it is  
33 self-contained, it must be disposed of for water and sewer department standards. In Item 4 they have  
34 taken out sleeping corners and put them for storage. Travel trailers must not be used either for long  
35 term or for short term rentals.

36 Chairman White asked if there is any vehicle for somebody to stay in a travel trailer for a seasonal work  
37 situation. Mr. Marquise said no. Chairman White asked if 90 days seem appropriate for everyone in the  
38 meeting room.

39 Ms. Silverstein said that they at least have a starting point, otherwise they have no way to monitor it.  
40 Even the compliance officer can say May or October.

41 Chairman White commented that there is no registration of anything like that with the town.

42 Mr. Hazelton said that per calendar year it is an effective way to do something like that.

43 Mr. Marquise recalled that they had the same thing with the tree cutting case, they used to say per  
44 calendar year which would be 3 months, 90 days and 1 year.

45 The board concluded that having a calendar year is a good standard to start with. Chairman White asked  
46 if everybody is in favor of that. All members were in favor.

47 Mr. Josh from the public commented about people that might be building a house, might use a trailer on  
48 their property during the construction of the house and he saw the intent in this to being somebody that  
49 is at the bottom of the chain who is trying to start.

50 Chairman White said that it is a good point.

51 Mr. Jewczyn asked what if the person who is building a house has a trailer but not for them, for example  
52 it is for the contractor. Mr. Josh sees that as a good thing; having a place for a person to stay while  
53 working in a house.

54 Mr. Hazelton said that they would allow that as a special exception, he said that both cases are  
55 considerable; he agreed that somebody building a house could use it for stay during the construction, or  
56 in the case for contractors, if they are coming from out of the town, they can use the trailer for  
57 temporary stay while the house is finished during a certain period of time.

58 Mr. Christian from the public said that one way to accomplish it is to allow special exception for the  
59 party to stay in the trailer if the house on the property is under construction and does not have a CO.  
60 Once the CO is issued, the need for a person to stay in the trailer is no longer required.

61 Mr. Jewczyn suggested that a registration of the trailer might be involved, except it is going to  
62 accommodate the occupation for specific purposes.

63 Mr. Marquise recommended that based on what is being suggested, the stay could be no more than 90  
64 days in a period of 12 months, but there is a statement that says that the period can be extended to 180  
65 days as a part of a house construction.

66 Ms. Silverstein asked whether they could offer a variant that is conditional or limited to 90 days, if it  
67 comes to zoning. So, she asked if they could approve a variant for a specific period.

68 Mr. Marquise added that he understands the intent; if it is part of the certificate of zoning compliance  
69 for the house, it is extended if the construction is active.

70 The members of the board discuss the definitions of travel trailers and mobile homes.

71 Mr. Marquise said that regarding the special exceptions, and what they had in that exception was a  
72 requirement that if one has a shed on neighboring houses, the house cannot be compared to that shed.  
73 They clarified that if something is contained in the structure it would be considered as a part of a greater  
74 structure.

75 The members of the Board discussed whether an external object is contained or connected to a greater  
76 structure or not.

77 Chairman White suggested that they all move forward.

78 The members of the Board discussed the difference between contained and connected. They all agreed  
79 that the term connected is going to serve well.

80 Mr. Marquise said that they will jump over Amendment 5, since it is going to be a long one.

81 Mr. Jewczyn asked about section 500 number 4, which calls the portion of the structure encroaching  
82 shall be no higher than 25 ft. He asked what the reference of 25 ft. is i.e., the starting point.

83 The members of the Board discussed that the reference is the ground point. The lowest point of the  
84 existing structure.

85 Mr. Marquise announced Amendment 6, which regards the cutting of trees and asked if the trees define  
86 living or dead trees. He said that it is explained that the trees which are determined to be dead,  
87 diseased, dying or examined.

88 Chairman White asked if there are any comments.

89 Member of the audience asked if that is within a calendar year.

90 Mr. Marquise said that it is a 12-month period.

91 Mr. Clark asked whether it is how it would be read in the Article.

92 Chairman White asked if there are any further questions on Amendment 6. Since there are not any, he  
93 suggested that they continue.

94 Mr. Marquise continued to Amendment 8. They skipped 5 and 7. The Amendment is for accessory  
95 dwelling units which was recommended in a review by the Planning Commission, it had been an update  
96 to numbers and an update to a purpose. Talking about caregivers and access to portable housing, long  
97 term renters.

98 Chairman White asked if anyone have any questions regarding this.

99 Lisa Hoekstra from the public is curious whether any other people than owners or caregivers are allowed  
100 to use it.

101 Mr. Jewczyn asked whether there is a caregiver who has compensation for caregiving. Does that  
102 distinguish it from a family member? Is it somebody who is an employee and does that for a living vs.  
103 somebody who is related and staying there?

104 Mr. Marquise said that there is more to the section that is not here, in response to Ms. Hoekstra and it  
105 will be amended.

106 Mr. Marquise continued with number 9 which is to look at the requirements on the non-conforming  
107 structures (Article 6.12) and the term about reconstruction and said that it had been added is a  
108 requirement that if one reconstructs, it must stay within the horizontal footprint of the existing  
109 structure. He said that horizontal footprint is defined as an exact horizontal location on the ground of  
110 the existing structure. Regarding the way it is written, some of the members have some issues with it  
111 and they are addressing it in another exception.

112 Chairman White asked if there are any questions.

113 Members of the audience asked whether that is within the nonconforming area or the whole structure.

114 Ms. Silverstein replied that it is the nonconforming area.

115 Mr. Marquise explained the couple of changes to Amendment 10 and they found a few errors in the text  
116 which will be cleaned up and moved on to the next one.

117 Mr. Marquise moved to Amendment 11 and explained that at the last meeting they had agreed to start  
118 from the lowest finished grade, and they had a long discussion on the matter of safety about the fire  
119 department ladder. The board agreed to "The vertical distance measured from the lowest ground  
120 elevation around the finished grade within 15' away from the base of the structure to the highest level  
121 of the roof".

122 Mr. Marquise moved to Amendment 12 and the board agreed on the proposed changes.

123 Chairman White said that Amendment 7 which has to do with short-term rentals is probably the reason  
124 most of the people are here tonight. He said that there is lot of concern on both sides whether the STR's  
125 are good for the community or not. Because there is no regulation in ordinance about the STR's  
126 currently, they are trying to achieve for it to be mentioned in the ordinance. He presented the proposed  
127 spreadsheet on STR criteria on the screen to help people visualize what the proposed amendments  
128 allow and do not allow.

129 Robin Saunders said that the STR Group did not send their proposed document as it is presented,  
130 because their proposal did not allow STR in all zoning districts. They had proposed that they could be  
131 allowed only by special exception in rural residential districts and not allowed at all in rural districts.

132 Chairman White said that it had come down to a matter of intensity. A person who has a single-family  
133 home and it is owner-occupied and they have an additional room, there is no reason why he or she  
134 cannot be allowed to rent it as a short-term rental, because that is a pretty low intensity use versus  
135 having a big house with six- or eight-bedrooms non-owner occupied rented out of Airbnb. Those two are  
136 very distinct uses in intensity.

137 Robin Saunders added that now they are prohibiting transient housing and it is allowed only with special  
138 exception, so no transient housing, no bed & breakfast, inns, and hotels are allowed without special  
139 exception. It was never their intention to eliminate STR's as a committee, just to keep them in the  
140 districts where people expect to have them.

141 Member of the audience said that he agrees with owner-occupied if the owner lives there all the time  
142 while he/she is renting.

143 Ms. Silverstein thinks that using the term owner-occupied is misleading, because that means the owner  
144 needs to be 120 days a year and in their minds the owner is there all the time, which rarely happens.  
145 They need to change that into the owner is present during the rental.

146 Chairman White said that the reason that he thinks the STR's were allowed in all areas by this  
147 amendment is that they had letters from people that own houses in rural and rural residential areas and  
148 had expressed concerns about their ability to rent in those areas.

149 Members of the audience said that those people have houses there as second or third and do not even  
150 live in town, they are using the renting as a business, to make money, not to support payments on their  
151 houses.

152 Lisa Hoekstra said that in the meeting agenda there are several letters, but she had not seen the other  
153 letters that were sent from the other STR owners with the other agendas and asked for them to be  
154 submitted for the public record. She said that it is the homeowners right to rent their property/home.

155 Members of the audience argued that this is not really a homeowners' rights issue, but more of a house  
156 owners' rights issue, because they have a separate set of financial rules.

157 Mr. Jesse pointed out that he is not a fan of paying tax dollars to support out of town and out of city or  
158 state corporations that had bought property in Sunapee.

159 Bill Stockwell said that they are concerned about the water quality in the pond, because 55% of the Lake  
160 Sunapee surface water comes from Otter Pond. He said that people come in without scrubbing their  
161 boats.

162 Chris Whitehouse pointed out that it is the right of the people to rent their houses whether they like it  
163 or not and the city is taxing them properly for doing so.

164 Ms. Saunders said that there are approximately 140-180 or maybe up to 200 STR's and asked why they  
165 are changing the zoning for less than 4% of the population of the town, where most of these people do  
166 not even reside there, and that was her biggest concern.

167 Jackie Smith pointed out that there is a significant difference between long-term and short-term rental,  
168 because firstly the tenants are checked thoroughly, and the owners are responsible for their tenants and  
169 on the other hand STR's would change the complexion of the town.

170 Peter Hoekstra said that electricians and plumbers do not rely totally on the STR community, but they do  
171 a lot of work for them in the town, so does not want to underestimate the impact they have on the  
172 community as positive in that way. He said that maybe the best thing to do is start figuring out how  
173 many STR's they have there and go from that point. He said that the number of people renting is almost  
174 irrelevant, because there are going to be people anyway, whether they own it or not.

175 Ms. Silverstein disagreed with that, because of comparing apples to apples. In a home there might be 4  
176 or 6 residents, and the same house could be rented to much more people. She also said that if someone  
177 needs to rent to pay taxes, there is always the long-term option. She went back to the owner-occupied  
178 issue and pointed out that it does not work, so the owner must be present, but then raised the question  
179 what if the owner is a trust. She said that she did some research and in NH it is stated that the trustee or  
180 the beneficiary of the trust must be present. She said that they need to work on the definitions and find

181 a different term than owner-occupied to have the owner on site during the time of the rental, and then  
182 if it is a trust, LLC, or corporation, how are they going to define the owner.

183 Chairman White suggested that they take out the non-owner occupied and keep the owner occupied  
184 and define the terms as discussed by Ms. Silverstein.

185 Mr. Marquise said that non-owner occupied is a trigger for site plan review, it does not say whether you  
186 can do it or not.

187 Mr. Swick said that the site plan review is a low bar, it just determines whether one fulfils the basics.

188 Mr. Jewczyn was not sure that they could only allow STR's to be owner-occupied, it is not legal.  
189 Someone can own a house in another state or town and can rent it for a short-term.

190 Mr. Claus explained that they are saying to limit it to certain districts, everything outside of rural  
191 residential. He said that he agrees with the council's comment made on the previous meeting that this is  
192 all new and rather than opening up to all districts, maybe they need to take baby steps and start with  
193 more commercial districts and not residential and rural residential and then in a year they can have  
194 another conversation depending on the feedback from the community, to expand that.

195 Mr. Marquise replied that regarding the Zoning Board, he understands what he is saying, but there is a  
196 high chance of lawsuits with that proposal, because most of STR's are in those districts. They will have  
197 increased numbers of special exceptions requests as well and asked what they will gain with that  
198 process other than getting the burden of all these cases.

199 Ms. Silverstein answered that they would not be grandfathered. The risk is that if they have an overly  
200 broad amendment, the town will vote against it, and they would come back to where they are now. If  
201 they reach a compromise and allow the community to see that they take baby steps.

202 Mr. Marquise replied that he is not sure making 80% of them illegal is baby step.

203 Members of the audience said that the position of the town manager is that they are already illegal and  
204 that they are not making something illegal there.

205 Ms. Hoekstra said that they should start with something that they do not know and register all the STR's  
206 in town. Based on evidence from several different research recourses there are about 125 STR's in  
207 Sunapee and about 75% of them are in rural residential districts. They do not know how many of them  
208 are owner-occupied, they might be owned by LLC, or the owner might not be there.

209 Ms. Silverstein asked how many of the STR owners are voters.

210 Chairman White replied that if they are not voters, they are taxpayers.

211 Mr. Lessard pointed out that if they prohibit STR's from the areas where there are hotels, bed &  
212 breakfast, and other open market competitive uses, which is a lawsuit in his view. He said if they make  
213 them available where other competitive uses are available, that is economically fair to all parties.

214 Mr. Clark pointed out that he will give his opinion when they discuss the matter as a board at some  
215 point and Chairman White said that they are about to discuss it now, because they are running out of  
216 time.

217 Mr. Hazelton talked about the issues that they have had at the transfer station with people that do not  
218 understand the rules and mentioned that the police had to intervene on numerous occasions to address  
219 disorderly group at one of the short-term rentals, which had taken a lot of resources on behalf of town  
220 staff. That is why he agrees with the way members of the board presented it to allow STR to owner-  
221 occupied sites.

222 Members of the audience said that congestion can be a good thing and it can drive foot traffic and  
223 business in certain circumstances and that is exactly what they want in commercial districts.

224 Short-term rental owner that lives in the area (Via ZOOM) said that in terms of transfer stations, they  
225 have private trash pick-up which many owners do, and many of them are not businesses, just a family  
226 who rent to other people while they are present at the area themselves.

227 Chairman White decided to discuss the matter amongst the members at this time.

228 Mr. Clark's opinion was that STR is a business, after discussing with attorneys and information read. He  
229 said the State, HMA and counselors recommend that it is a business, so that is how he looks at it. To put  
230 a business somewhere, you must go through a process, and he did not know if he wanted a business in  
231 the rural residential areas.

232 Mr. Swick said that he lives in a rural residential area, and he understands the impact. He is reluctant to  
233 tell people that they do not want this at all, but he really wants them to produce the strategy that allows  
234 them to move forward in this step, but things that allowing it 100% is not a clever idea and would not  
235 pass.

236 Ms. Silverstein agreed that it is a commercial operation and if they do want to move forward, it must  
237 have the same structure that any commercial operation would have to abide by.

238 Mr. Claus pointed out that having talked with several people that had followed this, the question had  
239 been how come no one is talking about not allowing them; they are currently not allowed. He said he is  
240 not advocating it; he is just putting it out there. He said that he is supporting the baby steps idea still.

241 Chairman White asked the board to decide what direction would they give Mr. Marquise to make  
242 changes.

243 Mr. Jewczyn said they need to know how many of STR's are out there, by creating a format where  
244 people will have the opportunity to register, and then regulate it.

245 Mr. Clark suggested starting with the definitions. After a discussion amongst members and the public,  
246 the board decided to take the definition of long-term rental out as a term, since it is not mentioned  
247 anywhere in the ordinance. They have also decided to switch the definitions of short-term rental and  
248 transient with the definitions that they have gotten from Cordell Johnston.

249 Ms. Silverstein suggested for owner-occupied to use Cordell Johnston's definition which defines that the  
250 owner is a full-time resident who rents one or more rooms in a house or building, instead of 120 days.

251 Lisa Hoekstra advised the board to look back when the term owner-occupied was introduced and  
252 revised in 2020 and the intent had nothing to do with renting; it had everything to do with just defining  
253 what an owner-occupied building is, which was 120 days. The way it would be defined now will pretty  
254 much effectively eliminate most if not all STR's. If they want to keep the harbor businesses and local

255 support businesses in business, they cannot just start changing that. If that is the intent, she added that  
256 there are easier ways to eliminate the STR's than changing the definition. She mentioned that there will  
257 be lawsuits and then the little houses will end up getting sold, because people are renting them because  
258 they need to. She asked the board to look at the impact, if the STR's are eliminated or greatly  
259 diminished, there will be economic impact and the businesses in the harbor will not be able to survive.

260 Mr. Clark suggested for the hotel and motel definition to add a sentence: "Where all the units are  
261 owned and operated by the same entity."

262 Chairman White asked for clarification if the board is asking to take a more conservative approach and  
263 mirroring the requirements for inns, bed & breakfast for STR's.

264 The board discussed the registration process and the districts that they might not allow STR's.

265 Ms. Silverstein said that once they allow them, from the guidance of the counselors, they are  
266 grandfathered. So, this is a new process for the community, if they could define it and if the model  
267 works, they can revisit it next year, but she thinks that they could start with a very controlled area in  
268 commercial districts.

269 Mr. Claus asked what oversight has more as far as control and regulation, having a site plan review or go  
270 with other uses and if it goes with bed & breakfast and others, to be allowed in residential district and  
271 need special exception in the rural residential district.

272 Mr. Clark said that to him business classification has more power for the town.

273 Mr. Jewczyn said that to him it comes down to them all being short-term rentals regardless unless they  
274 vote in the town of Sunapee.

275 Chairman White opinion was that people should be allowed to rent a room in the house that they live in.

276 Ms. Gottling replied that no matter if it is right or wrong, his opinion is expressing the thoughts of the  
277 great many of the voters in Sunapee.

278 Robin Saunders said that she is familiar with all the STR's in Perkins Pond and there is not one of those  
279 that rents one room.

280 Ms. Silverstein said that with Chairman White's scenario the owner is there and rents a room from the  
281 house that he/she lives and is truly a residence.

282 Chairman White replied that they were saying that the owner occupancy does not matter in this case  
283 and that any rental was commercial, from what he had heard.

284 Ms. Silverstein thinks it is different and that a short-term rental where the owner is not in residence is a  
285 commercial exchange, but if the owner is in residence, in her mind, it does not feel like a commercial  
286 exchange.

287 Mr. Swick asked if they are going to allow people to buy a house and rent it in a residential area.

288 Ms. Silverstein suggested going back to the definition and adding to it that the owner must be in  
289 residence at the time of the rental. She added that they do not need a dwelling unit, it can be a portion  
290 of a dwelling unit



291 Mr. Clark said that he would be OK with that in every district.

292 Mr. Lessard said that basically they are shutting down all Airbnb's, bed & breakfast, and other similar  
293 competing commercial entities when there are commercial options to have and thinks that it is going to  
294 bring all sorts of lawsuits.

295 Mr. Marquise said that the problem he sees with the option of the owner being on site is that means  
296 that you can never rent a single-family home as a STR.

297 The board discussed the owner-occupied option and which districts would the STR's be allowed and in  
298 what conditions.

299 Mr. Clark thinks that they should be allowed in residential areas under non-owner-occupied and  
300 nonresident.

301 Chairman White concluded that bed & breakfast, tourist homes and lodging and boarding is permitted  
302 by right in the residential district and the board shared the opinion to allow the STR's in the residential  
303 and commercial districts and stick with not allowing them in rural and rural residential districts, with the  
304 option to change the amendment in the next meeting, depending on the comments from the public.

305 Chairman White announced the letter from Daniel Cave in relation with the Amendment number 5  
306 Article III, Section 3.50(k) – Special Exceptions.

307 The board members went through the proposed letter and diagrams, discussed it with Mr. Cave, but did  
308 not make any final decisions during the meeting

309 **Meeting adjourned at 11:55PM.**

310 Respectfully submitted: Rajmonda Selimi

311 Panning Board

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|---------------------------|------------------|
| 312 _____                 | _____            |
| 313 Peter White, Chairman | Suzanne Gottling |
| 314 _____                 | _____            |
| 315 Jeff Claus            | Gregory Swick    |
| 316 _____                 |                  |
| 317 Randy Clark           |                  |