

1 **TOWN OF SUNAPEE**

2 **ZONING BOARD**

3 **MAY 2, 2019**

4 **PRESENT:** Daniel Schneider, Chair; Aaron Simpson, Vice Chair; James Lyons, Jr.; George Neuwirt; William
5 Larrow, Alternate; Jeffrey Claus, Alternate; Nicole Gage, Zoning Administrator

6 **ABSENT:** Clayton Platt

7 **ALSO PRESENT:** See Sign-in Sheet

8 Chairman Schneider called the meeting to order at 7:00 pm.

9 **CONTINUANCE: CASE #ZBA19-03: PARCEL ID: 0115-0009-0000: SEEKING A VARIANCE PER ARTICLE VI,**
10 **SECTION 6.12 TO PERMIT EXPANDING THE "ENVELOPE" OF A NON-CONFORMING STRUCTURE INSIDE**
11 **THE 50 FT SETBACK AND EXPANDING THE STRUCTURE INTO THE FRONT ROAD SETBACK WHEN IT**
12 **WOULD BE NON-CONFORMING, AND RAISING THE RIDGE 10 INCHES; 22 BURMA RD; LYNN ARNOLD &**
13 **FRED BEALIEU.**

14 **CONTINUANCE CASE #19-04: SEEKING A VARIANCE PER ARTICLE III, SECTION 3.10 TO PERMIT TEARING**
15 **DOWN AN EXISTING CAMP AND BUILDING A NEW RETIRMENT HOME. THE PROPOSAL INCLUDES A**
16 **GARAGE ATTACHED TO THE HOUSE AND ENCROACHES IN THE FRONT ROAD SETBACK. SEEKING 25 FT**
17 **OF RELIEF; 22 BURMA RD; LYNN ARNOLD & FRED BEALIEU.**

18 **CONTINUANCE: CASE #19-05: PARCEL ID: 0115-0009-0000: SEEKING A VARIANCE PER ARTICLE VI,**
19 **SECTION 6.13 TO PERMIT A NEW GARAGE TO BE ATTACHED TO HOUSE WITHIN THE FRONT 50 FT**
20 **SETBACK BY 6 SQ FT; 22 BURMA RD; LYNN ARNOLD & FRED BEALIEU.**

21 Mr. Neuwirt recused himself from the case.

22 Vice Chair Simpson made a motion to appoint Jeff Claus and Bill Larrow as voting members for the cases.
23 Mr. Lyons seconded the motion. The motion passed unanimously.

24 Chairman Schneider said that there is a letter on file that authorizes Mr. Neuwirt to represent the
25 applicants.

26 George Neuwirt, Lynn Arnold, and Fred Bealieu presented the merits of the cases.

27 Mr. Neuwirt said that he has had extensive conversations with Ms. Gage and before he begins his
28 presentation he thinks it would be beneficial for her to state her case regarding where she stands on a
29 few issues. Ms. Gage said that she did meet with Mr. Neuwirt after the last meeting and they discussed
30 requesting a Special Exception or to change the request but decided to keep the language as written.
31 After she posted the agenda, Chairman Schneider requested that she revise it to the wording that would
32 make the most sense in order for the requests not to be for Article VI. Her understanding is that since
33 there is a new house that will be built within the 50 ft waterfront buffer a Variance should be sought

34 under Section 3.40(c). The Variance from this Section will allow both the new house within the 50 ft
35 buffer as well as the garage in the 50 ft buffer, which were originally applied for in two separate
36 Variances. She also recommended a Variance for the parking area within the 50 ft buffer for the revised
37 driveway because Section 3.40(c) does now allow parking within 50 ft of the waterbody. Ms. Gage
38 continued that the other Variance should be for the road front setback.

39 Ms. Gage gave the Board copies of new plans from the applicant with more details and explained that
40 the house and garage locations were not changed.

41 Mr. Neuwirt said that the reason that he wanted to pursue the Variances the way that he applied for
42 them was because he wanted to cover the bases with three Variances. He was interpreting maximum
43 structure height as the height of the building whether it is in the 50 ft setback or not. According to the
44 current requirements in order to meet the Special Exception criteria, the building must be under 24 ft
45 tall and the building is 24 ft 3 in tall. It might seem that several different things can be combined with
46 three Variances, however, he questions if the Board thinks that he should present three Variances; or if
47 the Variances should be doubled up on, or are potentially unnecessary. They are moving the house back
48 from the lake 1 ft and have requested the garage to be in the 50 ft setback so they wanted to give back
49 more than they are taking and compensate by giving 24 sq ft back and only requesting 6 sq ft. Mr.
50 Neuwirt asked if they get any credit for making the house not any more non-conforming even though
51 they are raising the house 10 inches. He feels as though the case is splitting some hairs that are not very
52 clear, especially as height can be interpreted so many different ways. One person can think that height
53 is measured from the peak to the exact grade under the peak while he interprets height as the
54 measurement from the lowest adjacent grade. He applied for the Variance because the height of the
55 house did not meet the Special Exception criteria.

56 Mr. Neuwirt said that he would first like to describe the project to the Board.

57 Mr. Neuwirt said that the applicants purchased the property in September and would like to move into
58 the house as a retirement home. The project consists of taking the existing house, which is a camp that
59 is very rustic and on piers and building a new home. Mr. Bealieu gave the Board copies of what the new
60 house will look like; the house will stay essentially the same but they need to raise the house to increase
61 the floor joists, ceiling height, and rafters. Ms. Gage asked and Mr. Bealieu confirmed that the current
62 house is being demolished. Mr. Bealieu continued that the new house without the garage is the exact
63 configuration as the current house. Mr. Larrow asked if moving the house back is why the height is
64 changing and Mr. Bealieu said that the slope probably only affects the height a couple of inches.

65 Mr. Neuwirt showed the Board the area on the lot that is buildable with the setbacks, which is only 414
66 sq ft of area and explained this further to the Board using the submitted plan. Mr. Neuwirt continued
67 that they are seeking relief from the Zoning Board to build the new house because the buildable area on
68 the lot is very restricted.

69 Mr. Neuwirt said that the proposal is to demolish the existing structure and build one structure that is
70 22.2 ft from the lake. Vice Chair Simpson said that the setback measurements are not on the submitted
71 plans. Mr. Neuwirt said that he brought new plans for the Board because the data that the engineer

72 had did not match his data because the new plans from the engineer ended up in his junk email so he
73 had them printed before the meeting for the Board. The new plans and the plans that the Board has are
74 very similar, the house location is the same, the distance from the lake, and all the other requirements
75 are the same; the only changes are some erosion controls, sediment filters, and tree points have been
76 added to the plans; the new plans are more detailed.

77 Mr. Neuwirt said that the house is a pre-existing non-conforming structure. They would like to build a
78 new home in the exact same footprint and go up 10 inches in height. Vice Chair Simpson asked and Mr.
79 Neuwirt confirmed that it is a pre-existing non-conforming structure on a pre-existing non-conforming
80 lot.

81 Mr. Neuwirt continued to explain the proposed project to the Board using the submitted plans. The
82 proposed garage is 26 ft x 24 ft and there will be a master bedroom wing added to the end of the house.
83 Mr. Neuwirt continued that there was a recent case where there was discussion regarding if having a
84 garage is a right / need or a want. This garage is proposed to be a two car garage attached to the house
85 with a master bedroom wing behind it. The house is presently 22 ft 3 inches from the lake and they are
86 moving the new house back one foot. They have tried to find a tasteful solution to develop a small lot in
87 a way that meets the needs of the property owners. They knew they would not meet the road front
88 setback if they added the garage, however, he knew from past experience dealing with the Highway
89 Director that he likes to keep development out of the 10 ft buffer from the edge of the road and moving
90 the house back 1 ft still allows them to be at the 10 ft distance. They are also hoping that it gives them
91 some relief to add the 6 sq ft of the garage into the Shoreland setback.

92 Mr. Neuwirt said that according to the last meeting, there should be two Variances based on the criteria
93 of Article III, Section 3.40(c). The request is because they are expanding the envelope of a non-
94 conforming structure inside the 50 ft setback and expanding the structure into the road front setback
95 where it will be non-conforming; they are also going to raise the ridge of the house 10 inches. Mr.
96 Neuwirt asked and Ms. Gage showed him how she thought the Variance requests should be worded.
97 Mr. Neuwirt read Ms. Gage's recommended wording: "seeking a Variance from Article III, Section 3.40(c)
98 to replace a pre-existing non-conforming structure with a new structure 23 ft from the reference line of
99 the waterbody, whereas 50 ft is normally required". Mr. Larrow asked if it should say 24 ft from the
100 reference line. Mr. Neuwirt said that Mr. Platt's existing conditions plan shows that it is 22 ft 3 inches.

101 Chairman Schneider says that Article VI, Section 6.12 says "the replacement of a non-conforming
102 structure with a structure that increases the non-conformity to this Ordinance, either vertically or
103 horizontally, shall only be permitted by Variance or, if permitted hereby, by Special Exception" and that
104 Mr. Neuwirt has stated that they are not expanding the horizontal non-conformity because it will be in
105 the same or smaller footprint. Mr. Neuwirt confirmed this but said that they are expanding the vertical
106 envelope by 10 inches. There was further discussion regarding this matter.

107 Chairman Schneider said that he thinks that the first Variance request should be to expand the vertical
108 dimension. He thinks that the request should be worded "seeking a Variance from Article III, Section
109 3.40(c) to replace a pre-existing non-conforming structure with a new structure having the same or

110 smaller horizontal footprint but with a 10 inch higher vertical distance”. Mr. Larrow said that the way
111 that the original Variance request is written it sounds like all three Variances would be covered by one
112 request.

113 Vice Chair Simpson asked and Mr. Neuwirt said that the 10 additional inches in height is the only
114 expansion in the 50 ft setback except for the 6 sq ft part of the garage. Mr. Neuwirt said that if the two
115 issues are two different Variance requests he has addressed them separately, however, he needs
116 clarification from the Board if this is how it should be handled. He has addressed the project in three
117 different requests, the first to raise the house 10 inches within the 50 ft setback; the second for the 6 sq
118 ft of the garage within the 50 ft setback; and the third is for a 40 ft relief from the road front setback for
119 the garage. Mr. Neuwirt asked how to simplify the wording of the first Variance so that it is something
120 everyone can agree on. Mr. Larrow said that the first Variance is to increase the envelope and it should
121 be kept simple. Mr. Neuwirt asked and the Board confirmed that the Variance should be for 3.40(c)
122 because they are discussing the waterfront setback. There was further discussion regarding how the
123 Variance should be worded as well as about height.

124 Chairman Schneider said that the wording of the Variance request should be “seeking a Variance from
125 Article III, Section 3.40(c) to replace a pre-existing non-conforming structure with a new structure on the
126 same or smaller horizontal footprint, 23 ft from the Shoreland reference line of a waterbody, with an
127 increase of roof height 10 inches”. Vice Chair Simpson asked why the 23 ft needs to be mentioned. Ms.
128 Gage said that her concern going forward is that this is a non-conforming structure with a Variance and
129 it would be helpful to be clear that the footage is important for what is being built. Mr. Larrow said that
130 he thinks that it is a reference point for where the structure sits in the setback. Vice Chair Simpson
131 asked if there is a document that shows how far the existing cottage is from the lake. Mr. Neuwirt said
132 that the measurement was not added to the submitted plans, however, he will make sure that it is
133 added to the final plans if the proposal is approved. There was further discussion regarding the setback.

134 Chairman Schneider read his revised wording for the Variance request again: seeking a Variance from
135 Article III, Section 3.40(c) with a new structure on the same or smaller footprint, within 50 ft reference
136 line from the waterbody, not less than 23 ft from the waterbody, with an increase of roof height on not
137 more than 10 inches. There was a discussion about this motion as it should be “that is not less than 24
138 ft from the waterbody”. Vice Chair Simpson asked about having the height part of the request. Mr.
139 Neuwirt said that the height will be 25 ft 2 inches from the lowest adjacent finished grade. Vice Chair
140 Simpson asked about the existing grade. Mr. Bealieu said that all of the elevations are taken from the
141 lake and the engineer’s plan shows the first-floor elevation and the garage floor elevation, he just did
142 not add the peak elevation.

143 Ms. Gage said that the current assessment card shows that it is a one-bedroom house with one
144 bathroom.

145 Chairman Schneider said that his understanding is that there is a proposed addition that is very slightly
146 in the waterbody setback. Mr. Larrow asked and Mr. Neuwirt and Mr. Bealieu confirmed that this is for
147 6 sq ft of the addition.

148 Chairman Schneider said that the wording for the Variance addition should be “seeking a Variance from
149 Article III, Section 3.40(c) for a new addition not less than 48 ft from the reference line of the waterbody
150 to have an area within the reference line of not more than 6 sq ft”. Mr. Larrow said that the
151 measurement is not on the plan. Mr. Claus said that the closest part of the addition is scaling at 48 ft
152 from the lake. Vice Chair Simpson asked if adding the 6 sq ft is actually increasing the non-conformity of
153 the structure. Mr. Neuwirt said that they are moving the house back 1 ft so they are decreasing the
154 non-conformity a total of 18 sq ft. Chairman Schneider said that the Board does not consider land
155 swaps, they can look at the intent, however, it still requires a Variance.

156 Mr. Neuwirt asked and Chairman Schneider re-read the recommended wording of the Variance for the
157 roof height.

158 Mr. Neuwirt asked and Chairman Schneider agreed to have him go over the criteria supporting the first
159 Variance request. Mr. Neuwirt read the criteria from the submitted application (see file for details). Mr.
160 Neuwirt also added that because of the size of the lot the property cannot be developed to its true
161 potential without seeking some relief.

162 Vice Chair Simpson asked how the project will have a positive impact on surrounding property values.
163 Mr. Neuwirt said that the existing house is in severe disrepair and the amount of money it will take to fix
164 the house precludes that investment. This will be a brand new house so he does not understand how it
165 will decrease property values. Vice Chair Simpson said that building a new house that is bigger than the
166 surrounding houses could overshadow them. Mr. Neuwirt said that the new house will not be bigger
167 than all the surrounding houses. There was further discussion regarding this matter. Mr. Neuwirt said
168 that he assumes that this will have a positive impact on the neighborhood and there is no one in the
169 audience contradicting him. Vice Chair Simpson asked and Ms. Gage said that she has not received
170 anything from any abutter regarding this proposal. Ms. Arnold said that they sent a letter and pictures
171 to all of the abutters.

172 Chairman Schneider said that Section 3.40(c) says that “the minimum setback between structures or
173 parking areas and waterbodies shall be 50 ft” and the plan shows a parking area within the 50 ft
174 waterbody. Mr. Neuwirt said that the parking area that is pre-existing is closer to the waterbody than
175 the proposed parking area. Chairman Schneider asked if there should be a Variance for this change and
176 he proposes that the Variance request wording for this change be: “seeking a Variance for Article III,
177 Section 3.40(c) for a parking area to be not less than 33 ft from the waterbody”. Vice Chair Simpson said
178 that Ms. Gage already had recommended language for this Variance. Chairman Schneider said that,
179 using Ms. Gage’s wording, the Variance should be: “seeking a Variance from Article III, Section 3.40(c) to
180 allow parking on a gravel driveway 28 ft from the reference line of the waterbody, whereas 50 ft is
181 normally required”. Mr. Neuwirt said that he does not understand why a Variance is required when
182 there is currently a more non-conforming parking area that they are moving. Vice Chair Simpson said
183 that this is not an envelope. Chairman Schneider asked and Mr. Neuwirt said that the current parking
184 area is 27 + / - ft from the corner to the waterbody. The proposed parking area is approximately 32 ft
185 from the waterbody. Chairman Schneider re-read the language of the Variance he thinks that is needed
186 for the parking area with the change to include “that the parking area is not less than 32 ft from the

187 waterbody, replacing the existing parking area that is 27 ft from the waterbody”. Vice Chair Simpson
188 asked if the Board could address the driveway when they are addressing the increase in the height. Mr.
189 Neuwirt asked and Vice Chair Simpson said that he does not think that a Variance is required for this,
190 however, it will make the property more conforming and says what is happening. There was further
191 discussion regarding this matter.

192 Mr. Neuwirt said that the Variance for the road front setback is because the distance from the closest
193 corner of the garage to the property line is 10 ft 1 inch. There is a 50 ft road front setback and they are
194 requesting 25 ft of relief from the centerline of the road. Vice Chair Simpson said that there is a
195 triangular piece that goes into Burma Rd shown on the plan. Mr. Bealieu said that it is part of their
196 property. Vice Chair Simpson said that the plan shows the prescriptive road easement. Mr. Neuwirt
197 said that there is also an easement over the property for the abutters. There was further discussion
198 regarding how far the garage is from the centerline of the road.

199 Chairman Schneider said that he does not agree with Ms. Gage’s wording of the Variance request, he
200 would say: “seeking a Variance from Article III, Section 3.10 for a new structure including a house
201 addition and garage not less than 25 ft from the road setback whereas 50 ft is required”. There was
202 further discussion regarding this matter.

203 Vice Chair Simpson asked if he is correct that the new structure is almost three times the size of the
204 current structure. Mr. Neuwirt said that the square footage is in the submitted handouts.

205 Chairman Schneider asked and Ms. Gage said that there is a letter from the Highway Director regarding
206 the road front setback Variance. Mr. Hazelton would like to have a drainage plan and a new driveway
207 permit application. The Board asked and Ms. Gage said that Mr. Hazelton would not normally see a
208 drainage plan, the request seems to be for water flow from the road onto the owners’ property that he
209 does not want draining into the pond.

210 Chairman Schneider asked if they have applied for DES permits yet. Mr. Neuwirt said that all of the
211 documents before the Board have been submitted to the State as part of a DES application.

212 Mr. Neuwirt said that they are adding 996 sq ft to the structure with the garage and master bedroom
213 area. The garage will have a second floor but the master bedroom will not have a second floor. Mr.
214 Claus said that the new living area seems to be 1960 sq ft; the footprint of the existing building is 672 sq
215 ft. Mr. Neuwirt confirmed that the living space is almost tripled, however, they are not tripling the
216 impact that the living space is having on the property; they are adding 996 sq ft to the current 672 sq ft
217 footprint. There was further discussion regarding this matter.

218 Chairman Schneider asked and Mr. Neuwirt said that the maximum height of the structure is 25.2 ft; the
219 garage will be less than 22 ft high.

220 Mr. Neuwirt read the reasons to grant the Variance from the submitted application (see file for details).

221 Mr. Claus said that abutting lots do have garages that are as close or closer to the road as this proposed
222 garage. Vice Chair Simpson asked and Mr. Neuwirt said that it does not qualify for a Special Exception

223 because he could not find 50% of houses / garages along Burma Rd to be as close or closer than the
224 proposed structure as there are a lot of properties along Burma Rd. Mr. Neuwirt said that the applicants
225 are requesting a garage this size due to their lifestyle and needs. Mr. Lyons asked and it was confirmed
226 that the garage will be attached to the house. Vice Chair Simpson asked and Mr. Neuwirt said that he
227 does not know the sizes of the other garages along Burma Rd. There was further discussion regarding
228 this matter.

229 Vice Chair Simpson asked and Mr. Neuwirt said that the hammerhead parking area is determined by
230 using the length and width of a car. Mr. Neuwirt said that the width of the current driveway is 17 ft and
231 the width of the proposed driveway is approximately 12 ft. There is 20 ft in front of the garage, which is
232 enough for two spaces, and one parking space in the turn around area.

233 Mr. Neuwirt explained the reason for the requested 6 sq ft of space within the 50 ft waterbody setback.
234 They are moving the house back 1 ft from the waterbody so by giving up the 24 sq ft they were hoping
235 that the Board would be favorable for them asking for an encroachment of 6 sq ft to make a final impact
236 of only 18 sq ft. Their second Variance request is to encroach into the 50 setback by 6 sq ft. Vice Chair
237 Simpson asked and Mr. Neuwirt said that the 6 sq ft is driven by design; the stairway going from the first
238 floor to the lower level and from the first floor to the second level are stacked on top of each other in
239 that area. Vice Chair Simpson asked and Mr. Neuwirt said that there will be basement under the main
240 house, it will be an unfinished area for storage and utilities; the slab to floor height is 7 ft 6 inches. Vice
241 Chair Simpson asked how much higher the proposed building will be over the existing building. Mr.
242 Neuwirt did calculations and said that the new first floor elevation will be 1 ft higher than the exiting
243 house. Vice Chair Simpson asked and Mr. Neuwirt confirmed that they will be excavating the
244 foundation. Vice Chair Simpson asked and Mr. Neuwirt said that the basement will be 24 ft x 28 ft. Vice
245 Chair Simpson asked and Mr. Neuwirt said that there will be a room above the garage and there will be
246 dormers so it is usable space.

247 Vice Chair Simpson said that they are taking a one-bedroom building and tearing it down and adding two
248 additional rooms that are approximately 24 ft x 24 ft. Ms. Arnold asked and Vice Chair Simpson said that
249 he is calling the basement one of these rooms. Mr. Bealieu said that the basement cannot be
250 considered living space because there is no egress to the outside and there will not be egress windows
251 installed. There was further discussion regarding this matter.

252 Vice Chair Simpson asked and Mr. Neuwirt said that the existing house is 672 sq ft of footprint and the
253 proposal is to add 560 ft of new garage and 420 ft of bedroom for a total increase of 980 sq ft. Mr.
254 Claus said that he thinks that Mr. Platt's calculations include the stairs coming off the structure. He
255 calculated a footprint of approximately 1716 sq ft. Mr. Larrow asked and Mr. Neuwirt said that the wall
256 of the garage and addition facing the road is 38 ft.

257 Mr. Neuwirt read the criteria for the third requested Variance to the Board from the submitted
258 application (see file for details).

259 Vice Chair Simpson asked how many sets of stairs will be outside. Mr. Bealieu said that there will be one
260 set of stairs. Mr. Platt's original plan showed two sets but they only will have one set of stairs and it will

261 be between the two shown on the original plan. Mr. Neuwirt said that the Zoning Ordinance allows for
262 32 sq ft so that is what they have proposed and the platform will be approximately 28 inches off the
263 ground; the new stairs and platform will not be greater than 4 ft in height.

264 Mr. Neuwirt said that the current lot coverage is 22% and the proposed lot coverage will be 24.3%, less
265 the easements. Vice Chair Simpson asked and Mr. Neuwirt said that both Mr. Platt and the engineer
266 called the State and the argument is that part of the land is in the road but not included in the
267 dimensions. The State, Mr. Platt, and the engineer are looking only at land that is usable to the
268 applicants. Therefore, they added the note that the road area and easement were not figured in the
269 calculations. Mr. Claus said that the Ordinance allows for a total lot coverage of permeable and
270 impermeable surface of 40%. Chairman Schneider asked and Ms. Arnold and Mr. Bealieu confirmed that
271 the driveway will be permeable. Mr. Neuwirt said that they were at 25% until they decided to make the
272 walkway from the deck to the dock pervious.

273 Mr. Neuwirt gave an explanation on how the project will be performed and how they will include the
274 engineer's implementations to the project. There will be temporary erosion control measures put in
275 place while the job is under construction to manage storm water including silt fencing and hay bales.
276 Mr. Claus said that he thinks that this is the most thought through storm water management plan for a
277 residential construction project that he has ever seen. Mr. Neuwirt gave further explanation regarding
278 the storm water management including the temporary and permanent fixtures such as catch basins and
279 filtration systems. There was further discussion about the maintenance plan, the trees being cut, and
280 revegetation plan including the trees and bushes that will be planted. Ms. Gage also said that the plan
281 may need to go to the Planning Board as the Town has additional requirements regarding cutting more
282 than five trees and removing vegetation within the 150 ft buffer.

283 Chairman Schneider closed the meeting to public comment and read the new wording of the three
284 Variance requests again.

285 The first Variance request wording should be: seeking a Variance from Article III, Section 3.40(c) to
286 replace an existing structure on the same or smaller footprint, within the 50 ft reference line from the
287 waterbody, that is not less than 24 ft from the waterbody, with an increase of roof height of not more
288 than 10 inches so that the height of the structure will not be more than 25 ft 2 inches from the existing
289 grade; the parking area will be not less than 32 ft from the water body, replacing the existing parking
290 area 27 ft from the waterbody.

291 The second Variance request should be: seeking a Variance from Article III, Section 3.40(c) for a new
292 addition not less than 48 ft from the reference line of the waterbody, such addition to have an area of
293 not more than 6 sq ft within the 50 ft reference line of the waterbody.

294 The third Variance request should be: seeking a Variance from Article III, Section 3.10 for a new
295 structure including a house addition and garage not less than 25 ft from the road front setback whereas
296 50 ft is required.

297 Vice Chair Simpson said that he is having a hard time saying that the house is being replaced in a smaller
298 footprint even though it is in a smaller footprint within the setback. This is a new construction project
299 with a significantly larger footprint. Chairman Schneider said that the request is to replace an existing
300 structure with a new structure on the same or smaller footprint within the 50 ft reference line of the
301 waterbody. Mr. Larrow said that they are only talking about the piece that is relevant to the existing
302 structure within the setback. The Board would be agreeing to the addition in another Variance because
303 it is not part of the existing footprint. There was further discussion regarding this matter.

304 Chairman Schneider asked if anyone has any concerns about the first Variance for the 10 inches in
305 height and the parking area. Vice Chair Simpson said that the original application is for Article VI,
306 Section 6.12 and the Board has decided to rewrite it. Chairman Schneider said that he does not think
307 that a Variance can be granted under Section 6.12 and Vice Chair Simpson agreed. Mr. Larrow said that
308 this is the first time the Board has rewritten anything and asked if the Board is going to have any
309 problems. Vice Chair Simpson said that the Board could have problems because they are not following
310 what is noticed. Mr. Larrow asked and Vice Chair Simpson said that he does not know if an approval
311 could be challenged. Vice Chair Simpson asked to reopen the meeting to be able to ask the applicants
312 if they are OK with the new wording. Chairman Schneider reopened the meeting to public comments.
313 Mr. Neuwirt said that he was under the assumption that they were all in agreement that the Variance
314 was going to be for Section 3.40(c). The applicants said that they are OK with the rewording of the
315 request.

316 Chairman Schneider reread the wording of the first Variance “seeking a Variance from Article III, Section
317 3.40(c) to replace an existing structure on the same or smaller footprint, within the 50 ft reference line
318 from the waterbody, that is not less than 24 ft from the waterbody, with an increase of roof height of
319 not more than 10 inches so that the height of the structure will not be more than 25 ft 2 inches from the
320 existing grade; the parking area will be not less than 32 ft from the water body, replacing the existing
321 parking area 27 ft from the waterbody”. Vice Chair Simpson asked if it is the existing grade or the
322 finished grade. Chairman Schneider reopened the meeting to public comments and Ms. Arnold said that
323 it is the finished grade. Chairman Schneider reclosed the meeting and replaced word “existing” with the
324 word “finished”.

325 Chairman Schneider stated that the motion should say that the Variance is for Article III, Section 3.40(c)
326 to replace an existing structure with a new structure on the same or smaller footprint, within the 50 ft
327 reference line from the waterbody that is not less than 24 ft from the waterbody, with an increase of
328 roof height by not more than 10 inches so that the height of the structure will not be more than 25 ft 2
329 inches from the finished grade; and the parking area will be not less than 32 ft from the water body,
330 replacing the existing parking area 27 ft from the waterbody. Mr. Lyons made a motion to approve the
331 Variance as stated by Chairman Schneider. Vice Chair Simpson seconded the motion.

332 Mr. Larrow said that he thinks that there should be a condition on the motion that it is subject to DES
333 approval and the drawings submitted. Mr. Claus asked if there should be a condition that the driveway
334 is permeable.

335 Vice Chair Simpson said that he thinks that there needs to be a plan that shows all the setbacks and
336 without two sets of stairs; he does not think that the Board has a set of plans that they can approve.
337 There was further discussion regarding the plans. There was a discussion regarding how far the house
338 currently is from the lake and how far the new house will be. Mr. Claus scaled it and said that he thinks
339 that the current house is 22 ft from the lake and the new house will be 23 ft. Chairman Schneider asked
340 if someone wants to amend the motion. Mr. Claus made a motion to amend the motion from 24 ft to
341 23 ft. Mr. Larrow seconded the amendment.

342 Vice Chair Simpson said that he thought that there was something in the Ordinance that required a plan
343 to show the setback if a structure was not being kept in the original footprint. Ms. Gage said that the
344 Grandfather Policy says that the original footprint, building size, and location of a structure must be
345 documented if the structure has been removed and is to be rebuilt within 2 years. Vice Chair Simpson
346 said that the Board does not have a plan that shows how far the existing house is from the waterbody.
347 Mr. Neuwirt gave Mr. Claus a copy of a survey that shows the house is 22.2 ft from the waterbody. Vice
348 Chair Simpson said that he thinks that the current motion should be withdrawn and restated pursuant
349 to the newly submitted plan. Mr. Larrow said that if the Board is going to tie everything to a plan then
350 the motion should state what is on the plan. Mr. Larrow withdrew his second.

351 Mr. Claus said that the Board is discussing 2.5 inches and in the construction world that is not a lot.

352 Mr. Larrow made a motion to amend the motion to change the 24 ft to 23.2 ft. Vice Chair Simpson
353 second the amendment. The motion for the amendment passed with four in favor and one opposed.
354 Vice Chair Simpson asked and Mr. Claus explained that he opposes the amendment because the site is
355 tight and he wants to know where they are getting the 2.5 inches as the other side of the road is at 10 ft
356 from the property line. Vice Chair Simpson said that it is the applicants' plan, not his. Mr. Claus said
357 that they were trading the 24 sq ft for the 6 sq ft for the addition and this changes that calculation. Mr.
358 Larrow said that he does not think any Variance should be approved unless they know that the plan is
359 correct. Mr. Claus said that the existing conditions plan shows 23.2 ft and the proposed plan shows 23
360 ft. Vice Chair Simpson asked and Mr. Claus confirmed that what they are giving up will be less than
361 proposed. There was further discussion regarding this matter and the Board said that they wanted to
362 get all the measurements to be shown on one plan. There was a discussion regarding tabling the motion
363 and tabling the cases until the Board has a plan with all the measurements shown on it.

364 Ms. Arnold asked and Chairman Schneider said that he was not ready to open the meeting to the public.

365 Chairman Schneider said that he can understand the desire for proper documentation and he was
366 disappointed that the application was not framed specifically to meet the requirements of the
367 Ordinance so the Board has rewritten it for the applicants. He would prefer that the Board have proper
368 documentation showing all the dimensions. He is not troubled by the house going up 10 inches nor is he
369 troubled by adding the 6 sq ft for the addition. He is troubled with the size of the project but if you look
370 at where the added size is added it is not within the water front setback. He would suggest that the
371 Board withdraw the motion for the Variance and make another motion.

372 Vice Chair Simpson said that he thinks that the Chair should open the meeting to the public to allow the
373 applicant to talk about what the Board has discussed.

374 Ms. Arnold said that they hired an engineer because they understand the constraints of the lot and
375 wanted to make sure that they did things the right way. Mr. Larrow said that the Board is not saying
376 that they do not want to do things correctly. Mr. Bealieu said that he apologizes that the plans do not
377 match up and understands the Board's frustrations. He will be calling the engineer and the surveyor to
378 get together and coordinate the plans. Vice Chair Simpson said that he is questioning what the
379 applicants are asking for because some plans say 1 ft and others say less. There was further discussion
380 regarding the submitted plans.

381 Mr. Neuwirt said that the Board has approved plans based on rewriting the distances and gave an
382 example of one case. He does not know why the Board cannot make an approval conditional upon
383 receipt of a document with specific measurements as this is done routinely. They cannot show the road
384 as two rods wide because it is not 32 ft wide and they will not depict it in such a way so that something
385 comes back on the Zoning Board as that is the center of the road; additionally, a portion of the property
386 is located in the road. He thinks that the Board can request plans to match an approval after things have
387 been sorted out and specified. Vice Chair Simpson said that the center of the road is on the existing
388 conditions plan and it says that the road is 27 ft 5 in. Mr. Neuwirt said that he has sat on the Board
389 when they have given stipulations and helped an applicant through a proposal to define what needed to
390 happen. As an applicant, he feels as though the Board is splitting hairs on an application where the
391 owners have gone above and beyond what is required and the issues can be solved. Mr. Larrow said
392 that he does not think that it is unreasonable for the Board to want to tie an approval to a submitted
393 document. He thinks that the applicants want to build what they want to build and does not think that
394 the Board should dictate what they would like to do and have the Variance approval be different than
395 what they want. Mr. Neuwirt said that if the Board says that they are approving a Variance so that the
396 new house is 24 ft from the lake, that is what they will do. There is a stamped plan that shows that the
397 existing house is 22 ft 2 inches and they just need to move the house back one foot. Mr. Claus said that
398 the reason he did not vote for the amendment is because if Mr. Neuwirt needed those few inches he did
399 not want to take them away. Vice Chair Simpson said that the plans show that the house is being
400 moved 10 inches from the lake. Mr. Claus asked and Mr. Neuwirt said that they can take 6 inches off
401 the garage if they need to. Mr. Larrow said that the Board were not trying to dictate that. Mr. Bealieu
402 said that they will make the garage smaller if they need to. Mr. Larrow asked about the road front
403 setback. Mr. Lyons said that if the house as a whole is moved back a foot then the setback changes,
404 however, if the size of the garage is changed then the setback does not change. Mr. Neuwirt said that
405 the Variance approval can state that the corner of the garage can be no closer than 10 ft to the property
406 line. Vice Chair Simpson said that he thought it was supposed to be no closer than 25 ft to the
407 centerline of the road, as per Mr. Platt's survey. Chairman Schneider said that is how the Ordinance
408 measures it.

409 There was another discussion regarding the submitted plans.

410 Mr. Neuwirt said that on other properties where there have been constraints, he has built according to
411 pins set by an engineer whose responsibility it is to make sure the setbacks are met.

412 Chairman Schneider closed the meeting to public comments.

413 Vice Chair Simpson made a motion to add a condition requiring the submission of a drawing that has all
414 the pre-existing conditions on it in accordance with 6.32(1)(a) to be delivered to the Zoning
415 Administrator to conform with all the various drawings. The amendment passed.

416 Mr. Lyons made an amendment that the approval be subject to the conditions of a Shoreland permit.
417 Vice Chair Simpson seconded the motion. The motion passed unanimously.

418 Chairman Schneider repeated the motion on the table. The motion is to approve the Variance from
419 Article III, Section 3.40(c) to replace an existing structure with a new structure on the same or smaller
420 footprint, within the 50 ft reference line from the waterbody that is not less than 23.2 ft from the
421 waterbody, with an increase of roof height by not more than 10 inches so that the height of the
422 structure will not be more than 25 ft 2 inches from the finished grade; and the parking area will be not
423 less than 32 ft from the water body, replacing the existing parking area 27 ft from the waterbody;
424 subject to providing documentation as required under Section 6.32(1)(a) of the Ordinance and subject to
425 conditions of receiving and complying with a DES Shoreland Permit. The motion passed unanimously.

426 Chairman Schneider said that the second Variance request is: seeking a Variance from Article III, Section
427 3.40(c) for a new addition not less than 48 ft from the reference line of the waterbody, such addition to
428 have an area within the 50 ft reference line of the waterbody of not more than 6 sq ft. Mr. Claus made a
429 motion to approve the second Variance per what Chairman Schneider stated. Mr. Lyons seconded the
430 motion.

431 Vice Chair Simpson said that this area should not be considered part of an addition because it is a new
432 structure. Chairman Schneider asked and Vice Chair Simpson said that he thinks it should be called a
433 new structure.

434 Vice Chair Simpson made a motion to amend the motion to replace the word "addition" with
435 "structure". Mr. Claus seconded the amendment. The motion passed unanimously.

436 Chairman Schneider read the new wording of the second Variance request: seeking a Variance from
437 Article III, Section 3.40(c) for a new structure not less than 48 ft from the reference line of the
438 waterbody, such addition to have an area within the 50 ft reference line of the waterbody of not more
439 than 6 sq ft. The motion passed unanimously.

440 Chairman Schneider said that the third Variance request is: seeking a Variance from Article III, Section
441 3.10 for a new structure including a house addition and garage not less than 25 ft from the front setback
442 whereas 50 ft is required. Vice Chair Simpson made a motion to approve the Variance as stated by
443 Chairman Schneider. Mr. Claus seconded the motion.

444 Mr. Lyons said that he would like to have a condition that the drainage plan is installed according to the
445 plan and appropriately maintained. Vice Chair Simpson asked if that will be a condition from DES. Mr.
446 Lyons said that he thinks that it can be a condition the Board places on an approval as well.

447 Vice Chair Simpson said that there is also an issue that Ms. Gage raised that the proposal will need to go
448 to the Planning Board.

449 Chairman Schneider asked Mr. Lyons if he would like a condition that the approval be subject to the
450 drainage plans submitted to the Board. Mr. Claus asked and Mr. Lyons said that the Highway Director's
451 concerns had to do with road runoff but it is all downhill.

452 Chairman Schneider said that he is concerned with the size of the structure relative to the size of the lot
453 and the setback. The Board has approved garages that are closer to the setback but had modifications
454 made to the plan, an example is a house on Lake Ave that was modified but the Zoning Administrator
455 determined that the medication was within the Board's approval. Chairman Schneider continued that
456 he has a problem with this 38 ft long structure being in the setback; he would not have a problem with
457 just a garage.

458 Vice Chair Simpson said that he has some of the same concerns as Chairman Schneider. The footprint is
459 2.5 times bigger and there will be a lot more usable space, for example, they could change the basement
460 to a walkout basement.

461 Chairman Schneider said that he is having a hard time seeing the hardship.

462 Mr. Larrow said that he visited the property and looked at where they structure is proposed to go and
463 asked himself if they were overbuilding it. He then looked at the other structures in the area that are by
464 the road and many are not very pretty. The Board needs to look at if they are making things better or
465 worse and 38 ft along the road might not be something people want to see but there are a lot of things
466 in that area that people might not want to see. If the lot coverage is not exceeded, he does not think
467 that the Board should think that it is overbuilt.

468 Vice Chair Simpson said that the Board needs to determine the hardship, which is the point that
469 Chairman Schneider is raising. The Board has to determine if the proposed house and garage are too
470 big; the garage next to this property is a one bay garage. Mr. Larrow asked if there is hardship because
471 the property is small. Chairman Schneider said that he does not think that size creates a hardship,
472 topography can create a hardship but if the argument is that the property is too small then they are
473 building too big a structure on too small of a lot. Mr. Larrow said that he thinks that was part of the
474 justification given, that the lot is small. Mr. Claus asked if the Board feels as though the proposed house
475 is excessively big as far as being a residential home to live in. Chairman Schneider said that it is not a
476 question as it if it is excessively big, it is a question as to if it is excessively in the setback because Zoning
477 does not set house sizes. Mr. Claus said that he does not feel as though this house is excessively big and
478 even with the house not being excessively big it is already in the setback because of the small lot.

479 Mr. Larrow said that the original setback in the lake was always there anyways. The Board is debating
480 what is along the road and its relationship to the land. The only way to grow is to either have a third
481 story or grow out.

482 Mr. Claus said that he understands that this does not have anything to do with the hardship but this is
483 not the first house on this road to overbuild so to speak. Mr. Larrow agreed that going down the road
484 the lake side is crowded.

485 There was a discussion regarding the drainage plans and storm water management plans.

486 Mr. Lyons said that he wants to add to the Variance that the Drainage, Grading, and Erosion Control
487 Plans put forth by Moser Engineering dated April 10, 2019, Sheet 3, be fully implemented and
488 appropriately maintained.

489 Mr. Claus asked and Vice Chair Simpson said that a condition should be added that the tree cutting
490 request be approved by the Planning Board. Vice Chair Simpson said that he would like to add a
491 limitation on the extra rooms in the building. There was further discussion regarding the proposed
492 amendments.

493 Mr. Lyons made a motion to amend the motion so that the approval is subject to the Drainage, Grading,
494 and Erosion Control Plan by Moser Engineering, dated April 10, 2019, Sheet 3; subject to full
495 implementation and maintenance. Mr. Claus seconded the motion. The motion passed with four in
496 favor. Vice Chair Simpson asked and Chairman Schneider said that this amendment does not include the
497 tree cutting plan going to the Planning Board. Vice Chair Simpson said that the Board should make a
498 condition that the plan needs to go to the Planning Board. Ms. Gage said that Article IV, Section
499 4.33(8)(b)(l) requires that if there is removal of more than 5 trees having a diameter of six inches or
500 more within a 12 month period, or if there is removal of over 1,000 sq ft of vegetation within the
501 Natural Woodland Buffer in any calendar year, then the plan must go to the Planning Board for
502 approval.

503 Vice Chair Simpson said that he is concerned because the space above the garage can be turned into an
504 Accessory Dwelling Unit (ADU). Chairman Simpson said that an ADU would have to be approved by a
505 Special Exception. Mr. Lyons asked and Ms. Gage said that an ADU is limited to 1,000 sq ft. Chairman
506 Simpson said that he is concerned about parking with an ADU. Mr. Claus said that parking for a one-
507 family dwelling, up to four bedrooms, required two spaces and each additional bedroom requires ½
508 space per bedroom. Vice Chair Simpson said that an ADU is another dwelling unit. Mr. Claus asked and
509 Vice Chair Simpson said that he thinks that the space above the garage could become an ADU with the
510 current regulations: "an ADU will be permitted in all districts by special exception. Only one ADU is
511 allowed per single family dwelling unit. Owner occupancy is required in the main unit or ADU The ADU
512 cannot be larger than 1,000 square feet. It must be within or attached with heated space to the single-
513 family dwelling and there must be a connecting door between units. Setback dimensions for the ADU
514 must meet the same guidelines as the single-family unit. The ADU addition must comply with existing lot
515 coverage standards as specified elsewhere in this Ordinance. There shall not be more than two
516 bedrooms in the ADU. Septic designs and sewer hook ups shall accommodate the number of bedrooms

517 as required by Article VII of this ordinance. Proper off-street parking must be provided per section
518 3.40(e) of this Ordinance.” Ms. Gage said that an ADU would be treated like a two-family dwelling unit
519 and Vice Chair Simpson agreed. Mr. Claus said that then they would require four parking spaces, which
520 they do not have. There was a brief discussion regarding the definition of “Living Space” and about
521 bedrooms and the rooms indicated on the plan.

522 Chairman Schneider said that he does not think that the addition to the house should be in the road
523 front setback. He could be persuaded to allow the garage to be in the setback but not the addition
524 because he does not see that not having a house that is too big for the property to be a hardship. The
525 Board has heard arguments that having a garage is a hardship and he is not sure that is true. Vice Chair
526 Simpson asked if anyone else feels the same as Chairman Schneider. The house is currently a one
527 bedroom residence and the proposal will have two bedrooms on the second floor and a master
528 bedroom on the first floor. It seems like there are too many situations where the room over the garage
529 can be used as a bedroom and allow for numerous people at the house and he does not know how to
530 control it but thinks that it is overuse of the lot. Mr. Bealieu asked and Chairman Schneider said that he
531 would not open the meeting to public comments. Chairman Schneider said that he does not know that
532 the Zoning Board can control how many people are in a house other than limiting the number of
533 bedrooms. Mr. Larrow said that what is being said is that the addition and the garage are overbuilding
534 the lot and it is not a hardship in relationship to the living area that is necessary. The Board would be
535 saying that the lot does not support the size of the house that the applicants want to build. Chairman
536 Schneider agreed that is what he is saying. Vice Chair Simpson said that he agrees with Chairman
537 Schneider. Mr. Claus said that he does not look at this house being excessive. It is a modest sized house
538 and the envelope pushes it into the setbacks because there is a hardship with the small lot. Mr. Larrow
539 said that if they do not use the word “excessive” and the Board just looks at the house and the lot they
540 need to determine if this sized house should be built on the lot that is small or if it is just what someone
541 wants to build. Vice Chair Simpson said that part of the hardship criteria is that “the zoning restriction
542 as applied to the property interferes with the reasonable use of the property, considering the unique
543 setting of the property in its environment; and no fair and substantial relationship exists between the
544 general purposes of the Zoning Ordinance and the specific restriction on the property”. Chairman
545 Schneider said that there is nothing unique about the property other than it is small. Mr. Lyons said that
546 Mr. Neuwirt made a point that if you take all the restrictions on this particular piece of property you
547 come up with a space that would accommodate just about a tepee. Because there is a grandfathered
548 structure on the property, there is already something bigger than what the Zoning Ordinance would
549 permit on this lot. He thinks that it is a question of degree. The structure is large for the lot, but great
550 care has been taken to mitigate the effects of the expansion. He would prefer a one car garage over a
551 two-car garage and he would prefer for the house to not be able to expand to have five bedrooms or
552 more. The problem is not with the current owners not wanting to expand the number of bedrooms or
553 have an ADU, however, anything that is approved goes with the property.

554 Chairman Schneider read the motion that is on the table: seeking a Variance from Article III, Section 3.10
555 for a new structure including a house addition and garage not less than 25 ft from the front setback
556 whereas 50 ft is required; subject to implementation and maintenance of the Drainage, Grading, and

557 Erosion Control Plan by Moser Engineering dated April 10, 2019, Sheet 3 and subject to compliance of
558 Section 4.33(8) of the Ordinance. The motion passed with three in favor and two opposed.

559 **MINUTES**

560 Changes to the minutes from April 18, 2019: The minutes were continued to the next meeting.

561 Mr. Lyons made a motion to adjourn the meeting at 10:51 pm. Mr. Larrow seconded the motion. The
562 motion passed unanimously.

563 Respectfully submitted,

564 Melissa Pollari

565

566 Zoning Board of Adjustment

567

568 Daniel Schneider, Chair

Aaron Simpson, Vice Chair

569

570 James Lyons, Jr.

Clayton Platt

571

572 George Neuwirt

William Larrow, Alternate

573

574 Jeffery Claus, Alternate