

1 **TOWN OF SUNAPEE**

2 **ZONING BOARD**

3 **APRIL 18, 2019**

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

6 **ABSENT:** James Lyons, Jr.

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

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

9 **CONTINUANCE: CASE #ZBA19-02: PARCEL ID: 0106-0005-0000: SEEKING A VARIANCE PER ARTICLE IV,**
10 **SECTION 4.10 TO PERMIT DOG SITTING BUSINESS. 1002 MAIN ST, GEORGES MILLS; GEORGE & SUSAN**
11 **NEUWIRT.**

12 Mr. Neuwirt recused himself from the case.

13 Vice Chair Simpson made a motion to appoint Bill Larrow as a voting member for the case. Mr. Platt
14 seconded the motion. The motion passed unanimously.

15 Mr. Platt made a motion to appoint Jeffrey Claus as a voting member for the case. Vice Chair Simpson
16 seconded the motion. The motion passed unanimously.

17 Chairman Schneider said that this is a continuance of a case. He was not in attendance for the first part,
18 however, he has watched the recording and read the minutes and feel as though he is up to speed for
19 this case so the applicant should not have to go over everything again. He would like to ask Vice Chair
20 Simpson to act as Chair for this case for continuity.

21 Mr. and Mrs. Neuwirt continued presenting the merits of their case.

22 Mrs. Neuwirt asked and Vice Chair Simpson said that if she would like to present the whole case again
23 she can but she does not have to.

24 Mrs. Neuwirt said that at the last meeting there were questions regarding the State saying something
25 about five or more dogs. The day after the meeting she made a phone call to the Department of
26 Agriculture for clarity regarding this issue and received an email that says that the five or more dogs
27 refers to a discount for people registering their dogs in the Town that they reside in. It has nothing to do
28 with a limit on how many dogs you can own or how many you can have in your home. Also, you do not
29 need to be licensed or have inspections to have a dog sitting or kennel business in NH; you only need to
30 be licensed if you are selling animals.

31 Mr. Neuwirt said that at the last meeting there was a question for them to answer regarding if
32 conditions can be passed on a Variance. Vice Chair Simpson said that the Board has been told by the
33 Town's attorney that the Variance cannot be conditionally approved for a time limit.

34 Vice Chair Simpson said that the Town's attorney also gave the Board guidance regarding granting use
35 variances. Mr. Larrow said that the Board's first question was if the Variance stays with the property
36 and that has been answered that it does. Once the Variance has been granted, as long as it is exercised
37 within two years it remains with the property. The Board also cannot give a conditional Variance for a
38 year. Mr. Larrow continued that the Board questioned hardship of use and the attorney explained that
39 the Board needs to consider the hardship for the property. The Board asked and Ms. Gage said that she
40 gave Mr. Neuwirt a copy of the attorney's email at the last meeting.

41 Mr. Platt asked and Ms. Gage said that she has not had any additional feedback from the neighbors.
42 Vice Chair Simpson asked if there are any abutters who have questions or comments.

43 Susan Kent, 1008 Main St, said that she lives next to the Neuwirt's property and she is concerned. This
44 is a Village Residential Zoning District and a quiet neighborhood. The doggie day care business is
45 ambiguous as far as the number of animals, how long they will be there, and the traffic picking up and
46 dropping off. In her experience if there are a lot of animals they are going to bark and she does not
47 know how to keep them from barking. The noise level is a concern as they are in a quiet neighborhood.
48 She is also concerned that the Neuwirts live in a 24 ft x 24 ft apartment above a garage that houses two
49 adults and a dog; to have more animals does not allow for room to walk or run. Ms. Kent continued that
50 in the application, they say that the proposal will not impact the neighborhood, however, she finds this
51 unreasonable, especially as she will be impacted by it. There is a small fenced in area but they do not
52 know how many dogs or how long they will have the dogs. She also questions if it is appropriate to have
53 this kind of business in this kind of neighborhood.

54 Vice Chair Simpson asked and Mrs. Neuwirt said that they discussed limiting the number of dogs to eight
55 dogs.

56 Mr. Larrow asked and Vice Chair Simpson said that he believes that the Board can have a condition on
57 an approval but not have a time limit on an approval. Mr. Platt said that he thinks that the Board can
58 condition a use but cannot condition that the approval is only good for a year. Mr. Larrow thinks that
59 the Board cannot condition a use as that is his interpretation of the letter from the Town's attorney. He
60 does not think that the Board can put a condition on the number of dogs that Mrs. Neuwirt would be
61 allowed to have on the property at one time. Vice Chair Simpson read a section of the email from the
62 Town's attorney that says "Can the ZBA put a condition that the Variance is only good for one year?
63 How about two years? I'm assuming that the clock would start ticking at some point within the two
64 years they have to begin exercising the Variance in RSA 674:33 I-a. The short answer is 'No.' Conditions
65 that are necessary to ensure observance of the spirit of a Zoning Ordinance can be attached to a
66 Variance. Conditions that limit the Variance to one or two years make the Variance essentially a "trial
67 run" rather than ensuring that the Variance is consistent with the spirit of the ordinance. Since the
68 Variance is granted based on the uniqueness of the property, as opposed to the use, the focus should be

69 on whether the property meets the test set forth above or not.” Vice Chair Simpson continued that he
70 reads this as saying that the Board can place conditions on an approval, but the Board cannot say that
71 there is a time limit to try to see how the proposal goes.

72 Mr. Platt said that he is struggling with if the use is not allowed, it may not have been something that
73 was foreseen when the Zoning Ordinance was created; therefore, should it be banned if it seems like it
74 is a minor increase in use. He is struggling with allowing eight dogs and feels six would be more
75 reasonable.

76 Mr. Platt said that he also gives some credence to the fact that a daycare center would be allowed by
77 right, though this is not the same thing, the intensity of the use is about the same. Mr. Larrow asked
78 and Mr. Platt said that as far as the usage goes, this proposal is similar to a day care. When the Zoning
79 Ordinance was adopted they probably were not thinking about doggy day cares. Mr. Larrow said that he
80 thinks that there should be a Zoning Amendment to allow doggy day cares so that the Town has the
81 chance to vote on what they think rather than trying to squeak it in; however, this would take them into
82 next year. Mr. Platt said that this is also bordering on a home business, though there will be some
83 things that happen outside.

84 Mr. Larrow said that this is the Village Residential Zone but he is struggling with the question if this is an
85 incidental use as related to the size of the residence and the business. There are no parameters as to
86 what someone can do in a 200 sq ft home vs a 2,000 sq ft home.

87 Mr. Platt asked and Mrs. Neuwirt said that eight dogs would be acceptable as a maximum number of
88 dogs.

89 Mrs. Kent said that Mr. Neuwirt has commercial property in Newport where he has his Trusted Rentals
90 company and asked why they do not have the doggie day care on the commercial property. Vice Chair
91 Simpson said that the Board cannot address another property, and this is the property that is being
92 discussed.

93 Mrs. Neuwirt said that given the other uses that are permitted by right, she feels as though this is a
94 reasonable use of the property.

95 Vice Chair Simpson closed the meeting to public comment.

96 Vice Chair Simpson said that the Zoning Ordinance does not talk about doggy day cares, however, there
97 is a provision for kennels and he does not know what the difference is between the two other than one
98 is for a longer term; however, Mrs. Neuwirt said that she might have dogs for longer terms too when
99 people go on vacation. Kennels are currently allowed in the Rural Residential District. The Board could
100 grant a Variance to allow this proposal, or they can determine if this falls under the classification as a
101 home business.

102 Mr. Claus said that he is also on the fence because he looks at the other permitted uses and one could
103 argue that the impact is no greater than day cares or bed and breakfasts. There is an argument
104 regarding the noise of the dogs, however, it is close to the highway and the traffic on Georges Mills hill

105 and the dogs would probably not create more noise than what is there. However, kennels are listed as
106 something that is allowed in one of the Zoning Districts. He did some research to try and find the
107 difference between a kennel and doggy day care and believes that the difference is when dogs are
108 boarded it is a kennel, which is what is being proposed.

109 Chairman Schneider said that he does not think that this meets the definition of a home business. The
110 business will not only be conducted within the home. It also will create some noise and odor. The
111 applicants have said how they will try to mitigate these things, but the Variance stays with the property,
112 not with the owner. Once a Variance is approved, there is no way to monitor the noise or odor levels.
113 Also, the applicant said that if the dogs start barking, they will be moved inside, however, during the
114 summer windows are open and there will still be noise. Chairman Schneider continued that he does not
115 think that this is a day care as a day care is for human children. The applicants are requesting
116 permission to board animals, which is a kennel. A kennel is only allowed by Special Exception in a Rural
117 Residential District and there is a reason for that; the reason being that the animals have enough room
118 to exercise without affecting their neighbors. The Board has to determine if there is something unique
119 about this property that would cause them to grant a Variance for a use. He does not see anything
120 unique about the property other than it is small and size is not a condition of hardship. There is a
121 difference between something being inappropriate for the proposed use and unique conditions that
122 create a hardship for the applicant. There is nothing about the property that creates a hardship for it to
123 be a residence, which is the current legal use of the property. Chairman Schneider continued that he
124 does not find that the proposal meets any of the Variance criteria.

125 Mr. Larrow said that he thinks that the Board needs to determine if this proposal meets the hardship
126 definition and he does not think that it does. The Board was trying to find a happy medium that made
127 sense and, based on its location and use, he does not think that the proposal works with the size of the
128 apartment. Mr. Larrow continued that he was looking for a hardship and could not find it; he thinks that
129 the proposal should go before the Planning Board as a Zoning Amendment as opposed to trying to find
130 hardship. He realizes that this would take a year, however, this is how it should be done.

131 Mrs. Neuwirt asked and Vice Chair Simpson reopened the meeting to public comments.

132 Mrs. Neuwirt said that there is a big distinction between a kennel and dog sitting within her home. A
133 kennel is a facility with runs and cages and this is very different; it is not a kennel and it is not something
134 that is addressed in the Zoning. Mrs. Neuwirt continued that she thought that hardship had been
135 relaxed somewhat to take in to consideration reasonable use and with what is currently allowed in the
136 neighborhood, she feels that this is a reasonable use.

137 Mr. Neuwirt said that regarding Chairman Schneider's thoughts about odor and noise, he feels as
138 though these are unfounded claims. If you come to the property any time during the day you can smell
139 the brakes burning from the big trucks that come down the hill. It eclipses any conceptualized thought
140 of dog feces odor. In addition, Mrs. Neuwirt has come up with a plan to deal with the dog refuse. Mr.
141 Neuwirt continued that they also have the noise of the trucks coming down the hill; it is not a quiet area.
142 He would like to temper the impact of the statement that they are going to have an enormous amount

143 of odor added to the neighborhood as a result of the dogs and that there is a potential for noise. There
144 are numerous times during the day that they cannot go onto their deck and have a conversation with
145 the number of trucks going down the hill.

146 Vice Chair Simpson reclosed the meeting to public comments.

147 Vice Chair Simpson said that he acknowledges that the property is near Route 11 and it is probably
148 noisier there than it is at his house. However, he does not know if dog noise can be controlled as much
149 as they can control their refuse, though he thinks the refuse proposal is interesting. He is concerned
150 about the number of dogs and is not sure that limiting the number of dogs to six eliminates the concerns
151 that the dogs could bark. He thinks that there was a conscious decision made in the Ordinance to allow
152 kennels in the Rural Residential District.

153 Chairman Schneider said that he thinks that the Board needs to recommend that the Planning Board do
154 a Zoning Amendment to include a definition of a kennel. Vice Chair Simpson said that is something that
155 the Board can do, however, it does not help the Board for this meeting.

156 Vice Chair Simpson said that he agrees with Chairman Schneider as he has a hard time finding that the
157 proposal meets many of the Variance criteria as he thinks that this could impact the private rights of
158 others. Also, given that kennels are in the Rural Residential District, it would be contrary to the public
159 interest to the extent that it is reflected by the uses permitted in the Village Residential District. He
160 understands that the applicants believe that this is a reasonable use, however, for him these other two
161 things weigh against the proposal. He also struggles with if this is a home business and he thinks that it
162 is close, however, it is not.

163 Mr. Platt made a motion to approve the Variance from Article IV, Section 4.10 to permit a dog sitting
164 business at 1002 Main St, Georges Mills, Parcel ID: 0106-0005-0000 conditional on the use being forever
165 attached to a home occupation in a residence; conditional on the explanation of proper fecal disposal to
166 the Town's sewer; conditional to the dogs not being caged on the premises; conditional of full time
167 supervision of all the animals; conditional on the fact that there will not be more than eight dogs on the
168 premises at any given time (total); and conditional on Site Plan approval by the Planning Board. Mr.
169 Larrow seconded the motion. Chairman Schneider asked about the first condition and Mr. Platt
170 explained that it is to ensure that the primary use of the property is always as a residence. The motion
171 failed with one in favor and four opposed.

172 **CASE #19-06: PARCEL ID: 0129-0081-0000: SEEKING A SPECIAL EXCEPTION PER ARTICLE III, SECTION**
173 **3.50(I) TO ALLOW A PRE-EXISTING NON-CONFORMING STRUCTURE TO BE REPLACED ON EXISTING**
174 **FOOTPRINT WITH A HIGHER ENVELOPE. 25 MAIN ST, WILLIAM WIGHTMAN**

175 Mr. Neuwirt rejoined the Board.

176 Vice Chair Simpson made a motion to appoint Mr. Larrow as a voting member for this case. Mr. Platt
177 seconded the motion. The motion passed unanimously.

178 William Wightman presented the merits of the case.

179 Ms. Gage said that the Planning Board signed off that the proposal will not require a Site Plan Review.

180 Mr. Wightman said that he was instructed to request a Special Exception because the Zoning Ordinance
181 no longer only looks at the footprint of a structure, it looks at the envelope. The difference is that the
182 building will be going up 6 ft higher in the elevation. Chairman Schneider asked and Mr. Wightman said
183 that the footprint is staying the same but the elevation is changing.

184 Mr. Wightman said that currently he only has parking on the street and this proposal is to provide an
185 area for him to park. In order to build the garage, he is going to have to displace what he has in that
186 space now and move it down to another section. He then needs the upper level to replace some of the
187 area that will be taken up by the garage.

188 Chairman Schneider asked and Mr. Wightman said that the current structure is 15 ft 6 in and the
189 proposed structure will be 21 ft 6 in. The change is that the building will stay in the same footprint with
190 the 6 ft change in elevation. Mr. Platt asked and Mr. Wightman confirmed that the peak of the flat roof
191 of the proposed structure will be lower than the peak of the existing roof.

192 Chairman Schneider asked if there was anyone in the audience with any questions or comments
193 regarding this proposal.

194 TJ Alexander, 50 Central St, said that he is an abutter to this property. The property that he owns and
195 the subject property used to be connected as one property and they were subdivided 40 years ago or so.
196 From his point of view as a neighbor, Mr. Wightman has done a good job of maintaining his property
197 and upgrading it and his design efforts are impressive compared to the condition of the building when
198 he first acquired it. Mr. Alexander continued that he is in favor of this proposed project.

199 Lillian Hobausz, 58 Central St, said that she is also in favor of the proposed project.

200 Mr. Neuwirt asked if Mr. Wightman had explained everything that he is proposing to do. Mr. Wightman
201 said that he wrote a description of the proposal and was not expecting to have to make a full
202 presentation. Mr. Neuwirt asked Mr. Wightman to explain what the purpose of the expansion is and
203 when he is done with that go over the eight requirements for the Special Exception.

204 Mr. Wightman said that his proposal creates a parking area as well as enhances the look of the property.
205 He wanted the change to work with the area as Main St leads to the Harbor. The proposal would serve
206 his parking needs and this is the design that he came up with that he feels works best.

207 Vice Chair Simpson asked and Mr. Wightman said that the whole structure will be going from a shed
208 roof to a flat roof with an additional height of 6 ft in the front. Vice Chair Simpson asked about
209 shoveling the roof and Mr. Wightman said that the roof should not have to be shoveled. Mr. Larrow
210 said that he thought that the height expansion was just going to the two garage bays and then step
211 down. Mr. Wightman said that there is an incline in the road so one garage bay will be at one level and
212 he will need to step the second down to meet the road, however, the roof will be the same level all the
213 way across. Vice Chair Simpson asked and Mr. Wightman said that the 15 ft 6 in height is measured at
214 the lower end of the building and the measurement is to the ground. Mr. Wightman drew a diagram of

215 the structure for the Board. Chairman Schneider said that he thinks that 21 ft 6 in will be the maximum
216 height.

217 Chairman Schneider asked Mr. Wightman to go over the criteria for the Special Exception, starting with
218 #2 as #1 was repealed.

219 Chairman Schneider said that criterion #2 requires that the existing structure be a house, garage or
220 commercial building. Mr. Wightman said that the existing structure is a commercial building. Chairman
221 Schneider said that criterion #3 requires that the existing structure is less than 24 ft in height Mr.
222 Wightman confirmed that it is. Chairman Schneider said that criterion #4 requires that the vertical
223 expansion will be no more than 10 ft higher than the pre-existing structure and Mr. Wightman
224 confirmed that it is. Chairman Schneider said that criterion #5 requires that any roof changes are within
225 the height requirements set forth in the Ordinance; the proposed structure is less then the maximum 40
226 ft allowance and there are no height restrictions that it should not meet. Chairman Schneider said that
227 criterion #6 is that, in the judgement of the ZBA, no abutter will be adversely affected by the
228 enlargement. There have been several neighbors who seem to be in favor of the proposal. Chairman
229 Schneider said that criterion #7 requires that all state and local permits are acquired to insure
230 compliance with Article VII of the Ordinance. Article VII has to do with septic requirements and Mr.
231 Wightman said that his property is on Town sewer but there will not be any requirements in the
232 proposed building. Chairman Schneider said that criterion #8 says that such enlargement or
233 replacement, in the judgment of the ZBA, is consistent with the intent of the Ordinance. Mr. Platt said
234 that he thinks that this is consistent with the intent of the Ordinance.

235 Chairman Schneider closed the meeting to public input.

236 Vice Chair Simpson made a motion to approve Case #: Parcel ID: 0129-0081-0000: seeking a Special
237 Exception per Article III, Section 3.50(i) to allow a pre-existing non-conforming structure to be replaced
238 on existing footprint with a higher envelope, 25 Main St, William Wightman. Mr. Platt seconded the
239 motion. He feels that this is a minute change and wishes that it could be handled administratively. The
240 motion passed unanimously.

241 **CASE #19-07: PARCEL ID: 0113-0021-0000: VARIANCE FROM ARTICLE III, SECTION 3.10 OF THE**
242 **ZONING ORDINANCE TO PERMIT A REDUCTION OF FRONT SETBACK FROM 50 FT FROM CENTERLINE**
243 **OF ROAD TO 30 FT FROM CENTERLINE OF ROAD FOR CONSTRUCTION OF GARAGE. 60 RIDGEWOOD**
244 **RD, TIMOTHY & BETTE NOWACK.**

245 **CASE #19-08: PARCEL ID: 0113-0021-0000: VARIANCE FROM ARTICLE III, SECTION 3.10 OF THE**
246 **ZONING ORDINANCE TO PERMIT A REDUCTION OF THE WESTERN SIDE SETBACK FROM 15 FT TO 5 FT**
247 **FOR CONSTRUCTION OF A GARAGE. 60 RIDGEWOOD RD, TIMOTHY & BETTE NOWACK.**

248 **CASE #19-09: PARCEL ID: 0113-0021-0000: VARIANCE FROM ARTICLE III, SECTION 3.20 OF THE**
249 **ZONING ORDINANCE TO PERMIT A REDUCTION OF IMPERVIOUS LOT COVERAGE FROM 27.2% TO**
250 **26.2% (WHEREAS 25% IS THE MAXIMUM ALLOWED) FOR CONSTRUCTION OF A GARAGE. 60**
251 **RIDGEWOOD RD, TIMOTHY & BETTE NOWACK.**

252 Chairman Schneider asked and Mr. Neuwirt said that he does not feel as though he needs to recuse
253 himself from the cases but Mr. and Mrs. Nowack can ask him to recuse himself if they would like.
254 Chairman Schneider said that is not something that is up to the applicant. Vice Chair Simpson said that
255 he knows most of the people who live on Ridgewood Rd but he does not think that will make a
256 difference but would be willing to recuse himself if the Nowacks would like. Mr. and Mrs. Nowack said
257 that they do not think he needs to recuse himself. The facts can speak for themselves.

258 Vice Chair Simpson made a motion to appoint Mr. Larrow as a voting member for the three cases. Mr.
259 Platt seconded the motion. The motion passed unanimously.

260 Mrs. Nowack went over the materials that were provided with the application. Mrs. Nowack said that
261 the approved DES permit that was submitted as part of the application will need to be modified as the
262 garage is different, however the drainage system and rain garden are the same. Mrs. Nowack explained
263 the new plan for the garage. She also submitted a copy of a plan that was done for the original
264 construction that has some features that are not on some other plans, including the width of the road.

265 Mrs. Nowack said that she listed the requirements for granting a Variance under RSA 674:33, I(b)(5).
266 The first requirement is that there are special conditions of the property that distinguish it from other
267 properties in this area. They have the smallest lot in the area and their road frontage is a little less than
268 42 ft wide and they also have a 8 ft right of way going over their lot for Stuart Caswell which is on the
269 east side of the property to his dock. This leaves them with only 34 ft to work with for the width of their
270 property. Mrs. Nowack continued that this is a steep lot with 10 ft of elevation drop from the road to
271 the front of the house, across this area it is approximately a 22% slope. This makes it difficult for them
272 in the winter because they have drainage that goes down their lot and freezes in the winter. They have
273 both slipped this past winter and also had a contractor who slipped and hurt his back and could not
274 work for a while. They are concerned about the slipperiness of the driveway; they cannot park at the
275 end because it is too steep.

276 Mrs. Nowack said that regarding the relationship between the general public purposes of the Ordinance
277 and application of provision this speaks to the 50 ft setback from the centerline of the road. They are
278 asking for a Variance to go 30 ft. from the centerline of the road. They understand that there are needs
279 for the Town to have access and a certain width to work in. However, currently, the butts of their cars
280 are right at the road; their parking spots barely let them get off of the road. Mrs. Nowack continued
281 that they are proposing building a garage a little back from the road so they are giving more space to the
282 road. Last year, their proposal was to construct the garage 5 ft from the edge of the road. They have
283 reconfigured things and their current proposal is that the closest corner would be 8 ft from the edge of
284 the road. They have not altered the side setback request.

285 Chairman Schneider asked and Mrs. Nowack said that they are requesting a 30 ft setback from the
286 centerline. Mrs. Nowack said that they just received feedback from Mr. Hazelton that was a surprise to
287 them. Chairman Schneider asked and Ms. Gage said that she will need to go print the email with Mr.
288 Hazelton's comments and the Board could continue to deliberate while she does that.

289 Mrs. Nowack said that she thinks that the proposed use is reasonable as most houses have a 2-car
290 garage. Mrs. Nowack showed the Board pictures of garages along her road that are within 500 ft of
291 their property; 58 Ridgewood Rd received a Variance to build their garage, 50 Ridgewood Rd is very
292 close to the road, and 48 Ridgewood Rd is also close to the road.

293 Vice Chair Simpson asked and Mrs. Nowack said that this is a town road. Vice Chair Simpson said that
294 the deed gives the Nowacks a right of way over a private right of way to her house. Mrs. Nowack said
295 that the Town plows the road. Vice Chair Simpson said that he knows that but questions if it is a Town
296 road. Mr. Platt said that he thinks that the Board has to accept that the Town considers this a Class V
297 road and the Board should not be debating if it is or not. There was further discussion regarding this
298 matter.

299 Vice Chair Simpson said that Mrs. Nowack shared her deed, which is why he questioned if it is a private
300 road. Mrs. Nowack said that the reason that she submitted a copy of their deed is because on the
301 second page it says that they are allowed to build a two-car garage. Vice Chair Simpson said that he
302 understands why it was submitted, however, it is not relevant as to whether the Board should grant
303 them a Variance.

304 Mrs. Nowack said that they owned this as a vacation property for a while and about two years ago they
305 sold their other house and moved here permanently but before moving here they talked to Roger
306 Landry about building a garage and he said that it looked reasonable. They moved up here with the
307 belief that if they wanted to build a garage, they would be able to do so. Mrs. Nowack continued that
308 they believe that the two-car garage is a reasonable use, especially as it is on the deed. As a year round
309 property they need to have cars to get around and need to be able to park the cars somewhere. They
310 currently park along the road and are requesting a shelter for their cars and a pathway to their house.

311 Mrs. Nowack said that the reason that they put the garage 5 ft from the Fitzgerald's property is because
312 of the topography. The contours for the property are shown in the survey plan and the 3D renderings
313 also show the slope as do photographs of the property. Mrs. Nowack said that the parking area is up off
314 of the road and the property boundary pin is in front of the telephone poles. They park their cars so
315 that the tails sit right on the property line. There is also an 11 ft drop from the top of the mound down
316 to where the house is located. Mrs. Nowack said that they did not want to move the garage off the
317 mound or toward the other side because they will need to bring in a lot of fill and it may require
318 retaining walls. From an engineering perspective, this is the best place to put the garage. She is an
319 environmental engineer and she knows that from an environmental standpoint you do not want to bring
320 in a lot of fill, change grades, or alter drainage in ways that could be detrimental. You want to work with
321 the contours of the land and not have to modify it a lot.

322 Mrs. Nowack continued that the further away from the road, the more impervious surface they would
323 have. They are proposing to take out a current bluestone area so that they actually end up decreasing
324 the impervious surface. Currently, the total impervious area allowed is 25%, however, when they built
325 their house it was 30%. The benefit to this proposal is that they will be decreasing the impervious
326 surface because they will be taking out the blue stone driveway and making it a walkway with a pervious

327 surface. Vice Chair Simpson asked and Mrs. Nowack confirmed that the area for the garage and
328 walkway will be less impervious than the current bluestone driveway and parking area. Chairman
329 Schneider asked and Mrs. Nowack said that she made the calculation regarding the pervious and
330 impervious area; she is a NH certified Environmental Engineer. Chairman Schneider said that Mrs.
331 Nowack is not neutral in this matter. Mrs. Nowack said that the Board is welcome to recalculate the
332 numbers. The Board asked and Ms. Gage said that she took the owner's calculations for the impervious
333 surface as she is an engineer.

334 Mrs. Nowack said that regarding the public or private rights of others and the effect that this
335 development could have on surrounding property values, they contacted a real estate agent who visited
336 the site and they have a letter from him that he does not believe that it will negatively impact property
337 values.

338 Mrs. Nowack said that they looked at this proposal as a win/win. There are a lot of advantages
339 compared to the current situation as it provides them safe access to their vehicles; it moves their cars 8
340 to 10 ft off the road; it provides additional space for Town maintenance; it provides a storm water
341 management system; it decreases the impervious surface; they are not bringing in fill; and they are not
342 altering the grade very much. Mrs. Nowack said that they are trying to make the garage as low profile
343 as they can; they expect it to be approximately 15-16 ft high from the slab and the design is consistent
344 with other properties on the street.

345 Ms. Gage gave the Board copies of letters from abutters, additional letters from the applicants, and
346 comments from Mr. Hazelton, all of which are available in the case file.

347 Chairman Schneider said that he would like to hear the comments and questions for all three cases and
348 then deliberate and vote on them separately after.

349 Mrs. Nowack said that when she did this design she looked at how close the garage could be to the
350 house while still having a safe rise and run of steps to go to the house; she also put the stairs right up to
351 the porch. The safety of the stairs with the steepness of the lot is what guided the setback from the
352 road.

353 Chairman Schneider asked and Mrs. Nowack said that they contacted Dave Smith of Harbor Light Realty
354 to give them an opinion regarding the property values. Vice Chair Simpson said that Mrs. Nowack had
355 indicated that she got an opinion of property values from a real estate agent. Mrs. Nowack said that Mr.
356 Smith was a third-party and they did not know him before contacting him. Vice Chair Simpson said that
357 Mr. Smith's letter does not talk about the neighbor's property values. Mrs. Nowack said that it is just
358 general for the neighborhood, it is not specific to one property.

359 Chairman Schneider said that there is a letter from Emily Hack, 58 Ridgewood, the abutter to the east of
360 the property who said that they have reviewed the plans and have no objection to the proposal.

361 Chairman Schneider said that there is a letter from Jeffrey Fitzgerald, 62 Ridgewood, the abutter to the
362 west of the property, who said that the proposed garage being 5 ft from the property line will negatively

363 affect his property value. Mr. Fitzgerald's letter included a letter from John Calderwood of Four Seasons
364 that indicated the proposed garage would negatively impact the value of any future sale of the property.

365 Chairman Schneider said that there is a letter from Scott Hazelton, the Highway Director, that
366 recommended that the garage be moved back another two feet away from the front setback. Mrs.
367 Nowack said that they started this project last year and the day of the hearing Mr. Hazelton wanted to
368 meet with them and said that he would approve the proposal if the garage was moved back more. The
369 hearing was continued and after they went home they looked at where another 5 ft would place the
370 garage and they realized that the revised plan would not be workable and sent an email to Mr.
371 Hazelton regarding this matter. There is a 10 ft drop-off from the current parking area to the new
372 location of the garage and the location of the house was a few feet closer to the road than shown on the
373 plan. Almost the entire garage would have been sitting on 10 ft of fill and when they walked out of their
374 house they would practically walk into the foundation wall. Mrs. Nowack said that her email included
375 that although it sounded like a good compromise, they could not make it work. They understood that
376 Mr. Hazelton opposed the original configuration and without his approval it was unlikely that the Board
377 would approve the setback Variance. This is why they decided to withdraw their Variance application
378 and continue to use the parking as they had. After Mr. Hazelton received their email, he asked to talk
379 them to work out how to make the garage work. However, now Mr. Hazelton's comments are the same
380 that they were a year ago when they said that they were going to withdraw the application. Mrs.
381 Nowack continued that they have spent a considerable amount of money to have the property surveyed
382 and worked with Mr. Hazelton on this. She has tried to set up meetings with him several times and she
383 only received cryptic comments regarding some of the drawings she sent for his review. Her last email,
384 sent on February 4, 2019, included that they wanted to request a Variance for the garage but if Mr.
385 Hazelton felt as though he could not provide positive input to the Board regarding the new proposal
386 location then they would like to discuss it with him. They did not hear back from Mr. Hazelton until the
387 Monday before this meeting. They were surprised with the reply as they thought they had worked out
388 the split because they were originally at 5 ft and went to 8 ft, however, Mr. Hazelton is back to where he
389 was a year ago, which is discouraging. They also do not understand what Mr. Hazelton is trying to
390 accomplish with the extra two feet. Mrs. Nowack said that the other conditions that Mr. Hazelton
391 would like to put on the approval seems very unusual, for example, for them to accept all liability from
392 the Town. Chairman Schneider said that he thinks that one of Mr. Hazelton's concerns is to allow the
393 Town's emergency equipment and snow plow to be able to turn around because they are at the end of
394 the road. Mrs. Nowack said that the other thing that she would like to point out is that last year Mr.
395 Hazelton said that the road is 33 ft wide at the location where they park now. However, both the plan
396 and pictures show that the width is 48.5 ft wide. To move the garage closer to the house two feet is a
397 lot on her end, but not a lot on a 48 ft wide road.

398 Mr. Larrow asked if when Mr. Hazelton met with them at the property if they taped off where the
399 garage would go or put a stake in to show where it would go. Mrs. Nowack said that Mr. Hazelton
400 recommended that they have the property surveyed so they did. Mr. Larrow asked if the survey showed
401 the road and Mrs. Nowack said that it does and it shows that the width of the road is 48 ft. Mr. Nowack
402 said that Mr. Hazelton perceives the road width is 33 ft but it is actually 48 ft. Mr. Platt said that he

403 thinks that most of Ridgewood Rd is 33 ft until it reaches the end. Mr. Nowack said that they are at the
404 end of the road.

405 Mr. Nowack said that this year they did not want to hire a private person to plow for them because Mr.
406 Hazelton indicated that the plowing would be close to their cars and he decided to hand shovel the few
407 feet behind the cars to the road. However, the snow plowing did not come close to the cars and he
408 shoveled for three storms before determining he needed to hire someone to plow the Town road in
409 front of their cars. Mrs. Nowack said that it is approximately 10 to 15 ft from where the plow goes to
410 their property line and they are proposing putting their garage 8 ft beyond their property line.

411 Mr. Platt said that garages are usually square and wondered why it is 20 ft on one side and 24 ft on the
412 other. Mrs. Nowack said that the road is 1124 elevation, the slab will be at 1125, and the entrance to
413 the house is at 1114. They need to have stairs going down and there was not enough room to have the
414 stairs all outside going straight down so they bumped out the wall 4 ft to have half of the elevation
415 change inside with stairs and the rest of the stairs outside. This was a way to move the garage back and
416 get closer to the house.

417 Ms. Gage said that Fire Chief Ruggles visited the site and reviewed the plans and verbally told her that
418 he has no concerns regarding the proposal. Emergency vehicles would continue to turn around as they
419 normally do by backing in and turning around.

420 Vice Chair Simpson asked and Ms. Gage said that she has not spoken with Police Chief Cahill regarding
421 this proposal. Vice Chair Simpson said that he thought setback questions would go to Fire, Police, and
422 Highway because they expressed concerns about the Board making decisions without talking to them.
423 There was further discussion regarding this matter.

424 Chairman Schneider read Mr. Hazelton's second request regarding a need for a plan to show the
425 proposed garage and drainage improvements and stormwater management. Mrs. Nowack said that the
426 DES permit is already approved.

427 Chairman Schneider read Mr. Hazelton's third request regarding no parking in front of the garage during
428 the winter. Mrs. Nowack asked if it is typical to not let people park in their driveway in the winter. Mr.
429 Nowack said that they are concerned and asked if this means that they cannot park in the 8 ft setback in
430 front of the proposed garage that is part of their property or if they cannot park in the road. Chairman
431 Schneider said that this is saying that they cannot park in front of the garage. Mr. Neuwirt said that the
432 Town has a right of way for the disposal of snow and maintenance of the road, even though it is on their
433 property. Mr. Platt said that he is not sure if that is accurate. Chairman Schneider said that he thinks
434 sometimes the Town confuses their parking regulations.

435 Chairman Schneider read Mr. Hazelton's fourth request that the Nowacks will be responsible for the
436 maintenance of all the drainage components on their property.

437 Mr. Neuwirt said that he is working on a project and if he goes within the 10 ft buffer he needs to get
438 letters from the Department Heads saying that there will be no adverse impact on the snow plowing

439 because of the structure. Mr. Hazelton might consider 10 ft onto the Nowack's property as room for
440 snow from the street. Mrs. Nowack said that if there is snow from the road put in front of their garage
441 they will not be able to enter the garage. Mrs. Nowack said that the existing winter parking was
442 approved when the house received a Variance when it was built. Mr. Neuwirt said that he thinks that
443 Mr. Hazelton is looking at if there are cars parked outside the garage in a heavy snow storm then the
444 plows will plow the snow in. Mrs. Nowack said that they plan to park in the garage but if they have a
445 guest in the winter they might park in front of their garage. Mr. Nowack asked if winter means the
446 entire season or just when there is a snow storm. Vice Chair Simpson said that the Board does not know
447 what it means, it is just something Mr. Hazelton is requesting. Mr. Neuwirt said that it is common
448 practice for snow on Town roads to end up on private property. He thinks that Mr. Hazelton wants
449 assurance that the Town will be absolved from liability to the Nowack's vehicles from snow plowing.
450 Mr. Nowack said that if the Town backs up their truck and hits the garage, Mr. Hazelton wants the Town
451 to not be liable for any damage. Vice Chair Simpson asked and Mr. Nowack said that he thinks Mr.
452 Hazelton's request is unreasonable.

453 Mr. Platt asked and Mrs. Nowack said that the drainage and storm water management system will not
454 change. They only need to get an updated approval from DES for the change to the garage.

455 Vice Chair Simpson said that the garage is being moved back a little bit over the retaining wall and asked
456 if the retaining wall is existing. Mrs. Nowack said that the wall exists. Mrs. Nowack explained the
457 location of the wall and where the stairs are proposed to be located. There was further discussion
458 regarding the wall and that it will be terraced like it currently is.

459 Jeff Fitzgerald, 62 Ridgewood Rd, said that when the Nowacks built their house 20 years ago they
460 requested two Variances and these approvals would be an additional three Variances. He is opposed to
461 the request. Vice Chair Simpson asked if there are copies of the original approvals. Mr. Fitzgerald said
462 that the subject property is the smallest on Ridgewood Rd. Ms. Gage said that the Nowacks received a
463 Special Exception to build the house. Mr. Fitzgerald said that the property is in the Rural Residential
464 Zone and keeping with the nature of the area, when he purchased his property he never expected any
465 property to get five Variances; he didn't expect to see any properties with any Variances because they
466 are in the Rural Residential Zone. He did not object to the two original Variances because he thought
467 that they were reasonable. When the Nowacks built the five-bedroom house, they were required to
468 have additional parking, which is why they have a second parking area. According to meetings that he
469 has had with Ms. Gage and Mr. Hazelton, the second parking area was never permitted. Vice Chair
470 Simpson asked and Mr. Fitzgerald said that according to Ms. Gage that the parking area needs to be
471 permitted. Ms. Gage asked and Mr. Fitzgerald said that because the amount of road frontage for that
472 lot is so small, the second parking area should be permitted. Ms. Gage said that all driveways need to be
473 permitted and Mr. Hazelton could not find that the original parking area was permitted but noted that it
474 was on the plan that was approved when the house was built, which was acceptable to him.

475 Ms. Gage asked and Mrs. Nowack said that they do not intend to keep the existing driveway. Mrs.
476 Nowack said that they cannot use the driveway in the winter. The reason they did the upper parking
477 area was because they cannot get down the driveway in the winter because it is too steep. Ms. Gage

478 said that Mr. Hazelton is aware that the Nowacks intend to get rid of the existing driveway and
479 permanently use the winter parking area.

480 Mr. Fitzgerald said that as a condition of building a five bedroom house, they required three parking
481 spaces, which this current plan would not support. Mr. Platt asked and Ms. Gage said that above four
482 bedrooms, each additional bedroom requires a half of a parking space. Chairman Schneider asked and
483 Ms. Gage confirmed that she has a copy of the assessor's card.

484 Mr. Fitzgerald said that he thinks that a lot of Mr. Hazelton's comments are due to the fact that he
485 realizes that there is a non-permitted driveway and he realizes that there needs to be three parking
486 spaces; however, he does not know how it is going to be resolved. Mr. Neuwirt said that he does not
487 think that it is fair for Mr. Fitzgerald to say what Mr. Hazelton means.

488 Ms. Gage said that the property card says that the house has four bedrooms and three bathrooms. Mr.
489 Fitzgerald said that it was originally submitted as a five-bedroom house when it was built 20 years ago.
490 Chairman Schneider said that as far as the Town is concerned it is a four-bedroom house.

491 Mr. Fitzgerald said that the concern was that there was a second non-permitted driveway. Chairman
492 Schneider said that there is a space where the Nowacks are parking their cars and would like to build a
493 garage in essentially the same space. Chairman Schneider asked and Mr. Fitzgerald confirmed that this
494 is the driveway area that was built after the new house was built. Chairman Schneider asked and Mr.
495 Fitzgerald said that there is another driveway that goes to the front of the Nowacks house. Mr. Neuwirt
496 asked if during the winter the Nowacks use the sloped driveway. Mr. Fitzgerald said that the other
497 driveway did not exist before the Nowacks built the new house. Mr. Neuwirt asked when Mr. Fitzgerald
498 thinks the new driveway was built. Mr. Fitzgerald said that It was built after the new house. Mr.
499 Nowack said that they built the driveway with the new house. Mr. Fitzgerald said that he and Ms. Gage
500 had a meeting with Mr. Hazelton and he made his thoughts very clear and he is concerned with backing
501 up trucks and removing the snow and doing what he needs to do.

502 Mr. Fitzgerald said that he has spoken to a couple of real estate agents and submitted a letter from one.
503 He is concerned that this proposal will adversely affect the market value of his property. It will also set a
504 new precedent in Fernwood Point as there has not been a Variance of this level given and he thinks it is
505 a horrible idea from a neighborhood standpoint.

506 Mr. Neuwirt said that if Mr. Hazelton was concerned about the parking area he thinks it would have
507 been stated as one of the bulleted points that the area was never permitted. He is trying to rationalize
508 Mr. Fitzgerald's assumption that that is what Mr. Hazelton meant when he didn't put it in the list of
509 concerns to Ms. Gage. Mr. Fitzgerald said that he understands Mr. Neuwirt's perspective, however, Ms.
510 Gage was present. Mr. Fitzgerald asked Ms. Gage if she feels as though he has misrepresented anything
511 that Mr. Hazelton said. Ms. Gage said that she does not think that Mr. Fitzgerald is misrepresenting
512 things, however, it would be helpful for transparency for the Board to know that Mr. Fitzgerald got put
513 under the Highway Director's microscope for having a garage structure and driveway that was not
514 permitted. He has worked extensively with Mr. Hazelton to move it because there was never a driveway
515 permit to come off the road. Mr. Neuwirt said that none of the Board members were present for any of

516 the meetings between Mr. Fitzgerald, Mr. Hazelton, and Ms. Gage. The Board only has the letter from
517 Mr. Hazelton go to by. Mr. Fitzgerald said that he was trying to give the Board the information that he
518 has and suggests that the Board talk to Mr. Hazelton. He is moving his structure, which is not a garage
519 but a storage area that is not used in the winter, because Mr. Hazelton and Ms. Gage told him they want
520 50 ft from the property line to be clear.

521 Mr. Fitzgerald said that this is a dead end road and winters can get bad. Anything that he has heard
522 about the proposed plan does not seem sufficient to the realities of what he is trying to address. Mr.
523 Neuwirt asked and Mr. Fitzgerald confirmed that he thinks the 5 ft to the property line is too egregious.
524 Mr. Fitzgerald said that he thinks that the 10 ft setback is too much and the impervious area is too
525 much. The property is on a dirt road and there are no drainage or storm water management on it; when
526 it rains the road gets flooded. He does not think that there should be buildings within 25 or 30 ft of the
527 street.

528 Vice Chair Simpson said that he agrees that the land is not contoured to put the garage further away
529 from the front setback. However, he does think that the side setbacks could be met with the same size
530 garage. Mrs. Nowack said that the land drops down to the east. Vice Chair Simpson said that he
531 understands that but asked if they could build the garage within the side setbacks. Mr. Neuwirt said
532 that would require a Variance from both setbacks because there is only 17 ft on the right-hand side.
533 Chairman Schneider said that this assumes that they need a two-car garage. Mrs. Nowack said that they
534 have two cars and asked where they would park their other car.

535 Chairman Schneider asked and there were no additional questions or comments from the Board for the
536 applicants so he closed the meeting to public comments. Chairman Schneider said that the Board will
537 be discussing and voting on each case individually.

538 Chairman Schneider said that the first Variance is for the front setback to be reduced from 50 ft to 30 ft
539 from the centerline of the road; the garage would, therefore, be 8 ft from the edge of the property line.
540 Mr. Platt said that he thinks that this proposal meets the hardship requirement. However, he thinks
541 that the Board needs to determine if this is a reasonable use and if a small lot in Sunapee is allowed to
542 have a two-car garage. He believes that the Board has supported this in the past. There are access
543 issues with the driveway and he thinks that the Board does not necessarily need to do everything that
544 the Highway Director wants. If they are giving up one access point on the road, whether the other is
545 permitted or not does not matter. He thinks that historically the Board has considered a two-car garage
546 to be a reasonable use. Mr. Neuwirt said that an approval could be contingent on the Nowacks
547 obtaining an approved driveway permit.

548 Vice Chair Simpson asked where the parking space requirement comes from in the Zoning Ordinance.
549 Ms. Gage said that it is in 3.40(e). Vice Chair Simpson said that he thought that was for commercial
550 properties.

551 Mr. Platt said that he has done a lot of survey work in that area and there are a lot of houses close to the
552 property lines in Fernwood Point.

553 Chairman Schneider asked about the previous Special Exception conditions and Ms. Gage said that there
554 was only one Special Exception to rebuild and reduce both side setbacks.

555 Chairman Schneider said that in the past the Board has granted reduced front setbacks when there has
556 not been a hazard to equipment. He thinks that the extra two feet that Mr. Hazelton is requesting is
557 diminutive.

558 Vice Chair Simpson said that he takes offense to some of Mr. Hazelton's comments. He thinks the only
559 thing that is reasonable in his request is to require the Nowacks to maintain their drainage system. He
560 does not think that the Board should impose a condition that absolves the Town from liability. He also
561 does not think that the Board should impose a condition regarding parking.

562 Chairman Schneider said that any approval should be subject to the approved Shoreland Permit. Mr.
563 Platt asked if the Shoreland Permit is a Permit by Notification Permit.

564 Mr. Neuwirt said that builders typically figure a vehicle to be 6 ft 6 in to 7 ft long by 17 ft wide as a
565 standard length and width. Regarding the front setback, if the Nowacks have people visit them, he
566 figures that 6 ft of the length of the vehicle will be sticking out into the road. Vice Chair Simpson asked if
567 it is possible for someone to park along the road and Mr. Neuwirt said that it is. There was further
568 discussion regarding this matter.

569 Mr. Claus asked if the DES Permit is only for a rain garden. Mr. Nowack said that it is for a rain garden as
570 well as a drainage system at the top and drainage around the garage and infiltration from the drip edge
571 of the garage roof into a perimeter system. Chairman Schneider said that the plan submitted to DES
572 does not include the garage. Mr. Nowack said that they are doing what is on the DES permit anyway.
573 Most of the driveway that comes off the road goes down the current driveway and they are installing an
574 interceptor trench at the top of the road so that they do not get flooding.

575 Chairman Schneider reopened the hearing to public comments.

576 Vice Chair Simpson asked if the DES Permit will still be eligible for a Permit by Notification. Mr. Nowack
577 said that they will just be doing a modification. Mrs. Nowack said that it will still be qualified for a
578 Permit by Notification as they will only be slightly changing the garage. Mr. Platt asked if removing the
579 driveway and building the garage remains under the 1,500 sq ft impact allowed under a Permit by
580 Notification. Mr. Claus said that the total impact is supposed to include temporary disturbance as well.
581 Mrs. Nowack said that she does not know if the total disturbance will be under 1,500 sq ft but the Board
582 could make the approval conditional on approval of a Shoreland Permit. Chairman Schneider said that
583 any approval should not be for the current DES Permit but for a future DES Permit. Ms. Gage said that
584 the Nowacks would need a Land Disturbance Bond and an approved DES permit before they could
585 receive a Certificate of Zoning Compliance. Mrs. Nowack said that they did not want to submit another
586 permit to DES that was not representative of what they are doing; they wanted to make sure they had
587 approval from the Town first. Mr. Nowack said that the drainage that was approved will be the same
588 thing that they do when they build this project.

589 Mr. Platt made a motion to approve the Variance from Article III, Section 3.10 of the Zoning Ordinance
590 to permit a reduction of the front setback from 50 ft from the centerline of the road to 30 ft from the
591 centerline of the road for construction of a garage at 60 Ridgewood Rd, Case #19-07; conditional on
592 compliance with all State permits required, future and current. Mr. Neuwirt seconded the motion. The
593 motion passed unanimously.

594 Chairman Schneider asked for discussion regarding Case #19-08.

595 Mr. Claus said that he thinks that there was a precedence regarding reducing the front setback but he is
596 struggling with reducing the side setback from 15 ft to 5 ft. He understands that the Nowacks have two
597 cars and would like a two car garage, however, not everyone gets a two car garage. A one car garage
598 could fit without any reduction of the side setback.

599 Chairman Schneider said that he has a problem with impinging on a neighbor's setback unless there is a
600 valid reason. The neighbor has objected to the impingement and he thinks that there is some validity to
601 the neighbor's argument. He also thinks that there is some validity that having something so close to
602 the property line creates a reduction of the quality of the abutter's property and possibly a reduction in
603 property values. The Board has to look at the rights of what someone wants to do with their property
604 versus the rights of others, including abutters. He also has a problem with saying that the objection that
605 the abutter has stated is not valid. Chairman Schneider continued that he thinks in terms of the criteria
606 required for the Variance request, he does not think that it meets criterion #3(c) that the Variance
607 would not injure the public or private rights of others because he thinks that it injures the rights of the
608 abutter.

609 Mr. Larrow said that he does not like the 5 ft reduction. The proposal is on a lot that is small, based on
610 the criteria but sometimes people want to overbuild what the lot can handle. He would rather see the
611 Variance on both sides rather than having the garage so close to the west side; there is room to move
612 towards the east side. Mr. Claus said that they could split the difference between the two sides rather
613 than pushing it one way and adversely affecting the one abutter. Chairman Schneider said that this does
614 not mean that the Board would approve the Variance if the garage is moved towards the center of the
615 lot.

616 Vice Chair Simpson said that he agrees with Mr. Claus.

617 Mr. Platt said that he does think that there are some environmental impact concerns because when you
618 slide down the hill there will be more impact and disturbed area. There is a canvas garage that is in the
619 neighborhood that is close to the property line. Vice Chair Simpson said that the Board is not
620 considering that garage. Mr. Claus asked if Mr. Platt means that there is a precedence set with the
621 canvas garage. Mr. Platt said that he doesn't think that it is a precedence. However, if the neighbor
622 thinks that a structure being that close will affect his property value, then why would something like
623 that not be an equal concern. He does not think that the side setback is to benefit the neighbor, it is to
624 benefit the neighborhood. There may be a number of structures in the neighborhood that are too close
625 to the road and / or too close to the property line. Chairman Schneider said that he disagrees with Mr.
626 Platt, he thinks that the reason there is Zoning is so that people will not do things with their property

627 that would disturb their neighbors or their neighborhood. Mr. Platt said that he agrees it is for the
628 neighborhood.

629 Mr. Neuwirt said that his concern is that the Board could vote to slide the structure two feet, which
630 would not infringe on the other setback, however, he does not know if it would make Mr. Fitzgerald any
631 happier. Chairman Schneider said that if the proposal is changed and Nowacks apply for another
632 Variance then the Board will make a determination.

633 Vice Chair Simpson made a motion to approve the Variance from Article III, Section 3.10 of the Zoning
634 Ordinance to permit a reduction of the western side setback from 15 ft to 5 ft for construction of a
635 garage, 60 Ridgewood Rd, Timothy and Bette Nowack, Case #19-08. Mr. Larrow seconded the motion.
636 The motion failed with one in favor and four opposed.

637 Chairman Schneider asked for discussion regarding Case #19-09.

638 Vice Chair Simpson asked if this Variance request is still relevant as the building request was defeated as
639 presented.

640 Chairman Schneider opened the meeting to public comments to ask the applicants if they would like to
641 withdraw the Variance request. Mrs. Nowack said that they might as well consider the application.
642 Chairman Schneider closed the meeting to public comments.

643 Mr. Platt asked why they need a Variance to reduce the amount of impervious surface. Ms. Gage said
644 that this is questionable because the lot coverage that is proposed still exceeds the maximum allowed in
645 the Zoning Regulations. She did not want the lot coverage to impede the Nowacks getting a Certificate
646 of Zoning Compliance. Chairman Schneider said that he thinks that a Variance is needed because the
647 Board approves applications for setbacks where the setback is not in compliance but the property is
648 being moved back even though it is less non-conforming and that is how he would look at this. Mr. Platt
649 asked if he has a stone patio that he wants to remove if he needs to come before the Zoning Board for a
650 Variance even though he is decreasing the impervious surface. Chairman Schneider said that it would
651 not require a Variance because they would not be building a structure.

652 Mr. Platt said that he thinks that the Board should proceed and does not see why the Board would not
653 vote to decrease the impervious surface. Chairman Schneider said that he would like to see the
654 calculation done by a third party.

655 Vice Chair Simpson said that he is concerned about voting on this because if the Nowacks do not
656 decrease the impervious surface and it remains at a higher number, what would be the purpose to
657 approve the decrease. Mr. Larrow said that it does not make sense to him for the Board to vote on this.
658 Mr. Platt said that if they move the garage over then they don't have to apply for another Variance. He
659 thinks that it is ridiculous too need a Variance for a reduction of 1% of impervious surface. Mr. Larrow
660 said that the Board does not know what is going to happen so it does not make sense to vote on this.
661 Vice Chair Simpson agreed that it would limit them to something less. Mr. Larrow asked why the Board

662 would do that at this point. Mr. Neuwirt said that the calculations are based on this plan. There was
663 further discussion regarding this matter.

664 Chairman Schneider opened the meeting up to public comments.

665 Vice Chair Simpson said that his suggestion is to withdraw this Variance request at this time because if
666 the Board votes to reduce the impervious surface and it does not happen then there is a non-
667 conformity. Mr. Larrow said that they do not lose anything by withdrawing the application. Mrs.
668 Nowack said that they would like to withdraw the Variance application for Case #19-09.

669 Vice Chair Simpson made a motion to allow the applicants to withdraw Case #19-09 which sought a
670 Variance from Article III, Section 3.20. Mr. Larrow seconded the motion. The motion passed with four
671 in favor and one abstention.

672 Mrs. Nowack asked now that they have the front setback Variance approved do they need to submit
673 applications for two more Variances at \$150.00 each. Chairman Schneider said that is an administrative
674 matter. Mr. Neuwirt said that they will need to either move the building and apply for another Variance
675 or make the garage smaller. Mrs. Nowack asked if withdrawing the application means that they still
676 need to pay another \$150.00. Mr. Platt said that he would try to convince the Zoning Administrator that
677 you do not need a Variance to reduce the impervious area. Ms. Gage said that the Nowacks did try but
678 she will work with them on the fees so that they are not incurred again, if at all possible.

679 **MINUTES**

680 Changes to the minutes from April 4, 2019: Change Line 29 to read "Chairman Schneider said that..."
681 Change Line 47 to read "...Vice Chair Simpson to continue to act as Chair..." Change Line 95 to read
682 "...the Variances need to be for." Change Line 158 to read "...no height restriction for what is being..."
683 Change Line 168 to read "...that a Variance should be requested..."

684 Mr. Platt made a motion to approve the minutes as amended. Vice Chair Simpson seconded the motion.
685 The motion passed with one abstention.

686 **MISCELLANEOUS**

687 Ms. Gage said that the Board has to vote to accept the new Variance application. The draft in the
688 Board's packet represents the changes the Board discussed at the last meeting in red. Vice Chair
689 Simpson asked and Ms. Gage said that the Board does need to adopt the new application.

690 Vice Chair Simpson made a motion to approve the Variance application as presented assuming that the
691 corrections will be made on the final version. Mr. Platt seconded the motion. The motion passed
692 unanimously.

693 Vice Chair Simpson thanked Mr. Larrow for acting as an alternate member and he hopes that he does
694 not resign. Chairman Schneider said that he hopes that Mr. Larrow remains as an alternate and attends
695 meetings when he can.

696 Mr. Neuwirt asked why the Variance requirements are on the application but the Special Exception
697 criteria under Section 3.50(i) are not. Vice Chair Simpson said that there are different Special Exceptions
698 that can be requested that are not under the same section. Mr. Neuwirt said that there was an
699 applicant who did not know what to do to answer the criteria and he felt bad because the applicant
700 didn't understand. Ms. Gage said that there are multiple different Special Exceptions available and
701 there cannot be an application for each one.

702 Ms. Gage said that she met with the applicant many times and feels as though he was ready to present.
703 Mr. Claus said that the applicant gave a very prepared presentation at the Planning Board meeting.

704 Mr. Neuwirt asked and Ms. Gage said that there are approximately eight different Special Exceptions
705 allowed and they all have different criteria. Vice Chair Simpson said that the application might need to
706 say that the applicant needs to address the criteria for the specific Special Exception being requested.
707 Ms. Gage said that she can work with the Board on the other applications.

708 There was a discussion regarding Variances and the requirements to receive a Variance.

709 Mr. Platt made a motion to adjourn the meeting at 9:44 pm. Vice Chair Simpson seconded the motion.
710 The motion passed unanimously.

711 Respectfully submitted,

712 Melissa Pollari

713

714 Zoning Board of Adjustment

715 _____

716 Daniel Schneider, Chair

_____ Aaron Simpson, Vice Chair

717 _____

718 James Lyons, Jr.

_____ Clayton Platt

719 _____

720 George Neuwirt

_____ William Larrow, Alternate

721 _____

722 Jeffery Claus, Alternate