

1 **TOWN OF SUNAPEE**

2 **ZONING BOARD**

3 **AUGUST 1, 2019**

4 **PRESENT:** Daniel Schneider, Chair; Aaron Simpson, Vice Chair; George Neuwirt; James Lyons, Jr.; Clayton  
5 Platt; William Larrow, Alternate

6 **ABSENT:** Jeffrey Claus, Alternate; Nicole Gage, Zoning Administrator

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

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

9 **CASE #ZBA19-13: PARCEL ID: 0114-0001-0002: SPECIAL EXCEPTION PER ARTICLE IV, SECTION 4.15 TO**  
10 **OPERATE A DOG KENNEL AS ALLOWED BY SPECIAL EXCEPTION IN THE RR DISTRICT. ZONE RR.**  
11 **OWNERS: 0 SUNNY LANE, LLC; APPLICANT: SUSAN AND GEORGE NEUWIRT; LOCATION: INTERSECTION**  
12 **OF SUNNY LANE & CARY FARM RD.**

13 Mr. Neuwirt recused himself from the hearing.

14 Mr. Lyons nominated Mr. Larrow as a voting member for the hearing. Mr. Platt seconded the motion.  
15 The motion passed unanimously.

16 Susan and George Neuwirt presented the merits of the case.

17 Chairman Schneider asked and Jim Woodley, the owner of the property, gave permission for the  
18 Neuwirts to present the case.

19 Mrs. Neuwirt said that she would like to purchase a piece of land that is for sale for the purpose of  
20 having a dog sitting business in her home. They would like to build a modest home and it will not be a  
21 traditional kennel with runs and buildings for the dogs. There will be a fenced in area that will be  
22 attached to her home and no other auxiliary buildings. Chairman Schneider asked and Mrs. Neuwirt  
23 confirmed that they have a plan that shows where the proposed residence will be constructed.

24 Chairman Schneider asked and Mrs. Neuwirt confirmed that the access to this property will be off Old  
25 Route 11, which is a Class VI road and an extension of Cary Farm Rd. Mrs. Neuwirt said that there is a lot  
26 of ledge from Sunny Lane and if they were to build the driveway from Sunny Lane it would be very long  
27 and expensive; coming off Cary Farm Rd would be a short driveway and that end of Cary Farm Rd is in  
28 excellent shape. Chairman Schneider asked and Mrs. Neuwirt said that she does understand that as a  
29 Class VI road that part of the road will not be maintained by the Town.

30 Mr. Larrow asked if Mrs. Neuwirt is applying for dog sitting or for a kennel. Mrs. Neuwirt said that it is  
31 dog sitting, which is the same thing that she was trying to do in Georges Mills; the word kennel is being  
32 used as a legal description for boarding dogs. It will not be like Dog Star in Springfield. Mr. Larrow asked  
33 if the Town has any regulations for kennels. Mr. Platt said that it is a use that is allowed by Special

34 Exception in the Rural Residential Zone. Mr. Neuwirt said that the Town does not have a definition of a  
35 kennel. Mr. Larrow asked and Mrs. Neuwirt said that she does not have to be licensed nor does the  
36 State need to inspect the property because she is not selling animals. She has an email from the  
37 Department of Agriculture confirming this information if the Board would like to see it. Mr. Lyons said  
38 that the email should become part of the record.

39 Chairman Schneider said that if this application is approved, Mrs. Neuwirt will need to go to the Planning  
40 Board for a Site Plan Review. Chairman Schneider asked and Mrs. Neuwirt confirmed that the plot plan  
41 shows the location of the proposed building.

42 Mr. Neuwirt gave the Board larger copies of the plans for their review. Mr. Neuwirt explained that he  
43 had Roger Rodewald create a site plan design and located a potential house site based on septic system  
44 test pits; the house is based on Mr. Platt's survey and where they would like the house.

45 Vice Chair Simpson said that the plan shows eight dogs but there is a new plan that shows fifteen dogs.  
46 Mrs. Neuwirt said that she is requesting fifteen dogs, and that is what the septic design is for. Mr.  
47 Rodewald contacted the State and got the number of gallons per dog needed for the septic system and  
48 it is 50 gallons per dog. She would like to not be limited to 15 dogs, however, because there are other  
49 options available for the dog waste. For example, there is a service out of Concord that takes waste out  
50 in closed containers or she could also get the tank pumped more often. Mrs. Neuwirt said that the  
51 septic design is also for a two-bedroom home, however, this will only be a one-bedroom home.

52 Mr. Larrow asked about the area on the plan that shows the fenced in area. Mrs. Neuwirt explained  
53 that the area shown on the plan is bigger than what she would like to have. They intend to leave a  
54 wooded buffer all around the perimeter of the property for the sake of the neighbors. They are  
55 intending to put the fence on the downhill side of the house, which is the furthest away from the  
56 neighbors. Mr. Larrow asked and Mrs. Neuwirt gave the Board a copy of a plan showing a smaller  
57 fenced area. Mrs. Neuwirt said that the fenced area does not need to be that big because most of the  
58 time the dogs will be in the house.

59 Chairman Schneider said that if the applicants are done with their presentation, he will open the  
60 meeting up to public comments. Mrs. Neuwirt said that she does have more to say, however, she thinks  
61 that it will make more sense after the abutters have said what they need to say. Vice Chair Simpson said  
62 that he thinks that Mrs. Neuwirt should go over the criteria for her Special Exception request.

63 Mrs. Neuwirt read the facts that support the Special Exception request. Regarding criterion number  
64 one: the selected site is an appropriate location for a kennel because the Zoning of this site allows  
65 kennels by Special Exception. Also, this lot is a larger lot of almost three acres and allows them the  
66 opportunity to develop it themselves instead of buying someone else's home. They intend to leave a  
67 wooded buffer all around the property and no other home will be able to see their house except for the  
68 home owned by Mr. Woodley. Vice Chair Simpson asked and Mrs. Neuwirt said that Mr. Woodley does  
69 not reside at the house that abuts this property. Mrs. Neuwirt continued that this is a perfect lot  
70 because it is on a dead-end road and there are hardly any other homes. The Board had recommended

71 that she look to do this type of business in the Rural Residential Zone so she has taken their advice and  
72 found the only land available and is trying to do it.

73 Mrs. Neuwirt said that regarding criterion number two, there is adequate and safe highway access. The  
74 lot is located at the end of a dead-end road and there is hardly any traffic and no one will go past the  
75 house because she will be at the very end and there will be 5+/- off street parking areas.

76 Mrs. Neuwirt said that for criterion number three, a new State approved and inspected septic system  
77 will be installed on the property and that is a contingency on the sale. Mr. Platt asked and Mrs. Neuwirt  
78 confirmed that there will be a separate septic system for the dog waste installed on the property. The  
79 dog waste system installs on a private septic system the same way that it is installed on a municipal  
80 sewer system.

81 Mrs. Neuwirt said that for criterion number four, the use is designed, located, and proposed to not be  
82 detrimental, hazardous, or injurious to the neighborhood. It is located at the end of a dead-end road,  
83 there will be off street parking, and there will a fenced in area so dogs are not loose or running around  
84 or barking.

85 Mrs. Neuwirt said that for criterion number five, the proposed use is consistent with the spirit of the  
86 Ordinance and the intent of the Master Plan by the very fact that it is specifically allowed by Special  
87 Exception. By the use of a kennel being permitted by a Special Exception in this Zone, the writers of the  
88 Ordinance have determined this use to be appropriate and, therefore, consistent with the public health,  
89 safety, and general welfare. Mrs. Neuwirt continued that her business model has less of an impact than  
90 a regular kennel.

91 Mrs. Neuwirt said that Neill Cobb is one of her abutters and said that he would like to remain neutral  
92 due to his position with the Town, however, he is not opposed to this proposal in any way. Mr. Neuwirt  
93 said that Mr. Cobb owns the property on the other side of the road. Vice Simpson asked and Mrs.  
94 Neuwirt said that Mr. Cobb did not submit anything in writing regarding his opinion of the proposal.

95 Chairman Schneider asked and Mrs. Neuwirt did not have anything else to say for her presentation at  
96 this time. Chairman Schneider asked and none of the Board members had any questions for the  
97 applicant. Chairman Schneider opened the hearing up to public comments and questions.

98 Denise Preston, 51 Cary Farm Rd, said that her property directly abuts the subject property. Mrs.  
99 Preston asked if Mrs. Neuwirt has a picture showing how she will access the property. Mr. Neuwirt  
100 showed Mrs. Preston on the plan where the access will be located off Cary Farm Rd. Mrs. Preston said  
101 that the letter that they received from Mrs. Neuwirt does not match the information that is being  
102 presented to the Board, which is a little bit of a concern for them. In the letter, Mrs. Neuwirt said that  
103 she will have an in-home doggie day care with some vacation boarders. A kennel with housing for  
104 fifteen dogs was not mentioned in the letter.

105 Mrs. Preston said that they are concerned about traffic because it will conflict with the rural nature of  
106 the area. A kennel housing fifteen dogs will adversely impact the amount of traffic in on their road as

there are young families with children who play in the road. There is also a large stand of bamboo near 18 Farm Rd. Vice Chair Simpson asked and Mrs. Preston gave a description regarding Cary Farm Rd / Old Route 11. Mrs. Preston said that the big stand of bamboo is native to NH and cannot be moved and there is only about a 25% visibility at that corner. According to NH House Bill 1258-FN, no one can move that bamboo. There was further discussion regarding the bamboo.

Mrs. Preston said that in March of 2019, the subdivision was approved with frontage and a driveway off Sunny Lane; keeping the access off of Sunny Lane affords for low impact of traffic on the neighborhood. If traveling off Route 11 via the present Cary Farm Rd exit, there will be a 900 ft drive on a Class VI road and pass by every homeowner on the street. If they access the kennel property from Sunny Lane, where the original driveway was approved, it will be the first driveway on the street and the kennel owners will have a shorter distance from a main road and will not pass multiple neighbors. It will also be easier access for police, fire, and ambulance services, which makes more sense.

Mrs. Preston said that they are concerned about noise pollution as they are not convinced that having fifteen dogs will promote the serene and tranquil neighborhood they have come to enjoy. Their neighborhood is sought as desirable because of these attributes. They do not have air conditioning and enjoy the summer breeze and do not wish to be met with dogs barking at all hours. Mrs. Preston continued that she had a discussion with a local real estate person and it was stressed that their personal property value would be decreased. The real estate person used the example that if they were selling their house and there was a showing at the house and the dogs were barking it would be a great impact on the value of their property.

Mrs. Preston said that dog waste is another of their concerns as they have a pond. Mrs. Neuwirt emailed them the information regarding the Powerloo system, which would be connected to a private sewer system at the kennel location. In the March 7, 2019 Zoning Board meeting, Mrs. Neuwirt stated on line 86 that dog poop should not be flushed down a private septic system and there is no public sewer system on this property. They are concerned about the impact that it will have on the pond, which houses ducks, geese, and frogs, and allows for their pets and neighborhoods pets to swim. Vice Chair Simpson asked and Mrs. Preston said that the pond is very close to the subject property.

Garrett Tilton, 18 Cary Farm Rd said that the proposed driveway would go by the pond. Mrs. Preston said that the water from the subject property runs into their pond. Vice Chair Simpson asked and Mrs. Preston and Mr. Tilton said that the pond might be a quarter of an acre. There was further discussion regarding the location of the pond.

Mrs. Preston said that they love animals but they feel as though a fifteen-dog kennel would be detrimental to their neighborhood in the categories of traffic, noise, and dog waste. It will also strongly impact the value of their property.

Vice Chair Simpson asked how far Mrs. Preston's house is from the proposed kennel. Mrs. Preston said that she does not know but described its approximate location to the Board. Chairman Schneider said that Mrs. Preston's driveway is after the pavement ends and goes up the hill while the road continues straight. Chairman Schneider said that he did not go up Mrs. Preston's driveway, however, he does not

145 believe he could see their house when he passed their driveway. Mrs. Preston agreed that he probably  
146 could not see the house. Chairman Schneider said that the house is pretty far from the subject  
147 property. Mrs. Preston agreed but said that things echo; she heard everything when they were building  
148 the house on Mr. Woodley's other lot on Sunny Lane.

149 Amy Huff, 11 Cary Farm Rd, said that their biggest concerns are the traffic and the corner. They have  
150 lived in their house for over 20 years and it has always been a dead-end road. They have had concerns  
151 about people driving past the pond and doing illegal things. This proposal will have more of an impact  
152 on traffic and will make it harder to know who their neighbors are. She is also concerned about the  
153 dogs barking and she does not appreciate having fifteen dogs in the kennel. Chairman Schneider asked  
154 and Mrs. Huff said that her property is the second on the left going up Cary Farm Rd. Mrs. Huff said that  
155 the pond and the brook on the Preston's property do run into Lake Sunapee. She thinks that it would be  
156 a very long distance to go and would impact their neighborhood; they could go off Sunny Lane instead.  
157 Mrs. Huff continued that the road used to have a dead-end sign and it has been removed. The road  
158 does not intersect with Sunny Lane, which a lot of the information says. Mrs. Huff said that they are not  
159 in favor of the kennel.

160 Vice Chair Simpson said that it appears as though Leena Mark's property and the Timber Rock Trust  
161 property are switched on the proposed site plan. Mrs. Neuwirt said that is incorrect and needs to be  
162 corrected. Chairman Schneider said that it is correct on the survey. There was further discussion  
163 regarding the different plans.

164 Leena Mark, 21 Sunny Lane, said that they never used to hear traffic off Route 11 but after the ice storm  
165 the traffic noise increased. The noise in the area travels; when they were building Pleasant Acres across  
166 Route 11, she could hear everything. Her dog goes to Dog Star five days per week and when she drives  
167 into the yard the dogs get excited and all bark. Her lot is quiet and the dog kennel will not be quiet; she  
168 does not think that this is a place for a dog kennel.

169 Ralph Hawkins, 32 Sunny Lane, said that he is concerned because you cannot see cars coming from the  
170 Georges Mills area when you come off of Sunny Lane until they are close. This has been the way that it  
171 has been since he first lived on Sunny Lane and he has been there for almost 40 years. If this proposal  
172 had the driveway on Sunny Lane it would also cause more traffic coming onto and off of Sunny Lane.  
173 Mr. Hawkins asked how deep the wooded buffer will be between the property and the abutters. Mrs.  
174 Neuwirt said that they are going to leave the lot wooded except for what is shown on the Site Plan. Mr.  
175 Hawkins asked if they know the narrowest distance and Mrs. Neuwirt said that they can calculate it. Mr.  
176 Neuwirt said that the plan is 1" for every 40" and he believes that the narrowest distance is  
177 approximately 60 ft between the potential fenced in area and Mr. Woodley's property line. Mr. Neuwirt  
178 asked and Mr. Woodley said that his other property is not cleared up to the property line. Mr. Woodley  
179 said that there is approximately 25 ft of wooded area behind the house. Mr. Neuwirt said that it is  
180 approximately 85 ft total of wooded area.

181 Mr. Hawkins said that Mrs. Neuwirt has said that the proposed business is not a kennel but is a dog  
182 sitting business and asked if she will have dogs overnight. Mrs. Neuwirt said that she will have dogs  
183 overnight. Mr. Hawkins said that dogs bark and create noise.

184 Ms. Mark said that regarding the buffer, she could hear Pleasant Acres when they were building their  
185 building across Route 11 and there are trees between them. She can also hear Route 11 and she is quite  
186 a distance away from it; she can hear it better after Mr. Woodley cut the trees to build the house next to  
187 her. Ms. Mark said that she does not think that 85 ft is very far.

188 Mrs. Huff asked the Neuwirts if they had been living in this neighborhood for over 20 years with four  
189 houses on the road how they would consider this low impact. She would like to have no impact and  
190 asked why they are not using the Sunny Lane access rather than the Cary Farm Rd access and ruining  
191 their neighborhood.

192 Garrett Tilton, 18 Cary Farm Rd, said that his house is closest to the road and he is concerned about the  
193 traffic and the sharp turn. If they have fifteen dogs, it can be assumed that there will be fifteen different  
194 owners and fifteen cars daily going on that corner by his house. There are already concerns when Mrs.  
195 Preston comes from her house as he cannot see her due to the bamboo. Adding more traffic will  
196 compound the problem more.

197 Mrs. Preston said that her other concern is the condition of Cary Farm Rd and the Class VI portion. The  
198 road is paved but it is not in the best condition after you make the turn at 18 Cary Farm Rd and  
199 continue. There are rocks coming up the road and there are people coming in for a business the road  
200 will need to be upgraded. They maintain the road from Mr. Tilton's house to their driveway; they had  
201 no other access to their property when they built their house so they were given permission to use the  
202 road as long as they maintained it. Mrs. Preston continued that it is a long drive to the subject property  
203 rather than the driveway off Sunny Lane, which was approved when the subdivision was originally  
204 approved. She would not want her customers to drive on a road where the rocks are coming up if she  
205 had a business. The pond can get high in the spring and there are wetlands on both sides of the road.  
206 Also, she questions where the snow will go as far as plowing.

207 Chairman Schneider said that he visited the property and he thought that the road was paved to Mrs.  
208 Preston's driveway. Mrs. Preston said that the road is paved up to Sunny Lane. Chairman Schneider  
209 asked where the Class VI road begins. Mrs. Preston said that it begins at Mr. Tilton's driveway. Mr.  
210 Tilton explained that his house is the one that that is at the end of Cary Farm Rd right at the turn and  
211 after the turn is the Class VI road. Vice Chair Simpson said that the Tax Map shows the Class VI road  
212 starting after the Preston's driveway. Mrs. Preston said that they were not getting their mail so they  
213 requested that Cary Farm Rd go all the way to their house. Mr. Tilton said that the Town stops plowing  
214 the road at his house. Mrs. Preston said that the Town leaves a pile of snow at the end of the road that  
215 she has to clean up. There was a lawsuit or something that went through that said that if you have  
216 access off a Class V road and are traveling more than 600 ft on a Class VI road you can be denied.  
217 Chairman Schneider said that they believe that the Class VI road starts at the right-hand turn. Mrs.  
218 Preston said that they maintain the road from there up and has been that way since they purchased the

219 property in 1995. Vice Chair Simpson said that is not what the Tax Map shows. Mrs. Preston said that it  
220 was changed so that they could get their mail. Chairman Schneider said that the Board can ask the  
221 Highway Director for clarification. Mrs. Preston said that she read a NH Road Law book and it says that  
222 the Town Manager is legally responsible for the roads over the Town's Highway Department. In a Town  
223 Manager system, the Town Manager would be the legal person to ask.

224 Chairman Schneider asked and there were no additional questions or comments from the audience.  
225 Chairman Schneider asked and Mrs. Neuwirt confirmed that she would like to respond to the comments  
226 and questions presented.

227 Mrs. Neuwirt said that there was nothing in the letter that she sent to the abutters that was inaccurate.  
228 She did not say that it was a daycare, she said that it was dog sitting dogs within her home. The letter  
229 also did not mention the number of dogs that she would be requesting.

230 Mrs. Neuwirt said that regarding the noise, Ms. Mark was not entirely accurate regarding driving into  
231 Dog Star and the dogs barking; when you drive into Dog Star, the dogs are outdoor on runs, which you  
232 cannot see, her business model is completely different than Dog Star. There seems to be a general  
233 consensus that everyone is assuming that the dogs will be outside all the time barking. The dogs will be  
234 inside the majority of the time and will not be out late at night. She did this before on Ryder Corner Rd  
235 and there was never an issue with any of the neighbors.

236 Mrs. Neuwirt said that regarding the traffic concerns, by the use of a kennel being permitted by Special  
237 Exception in the Rural Residential Zone, the framers of the Ordinance presume that there will be a  
238 degree of increased traffic and noise as a normal consequence. Her noise will not be the same as a  
239 normal kennel and her traffic will not be the same as a normal kennel. Her business model does not  
240 include numerous cars coming to the property two times per day, people would drop their dogs off for  
241 longer stays. She does not do doggie daycare so there is substantially less traffic than with a normal  
242 kennel. Mr. Neuwirt said that if you look at the things that are permitted by right and by Special  
243 Exception in the Rural Residential District, the many of the things permitted by Special Exception have  
244 more impact than what they are proposing. Mr. Neuwirt gave examples of these uses as listed in the  
245 Zoning Ordinance. He thinks that they have demonstrated that the impact of what they are proposing is  
246 far less than the impact of any other potential allowed use by Special Exception. Mrs. Neuwirt said that  
247 an increase in traffic alone is insufficient to justify refusal of a valid land use.

248 Mrs. Neuwirt said that Ms. Mark has a business at her property so it seems two sided to not want  
249 someone else to have a business in that neighborhood.

250 Mrs. Neuwirt said that that road will remain a dead-end road whether she is there or not. There will be  
251 less people going down the road and doing things that they should not be doing than there are now.

252 Vice Chair Simpson asked and Mrs. Neuwirt said that they do not intend to access the property off  
253 Sunny Lane because of the ledge and expense of the long driveway they will need to have. Vice Chair  
254 Simpson said that the plan by the septic designer shows the driveway off Sunny Lane but the plan done  
255 by Mr. Platt does not list the easement. Mr. Neuwirt said that there is an approved driveway application

256 that would allow them to access the lot from Cary Farm Rd. They have also agreed to allow Mr.  
257 Woodley to have an easement onto their property from Sunny Lane that would potentially access his  
258 property. Jim Woodley, 77 Upper Bay Rd, explained that the easement would allow his property to have  
259 a circular driveway to the side of the house because the Highway Director did not want to have three  
260 accesses in that same area. He was originally approved to have a driveway to the subject lot from Sunny  
261 Lane, however, discovered that it is going to be very expensive to build; therefore, he requested and  
262 was approved to change the driveway location to be off Cary Farm Rd. The easement is to allow the  
263 driveway to the side of his house to go over this lot. Mr. Woodley explained on the plan his proposed  
264 driveway location to the Board. There was further discussion regarding this matter.

265 Mrs. Neuwirt said that she misspoke when she said that the dogs at Dog Star are out on runs; she meant  
266 that they are out in their fenced in area.

267 Mrs. Neuwirt said that she has not heard anything other than speculation and opinions from the  
268 abutters. The objector's burden cannot be met by mere speculation of possible harm or problems; they  
269 need to have some kind of study or expert testimony. She knows that Mrs. Preston said that she spoke  
270 to a real estate agent who said that her property opinion will go down, however, Mr. Woodley is a real  
271 estate agent and has said that it will not. Vice Chair Simpson said that he has not heard Mr. Woodley  
272 say that. Also, everyone is entitled to their own opinion. Mrs. Neuwirt said that there should be a letter  
273 from Mr. Woodley regarding being in favor of the proposal. Chairman Schneider confirmed that the  
274 Board received the letter in their packet. Vice Chair Simpson asked Mr. Woodley why they have two  
275 letters from him. Mr. Woodley said that he originally put his name as the owner, which was incorrect as  
276 O Sunny Lane, LLC is the owner.

277 Chairman Schneider said that they have received a letter from Mrs. Preston opposing the proposal.

278 Mrs. Neuwirt said that the abutters only have their opinions and speculation, which is not enough to  
279 make their burden of proving that there will be detrimental harm.

280 Mrs. Neuwirt said that the pond that was discussed will be 300 ft from where the dogs will be located.  
281 The pond is near the property line, however, where they are developing will be 300 ft from the pond.

282 Mrs. Neuwirt said that the type of people who are attracted to her business model are typically people  
283 with small dogs or elderly dogs because they do not want to take them to a traditional kennel where  
284 they are stuck in cages; there will be some big dogs, but there will be a mix with small dogs.

285 Mrs. Neuwirt said that regarding when she requested a Variance for a kennel and said that dog waste  
286 should not be flushed down a private septic system, that is a private septic system that a normal person  
287 would have. They will be installing a septic system that will specifically be designed by State standards  
288 to handle this. Mr. Larrow asked and Mrs. Neuwirt confirmed that the septic system would support a  
289 two-bedroom house and this will only be a one-bedroom house. Mr. Larrow asked and Mrs. Neuwirt  
290 confirmed that the septic system will also support fifteen dogs. Mr. Neuwirt gave further explanation  
291 regarding the septic system.



292 Mr. Larrow asked if he understood correctly that Mrs. Neuwirt does not intend to have dogs for just one  
293 day, she intends to have dogs stay for multiple days at a time. Mrs. Neuwirt said that, as of now, she has  
294 no plans to do doggie day care, which is where people drop off every day and pick up every night. Mr.  
295 Larrow asked and Mrs. Neuwirt said that it could be possible in the future if things are going well and  
296 the neighbors are generally placated. Mr. Neuwirt said that is not traditionally Mrs. Neuwirt's  
297 customers.

298 Mr. Larrow asked and Mrs. Neuwirt explained where the fenced in area will be located. Mr. Larrow  
299 asked and Mrs. Neuwirt confirmed that the kennel will be the home. Mrs. Neuwirt said that some of the  
300 Site Plan is incorrect.

301 Mr. Neuwirt said that there is only one location for a home on this lot if you do not want to deal with  
302 steep slopes or a more severe grade change elevations from the road to the house.

303 Mr. Larrow asked if there are any concerns with people getting to the property on the Class VI road.  
304 Mrs. Neuwirt said that they will not be leaving the road as it currently exists, they will be bringing it up  
305 to a standard that is safe and allows adequate access. Mr. Neuwirt said that NH RSA 236:10 and 236:11  
306 basically say that private parties can maintain Class VI roads with permission of the governing party,  
307 which would be the Town. Mr. Larrow said that the abutters are concerned with what they will be doing  
308 to fix the road. Mrs. Neuwirt said that they will be bringing it up to a safe standard. Vice Chair Simpson  
309 said that anyone who lives on a Class VI road or a private way and uses it has a shared obligation to  
310 maintain it. Vice Chair Simpson asked if the Neuwirts are suggesting that they bring the Class VI road up  
311 to a certain standard and everyone else on the road will have to share in the expenses of maintaining it.  
312 Mrs. Neuwirt said no and that the Preston's section is already up to a higher standard; she is talking  
313 about beyond their driveway and the Neuwirts do not expect anything from the Prestons for the  
314 Neuwirt's section. Mr. Neuwirt said that the Prestons are already maintaining the road up to their  
315 driveway and they would be responsible from the Preston's driveway up to their driveway because no  
316 one else will be using that part of the road. Chairman Schneider said that the business will create  
317 additional traffic on a Class VI road that other people are maintaining, which is a legitimate concern, and  
318 asked how this will be addressed. Mr. Neuwirt said that it gets addressed by cooperative neighborly  
319 communication. Vice Chair Simpson said that what might be necessary to access a house might not be  
320 what is necessary to access a business. Mrs. Neuwirt said that it is the same. Vice Chair Simpson said  
321 that you could have a two-tire track driveway with grass in the middle to access a house but a business  
322 will require more than that. Mrs. Neuwirt said that they are saying that they are going to bring the road  
323 up to a standard. Vice Chair Simpson said that part of the road is already maintained. Mr. Neuwirt said  
324 that it is a very short distance that is maintained. It is approximately 150 ft up the road from the corner  
325 to the Preston's driveway. If that section requires cooperative maintenance, he owns a construction  
326 company and a heavy equipment rental company and he will be able to deal with this short section of  
327 shared road. Chairman Schneider said that a Special Exception goes with the property not the  
328 individual, so this may be true while the Neuwirt's own the property but not in the future if someone  
329 else owns the property. Mr. Neuwirt said that he thinks that the impact is very minimal based on the  
330 footage of the road. Mrs. Neuwirt said that this could be something added as a stipulation of approval.  
331 Mr. Larrow said that a concern is that in order to reach the business, people will need to pass other

332 people's properties. Chairman Schneider said that he is not concerned about the section of the road  
333 that only will be used by the Neuwirts and their customers, he is concerned about the section of Class VI  
334 road that other people travel on to get to their homes. Mr. Neuwirt said that there could be a condition  
335 put on an approval that, regardless of who owns the property, a burden of responsibility falls on that  
336 landowner to contribute to the maintenance of that 150 ft section of Class VI road. Vice Chair Simpson  
337 asked who else will use the Class VI road in addition to the Neuwirts and the Prestons. Mr. Platt said  
338 that the Cobbs would access their property from this road. Mrs. Neuwirt said that his access would be  
339 not be on the Class VI portion of the road. There was further discussion regarding this matter.

340 Mr. Platt said that the road is a 20 ft wide road and is not in bad condition except that it is overgrown.

341 Mr. Neuwirt said that every project that he does he makes sure he is responsible to acknowledge that  
342 they do not live alone in the town. They live in a small town with certain areas of sensitivity and they  
343 have no intention of distancing their neighbors or acting or behaving in a way that is going to cause  
344 irreparable harm and not care. He understands Chairman Schneider's concerns regarding an approval  
345 going with the property because if they build the house and sell it in five years the Special Exception  
346 would go with the new owners. However, he can attest to how they would feel responsibility and  
347 understanding regarding the impact that they may have on this short section of road to access their  
348 property.

349 Mrs. Neuwirt said that kennels are allowed by Special Exception and that this is an ideal property  
350 because it can be developed with a buffer and a dead-end road with not many homes. Mrs. Neuwirt  
351 asked if her application is denied, where in Sunapee someone could have a kennel. Vice Chair Simpson  
352 said and Mrs. Neuwirt agreed that this is a rhetorical question as the Board has not denied the  
353 application to build the house and have a kennel yet.

354 Mr. Neuwirt said that they plan to operate a respectful and responsible small business that has minimal  
355 impact on the surrounding neighbors and provides a benefit to the Town and neighboring Towns.

356 Mr. Platt said that he is struggling with the last application for the doggie daycare and this application  
357 for a kennel. At this point, there has been no discussion regarding limiting the number of dogs or about  
358 not having cages or about if the residence will be owner occupied or not. In his mind, fifteen dogs  
359 seems like a lot as it is twice the number that was being discussed for the last request; though he  
360 understands the septic system can handle that number. The house is going to be small and Mrs.  
361 Neuwirt has said that she is going to have all of the dogs inside without any kennel areas. Mrs. Neuwirt  
362 said that she reached out to the Upper Valley Humane Society as far as what they felt was a reasonable  
363 number of dogs. She was directed to the Animal Welfare Act Regulations, which says that each dog  
364 needs very little space. There was further discussion regarding this matter.

365 Vice Chair Simpson asked and Mrs. Neuwirt gave the Board a copy of the document from the  
366 Department of Environmental Services that tells how many gallons per dog is required for a septic  
367 system.

368 Mr. Platt said that the nature of the business goes beyond how much space is safe for the health of a  
369 dog. Vice Chair Simpson asked how the subject property aligns with the submitted paperwork regarding  
370 how much space is appropriate for a dog. Mr. Neuwirt said that the house will be 1,000 sq ft and then  
371 there will be a room above the garage and a breezeway. Mrs. Neuwirt said that the house will be  
372 approximately 1,650 sq ft. Vice Chair Simpson asked and Mrs. Neuwirt said that the dogs will have the  
373 run of the entire inside of the house. Vice Chair Simpson said that the minimum recommendation is 10  
374 sq ft of floor space per dog; the floor space does not include furniture or anything like that; 15 dogs  
375 would require 150 sq ft of floor space. Mr. Neuwirt said that 150 sq ft out of 1650 sq ft is only 9% of the  
376 square footage of the house. Mrs. Neuwirt said that she also lets the dogs on the furniture.

377 Mr. Platt asked if this will be a doggie day care or dog sitting business or a kennel. Mr. Neuwirt said that  
378 for the purpose of the application, they are requesting a kennel. Chairman Schneider said that there is  
379 no category for doggie daycares or dog sitting businesses in the Ordinance. Mrs. Neuwirt said that the  
380 definition of a kennel includes overnight boarding, which is what they are doing. Mr. Platt said that he  
381 thinks that the Board could put conditions on an approval including that the property must be owner  
382 occupied.

383 Ms. Mark gave further description regarding the Dog Star kennel. Ms. Mark said that Mrs. Neuwirt does  
384 not know how Ms. Mark feels, whether Ms. Mark has a business or not, it does not mean that she would  
385 not want anyone else to have a business; she would never hold someone back from something. The  
386 issue is that this application is to have dogs that could disrupt the neighborhood. Mrs. Neuwirt  
387 commented on Ms. Mark's remarks.

388 Ms. Preston said that, as a nurse, she is concerned about 15 dogs being in 1600 sq ft and asked if the  
389 Department of Health and Human Services or OSHA have to oversee this as it is a business. As a medical  
390 person, she thinks that someone would have to look at a business. Chairman Schneider said that the  
391 Zoning Board is not a health board and he assumes that the Neuwirts would comply with legal  
392 requirements. Mr. Neuwirt said that a kennel is not regulated.

393 Chairman Schneider asked and none of the Board members had any additional questions for the  
394 applicants so he closed the meeting to public comments.

395 Mr. Larrow said that he understands what Mrs. Neuwirt wants to do and does not have a problem with  
396 a kennel. He struggles with there are no regulations that the Board can follow to help them determine  
397 the best way to do things. He also struggles with calling a residential house a kennel. Mr. Larrow  
398 continued to discuss his thoughts regarding the application.

399 Mr. Lyons said that he is concerned with the traffic and noise concerns raised by the abutters. He finds  
400 it hard to believe that there will be fifteen quiet dogs on the site in perpetuity. The Board debated the  
401 number of animals allowed on the property in Georges Mills. He thinks that fifteen animals will produce  
402 a lot of traffic going back and forth and will create noise.

403 Vice Chair Simpson said that he thinks that the traffic and noise concerns can both be addressed. He is  
404 not sold on the neighboring property values depreciating because of being next to a kennel. He does

405 appreciate the abutters concerns; he just does not think that this use will necessarily be adverse  
406 Regarding the traffic concerns, there will be a requirement that will waive the of Town liability for  
407 maintenance of the Class VI road. Also, he would make a condition of approval that the Neuwirts must  
408 reach an agreement with the abutters for the maintenance of the portion of the Class VI road that is  
409 currently maintained by the abutters. Regarding noise, he believes that the Board can make an approval  
410 conditioned on a wooded buffer of 50 ft, and where it does not exist, he would require it to be created.  
411 Regarding health concerns, there will be multiple dogs congregating at this location so all of the dogs  
412 would need to be vaccinated to be there though he is not sure that this could be a condition from the  
413 Zoning Board; he understands that it is a health and safety issue, which he does believe is a Zoning issue.  
414 Vice Chair Simpson continued that he thinks that the Board should limit the number of dogs to fifteen,  
415 which is what the septic plan indicates. Any additional dogs over fifteen would be subject to increasing  
416 the size of the septic system. Mr. Platt said that he thinks that additional dogs should require further  
417 Zoning review. Vice Chair Simpson said that the number of dogs should be based on an approved septic  
418 system. Vice Chair Simpson continued to discuss his thoughts regarding the case.

419 Chairman Schneider reopened the hearing on Mr. Lyon's request.

420 Mr. Lyon's asked the Neuwirts if they have an existing permit for driveway access off Cary Farm Rd. Mr.  
421 Woodley said that he has an approved driveway permit for access off Cary Farm Rd. This permit is  
422 conditioned that the access off Sunny Lane is not used.

423 Chairman Schneider said that he thinks that the property is appropriate for the proposed use because it  
424 is far away from other properties and there will be a wooded buffer and the Board can require that be  
425 maintained. He thinks that it is far enough away that noise will not be a major concern. He does not  
426 think that the traffic will be excessive in a safety point of view. They need to have an approved septic  
427 system for the proposed use.

428 Chairman Schneider said that he is struggling with criterion number four because this is a Class VI road  
429 and they will use a portion of the road for increased traffic and there is no obligation on the Town or  
430 applicant to maintain that portion of the road so he is not sure what they can do except maybe put a  
431 condition that they maintain the road. Mr. Platt said that he thinks that the condition should be that the  
432 road be maintained to Class V standards or the standards of the use of the road. There was further  
433 discussion regarding this matter.

434 Mr. Larrow asked if there was any discussion at the Planning Board that the subdivision was acceptable  
435 if the properties remained only residential. Mr. Platt said that the initial application had the access off  
436 Sunny Lane and the request for the access off Cary Farm Rd came after the subdivision was approved.  
437 Mr. Larrow said that the Planning Board may not have approved this proposal if they knew that there  
438 was going to be a business on the property. There was further discussion regarding this matter and  
439 about the roads and maintaining the roads and if it is necessary to bring the road up to the standard of a  
440 Class V road from the end of the current Class V road to the driveway.

441 Chairman Schneider asked about potential conditions for an approval. Vice Chair Simpson said that he  
442 thinks that there should not be more than fifteen dogs without further approval as he is concerned with

443 the septic system. He also thinks the road should be brought up to Class V standards prior to operation  
444 of the business and to be verified by the Highway Director. He would require a 50 ft wooded buffer  
445 around the developed portion of the property. He thinks that they should be required to waive Town  
446 liability of maintenance of the road. He also thinks that there should be a condition that all of the  
447 animals boarded by vaccinated or licensed. There was a discussion regarding this condition.

448 Chairman Schneider reopened the meeting at the request of Mrs. Neuwirt.

449 Mrs. Neuwirt said that the standard for kennels and any dog care / dog grooming facilities are  
450 vaccinations for distemper, rabies, and kennel cough, no one requires licensing. Vice Chair Simpson said  
451 that licensing is how the Town ensures that dogs are licensed for rabies. Mrs. Neuwirt said that most  
452 places only require a current rabies certificate. Mr. Platt asked how Mrs. Neuwirt can verify that a dog is  
453 licensed. Mrs. Neuwirt said that she keeps the distemper, rabies, and kennel cough certificates on file.  
454 Mr. Platt said that the condition could be that the dogs will be properly vaccinated. There was further  
455 discussion regarding this matter.

456 Chairman Schneider closed the meeting to public comments.

457 There was further discussion regarding the conditions that the Board feels appropriate for an approval  
458 and if some of the conditions that they are discussing are Planning Board related items. There was also  
459 further discussion about the road standards.

460 There was a discussion regarding limiting the number of dogs to less than fifteen dogs. Chairman  
461 Schneider opened the meeting to ask the Neuwirts if they feel as though ten dogs is enough. Mrs.  
462 Neuwirt said that the number is arbitrary. Mr. Lyons said that fewer dogs would cut down on the noise.  
463 Mrs. Neuwirt said that one dog could be just as annoying as more than one. Mr. Lyons said that he is  
464 not overly concerned with now, he is concerned about potential noise in the future. Mrs. Neuwirt said  
465 that kennels are allowed by Special Exception. Mr. Lyons said there are still rules that apply to the  
466 Special Exceptions because noise is a potential detriment. There was further discussion regarding this  
467 matter. Mrs. Neuwirt said that she would be more comfortable with an allowance of fifteen dogs.

468 Chairman Schneider closed the meeting to public comments.

469 There was another discussion regarding the standard of the road and about the other proposed  
470 conditions.

471 Mr. Larrow asked if the Board is concerned with the number of dogs. Vice Chair Simpson said that he  
472 thinks that the number is subjective and the only thing the Board can really follow is the septic design.  
473 Mr. Platt said that if the business is successful, there is always an opportunity to return to the Board and  
474 ask for an additional number of dogs. He thinks that ten dogs in that space is enough and if they need  
475 more space they can return to the Board.

476 Chairman Schneider reopened the hearing to public comments at the request of Mr. Neuwirt.

477 Mr. Neuwirt said that they did not agree on the number of dogs that the Board is discussing. Mr.  
478 Neuwirt asked if the Board could meet them in the middle with thirteen dogs and if it goes well, they  
479 can come back before the Board and request having more dogs. Chairman Schneider asked and Mrs.  
480 Neuwirt agreed to have a condition of a maximum of twelve dogs. Mr. Platt asked and Mr. Neuwirt said  
481 that they had between twelve and fifteen dogs when they lived on Ryder Corner Rd and there were no  
482 complaints from anyone. Mrs. Neuwirt said that she will not be at maximum capacity every day. Mr.  
483 Neuwirt said that he thinks that they would be satisfied with thirteen dogs as they have one of their  
484 own.

485 Mrs. Preston said that she plows their portion of Cary Farm Rd / Old Route 11 and piles the snow into  
486 the road right past her driveway. She does not have any intention in changing because that has been  
487 the way that she has always done it. She would like to know if she does her driveway and the Neuwirts  
488 do not plow their section and there is an emergency what is the Town's responsibility. Chairman  
489 Schneider said that the Town would not have any responsibility. Mrs. Preston asked and Vice Chair  
490 Simpson said that the Board cannot tell her that the way she plows is acceptable or not. Mr. Neuwirt  
491 said that they will now be sharing the road. Mrs. Preston said that she is also concerned because they  
492 cannot put salt by the pond. She does not understand why they are not going off Sunny Lane like in the  
493 original subdivision plan. She thinks that a subdivision must have access off of a Class V road. Mrs.  
494 Preston continued to discuss her thoughts regarding the road and said that if this is approved, they will  
495 appeal the decision.

496 Chairman Schneider closed the meeting to public comments.

497 Vice Chair Simpson said that he is not sure the Board should be identifying the number of dogs that Mrs.  
498 Neuwirt is allowed to have based on anything but the proposed septic system that shows fifteen dogs.  
499 He does think that the number is arbitrary; he has dogs and his neighbors do tell him that they bark. He  
500 thinks that requiring a buffer addresses the concern regarding the number of dogs and the noise.

501 Vice Chair Simpson made a motion to approve the Special Exception per Article IV, Section 4.15 for Case  
502 #ZBA19-13: Parcel ID: 0114-0001-0002; owners: 0 Sunny Lane, LLC; with the following conditions: that a  
503 50 ft wooded buffer be maintained between the proposed home and the abutters to the north, west,  
504 and south of the property (everything except toward Route 11) and if there is nothing in it must be  
505 established; there is a waiver of liability signed with the Town as to maintenance of Cary Farm Rd as to  
506 that portion that is a Class VI; that they maintain that Class VI portion of Cary Farm Rd to be passible by  
507 passenger vehicles at all times; that the property be maintained as an owner occupied single family  
508 home; and that there is no more than fifteen dogs at the home, at any time, unless the applicants come  
509 back to the Zoning Board for permission for more dogs in the future. Mr. Platt seconded the motion.

510 Mr. Larrow said that one of the problems the Board is having is with the driveway and it might be good  
511 to involve the Planning Board. Chairman Schneider said that if the application is approved it will go to  
512 the Planning Board. Vice Chair Simpson said that he believes that the access to this property was ill  
513 conceived by the Planning Board and the Highway Director. He would like to see a letter from the  
514 Highway Director and would like to talk to the Planning Board. One thing that the Board can do would

515 be to table the case and ask for a joint meeting with the Planning Board. Mr. Larrow said that he thinks  
516 this would be good; he wants Mrs. Neuwirt to have a business but he wants to make sure it is done  
517 correctly and making these conditions does not sit right. Mr. Lyons said that he thinks that this is a good  
518 idea. Mr. Platt asked and Mr. Lyons said that the motion would be to table the case until the Board has  
519 the opportunity to have a joint meeting with the Planning Board and the Highway Director. There was  
520 further discussion regarding this matter.

521 Vice Chair Simpson withdrew his motion. Mr. Platt withdrew his second of the motion.

522 Vice Chair Simpson made a motion to request a joint meeting with the Planning Board to consider the  
523 Special Exception and the Site Plan Review issues, including the use of Cary Farm Rd. Mr. Lyons  
524 seconded the motion. Mr. Lyons asked and Vice Chair Simpson said that the Board cannot make the  
525 Highway Director attend the meeting but they can request it. There was a discussion regarding what the  
526 Board would like to discuss with the Planning Board and the order of the meeting as well as what  
527 happens if the Planning Board does not want to have a joint meeting. The motion passed with four in  
528 favor and one opposed.

529 Mr. Neuwirt asked and Vice Chair Simpson said that the joint meeting will have both Boards voting on  
530 the different cases before them; the Zoning Board for the Special Exception and the Planning Board for  
531 the Site Plan. There was further discussion regarding the potential date of the meeting and that the  
532 abutters will be notified.

### 533 **MINUTES**

534 Changes to the minutes from June 6, 2019: Change Line 103 to read "...that the Board accept that the  
535 application..." Change Line 286 to read "Mr. Claus asked and Mrs. Nowack confirmed..."

536 Mr. Platt made a motion to approve the minutes as amended. Mr. Lyons seconded the motion. The  
537 motion passed with three in favor and two abstentions.

### 538 **PROPOSED ZONING AMENDMENTS**

539 Chairman Schneider said that regarding Section 3.50 (k), which says, "if a pre-existing house is located  
540 entirely within the 50' water bodies setback, additions may be made to the structure provided that..."  
541 and then lists some different criteria. There was a case where the house was not fully in the setback, so  
542 it did not qualify for the Special Exception. It does not make sense to him to have a house partially in  
543 the setback not to qualify for a Special Exception so he thinks it should be changed to say "if a pre-  
544 existing house is located entirely or partially within the 50' water bodies setback, additions may be  
545 made to the structure provided that..."

546 Chairman Schneider said that there was a case where an applicant's attorney tried to say that Special  
547 Exceptions did not apply to Accessory Dwelling Units because they were not in the Special Exception  
548 section. He suggests adding "Accessory Dwelling Units as permitted by Special Exception in all Districts"  
549 as a subsection of 4.15.

Chairman Schneider said that there was a case that was withdrawn regarding Bed & Breakfast. The definition says, “an owner occupied single family dwelling in which no more than ten rooms are used to provide transient sleeping accommodations, with meals served to guests only” and he questions what “owner occupied” means for this purpose and if the owner has to be at the property when the rooms are rented. Vice Chair Simpson said that it is when the business is being operated. Chairman Schneider said that you can have an owner-occupied house that is rented. Mr. Lyons asked what happens when the owner is a corporation or a trust. The intent is to make sure that the owner is living in the house and subject to all the neighborhood pressures but it is different for a corporation. Mr. Platt said that there are a lot of houses owned by LLCs and trusts in Town. Vice Chair Simpson said that when there is a business applying, someone should be a resident. Mr. Larrow asked if this would apply to an AirBnB. Vice Chair Simpson said that there is nothing in the Ordinance that says that the Board can tell people they cannot rent their houses. Chairman Schneider said that the only restriction is that a house cannot be rented to more than five unrelated people. Mr. Lyons said that the State can regulate it if they are not collecting the rooms and meals tax. Chairman Schneider thinks that there should be clarification regarding this issue.

Chairman Schneider said that there was a case on Birch Point regarding a structure not being a dwelling unit because there is no stove. Vice Chair Simpson said that he thinks that this was a requirement for a Water and Sewer case as well. Chairman Schneider said that there are many things now that you can cook with and you do not need a stove to be a dwelling unit. He thinks that the definition should be changed to be “...containing independent kitchen, sleeping, and sanitary facilities; a kitchen is any room containing cooking or dishwashing capabilities”. He believes that a kitchen is any place where you can wash your dishes. Vice Chair Simpson said that someone could use paper plates and a microwave. Chairman Schneider asked if anyone has any other ideas regarding how this could be worded. There was further discussion regarding this matter as the Board determined it is an issue to be addressed.

Vice Chair Simpson said that he spoke to Mr. Marquise regarding which standards should be applied regarding height and was told all the standards; however, he still believes that they should all be listed. Chairman Schneider said that they have tried to add this amendment. Vice Chair Simpson said that there is nothing that talks about height within the Shoreland District in Section 3.10; it only talks about the setback from the rear and side setbacks. There was further discussion regarding this matter and about Section 6.10.

There was a brief discussion regarding scheduling the joint meeting with the Planning Board.

Vice Chair Simpson made a motion to adjourn the meeting at 9:46 pm. Mr. Platt seconded the motion. The motion passed unanimously.

Respectfully submitted,

Melissa Pollari



586 Zoning Board of Adjustment

587 \_\_\_\_\_

588 Daniel Schneider, Chair Aaron Simpson, Vice Chair

589 \_\_\_\_\_

590 James Lyons, Jr. Clayton Platt

591 \_\_\_\_\_

592 George Neuwirt William Larrow, Alternate

593 \_\_\_\_\_

594 Jeffery Claus, Alternate