

1 **TOWN OF SUNAPEE**

2 **ZONING BOARD**

3 **SEPTEMBER 5, 2019**

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

6 **ABSENT:** Daniel Schneider, Chair

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

8 Vice Chair Simpson called the meeting to order at 7:00 pm.

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

13 Vice Chair Simpson asked and Ms. Gage confirmed that this case has been withdrawn.

14 Mr. Larrow made a motion to accept the withdrawal. Mr. Claus seconded the motion. The motion  
15 passed with three in favor and one abstention.

16 Mr. Platt made a motion to accept Mr. Claus and Mr. Larrow as voting members for the meeting. Mr.  
17 Neuwirt seconded the motion. The motion passed unanimously.

18 **CASE #19-14: PARCEL ID: 0115-0022-0000: SEEKING A SPECIAL EXCEPTION OF ARTICLE III, SECTION**  
19 **3.50 (B) TO ALLOW FOR A PROPOSED GARAGE AND DRIVEWAY WITHIN THE FRONT SETBACK OF THE**  
20 **PROPERTY; 11 NORTH SHORE RD; WILLIAM & DIANE SINATRA**

21 George Grant presented the merits of the case on behalf of the owners. Vice Chair Simpson asked and  
22 the owners gave verbal permission for Mr. Grant to present their case.

23 Mr. Grant explained that they are seeking a Special Exception for a 28 ft x 28 ft garage. The owners are  
24 retired and have moved here as full-time residents and they would like to build a garage that does not  
25 conform to the front setback.

26 Vice Chair Simpson asked and Mr. Grant said that the garage is non-conforming and the lot is non-  
27 conforming. Vice Chair Simpson asked and Mr. Grant confirmed that the garage will be non-conforming  
28 because it will be in the front setback. Vice Chair Simpson asked and Mr. Grant said that the garage will  
29 be 32 ft to the centerline from the closest point.

30 Vice Chair Simpson asked Mr. Grant to go through the criteria required for the Special Exception.

31 Mr. Grant said that the lot is pre-existing and non-conforming due to the lot size. Vice Chair Simpson  
32 asked and Ms. Gage said that the lot is in the Rural Residential Zone. Vice Chair Simpson asked and Ms.  
33 Gage confirmed that the minimum lot size is 1.5 acres.

34 Vice Chair Simpson asked about the second criteria, which requires the majority of the lots on the same  
35 side of the road and within 500 ft of both sides of the subject lots having structures of equal or greater  
36 type which do not meet the front setback requirements. Mr. Grant said that there are seven properties  
37 located on the same side of the road as the property and four of the seven are non-conforming. Vice  
38 Chair Simpson asked and Mr. Grant confirmed that North Shore Rd is a loop road. Vice Chair Simpson  
39 asked if Mr. Grant is counting the properties on the other side of the road. Mr. Grant said that he is  
40 counting both ways on the road. Mr. Platt asked and Mr. Grant explained that the road does not go 500  
41 ft on one side but they counted the closest residences. Mr. Larrow asked and Mr. Grant explained the  
42 properties that he counted in his calculation per the submitted tax map. Mr. Larrow asked how Lot 21,  
43 as shown on the submitted tax map, relates to North Shore Rd. Mr. Grant explained that the address for  
44 that lot is on North Shore Rd. The Board questioned that property as the structure is non-conforming to  
45 a right-of-way. Mr. Grant said that he was advised by the Zoning Administrator that he could use that  
46 property. Mr. Platt said that he thinks that the definition says that the road must meet Town standards.  
47 Mr. Larrow asked if Mr. Grant is saying that the lots are non-conforming or that the placement of  
48 garages or houses on the lots are non-conforming. Mr. Grant said that he thought that they were  
49 questioning Lot 21. Mr. Claus confirmed that the Board is questioning whether Lot 21 can be taken into  
50 consideration. Mr. Grant said that Lot 21 is non-conforming to the private right of way setbacks. Vice  
51 Chair Simpson said that the Board is only considering North Shore Rd. Mr. Grant said that the property's  
52 address is on North Shore Rd. Mr. Claus said that the Board does not think that the portion of right of  
53 way to that property is actually part of North Shore Rd. Mr. Grant said that it is a private right of way  
54 that is paved and the structure is non-conforming to the right of way. Mr. Platt said that it still would  
55 require a setback. Ms. Gage said that a private right of way would be treated like a side setback. Mr.  
56 Claus said that if the setback off the right of way is counted then the subject house is in that right of  
57 way. Mr. Grant said that was one of his questions to the Zoning Administrator because they would also  
58 be dealing with a side setback. Mr. Grant said that it was also difficult to determine the centerline of  
59 this right of way.

60 Ms. Gage said that it was her understanding that the proposal was to shift the driveway off the private  
61 right of way and have it off North Shore Rd. Mr. Grant said that the proposal is to keep both driveways,  
62 including the one that comes off the private right of way. There are currently two driveways, one off  
63 North Shore Rd and one off the private right of way and that will continue. Mr. Grant said that they  
64 have an approved DES permit and part of that approval is to turn the driveway into a permeable  
65 driveway.

66 Vice Chair Simpson said that he thinks that Lot 30 should be part of the calculation and Mr. Grant said  
67 that it is not. Vice Chair Simpson said that the lot beyond Lot 30 should also be part of the calculation.  
68 Mr. Grant said that according to his calculations Lot 30 does not fall into the 500 ft. Mr. Platt said that  
69 he agrees with Vice Chair Simpson. Mr. Claus said that the measurements should go from the corner of  
70 the property. Mr. Grant asked and Vice Chair Simpson confirmed that the measurement is from the

71 corner of the property, not the edge of the road. Mr. Grant said that he does not think that Lot 30 or  
72 Lot 31 has structures on it. Mr. Neuwirt said that he calculates 395 ft from the corner of the subject  
73 property to the corner of Lot 30. Mr. Platt said that he calculated roughly 400 ft as well. There was  
74 further discussion regarding the length of the measurement along the road and the number of lots along  
75 the road and where the measurement starts as Mr. Grant said that the entrance to this property is off  
76 the private right of way, not North Shore Rd.

77 Mr. Platt said that it is difficult for the Board to see how this application meets the criteria for a Special  
78 Exception. The applicants can apply for a Variance as the Board has granted Variances for garages  
79 before and it is not unusual for them to do that on small lots but the Board cannot grant a Special  
80 Exception if they do not meet the criteria. Mr. Grant said that he thought that they met the criteria.

81 Vice Chair Simpson asked Mr. Grant to continue to go over the Special Exception criteria. Mr. Platt said  
82 that he does not think the presentation should continue because the Board should not spend time  
83 discussing a case that then could get continued; if there is ample evidence that it does not meet the  
84 criteria then he does not see the purpose of listening to the rest of the case. Vice Chair Simpson said  
85 that the next criteria may not be met either because Mr. Grant said that the front setback is off the  
86 private right of way. Mr. Platt said that the front setback on the plan is measured off North Shore Rd.  
87 There was a discussion regarding the definition of a front setback.

88 Mr. Claus said that between the subject lot and Lot 30 there are eight lots, not including the right of way  
89 lots. Vice Chair Simpson asked why they would not count the next lot. Mr. Claus asked if the 500 ft goes  
90 to the next lot and the Board said that they believe that it should be counted. Mr. Platt said that Lots 20  
91 through 32 should be counted. Mr. Grant asked if all the measurements on the tax map are accurate.  
92 Vice Chair Simpson said that was what was presented to the Board but it is not a survey. Mr. Grant said  
93 that he is just using the tax map as a reference for the lots that he is talking about. He is using the  
94 measurements that he determined. The Board asked and Mr. Grant said that he measured from the  
95 east corner of the lot.

96 Mr. Neuwirt said that he agrees with Mr. Platt and he does not think that this application meets the  
97 Special Exception criteria. He thinks that Mr. Grant should apply for a Variance.

98 Mr. Claus asked if Lot 20 has their front setback off Perkins Pond Rd or North Shore Rd because if he  
99 does not count Lot 20 there are eight lots and four of those lots are questionable as far as being non-  
100 conforming. Vice Chair Simpson said that Mr. Grant measured from the east corner towards the west.  
101 Mr. Claus said that when he measured from the west corner, he does not think that 500 ft goes past Lot  
102 30. He would like to know how this measurement is proven and if it requires a survey. Mr. Larrow  
103 asked if the majority of the lots are non-conforming why that would not be what Mr. Grant is trying to  
104 present. Vice Chair Simpson said that there are other lots there are conforming. Mr. Grant said that it is  
105 questionable because they do not know where the centerline of the road is located.

106 Vice Chair Simpson said that he is not sure it is proper to consider the property on the right of way;  
107 however, he thinks that the measurement has to go from the west corner towards the west and the east  
108 corner towards the east.

109 Mr. Larrow said that the Board has not taken into consideration the number of structures to determine  
110 if more than half the structures are within the 50 ft setback. Vice Chair Simpson said that Mr. Grant has  
111 offered evidence that at least three of the structures are within the 50 ft setback. Vice Chair Simpson  
112 asked and Mr. Grant confirmed that he added the notes to the Tax Map. Ms. Gage said that the next  
113 two lots do not have structures on them. Vice Chair Simpson said that they are still counted as lots. Mr.  
114 Platt said that the Board could say that Lot 21 does not have frontage on North Shore Rd. Vice Chair  
115 Simpson said that if they say that then they have to count Lot 30 and Lot 31. Mr. Larrow said that Lot 30  
116 and Lot 31 do not have structures on them. Vice Chair Simpson said that does not matter as the  
117 Ordinance says "the majority of the lots on the same side of the road and within 500 ft of both sides of  
118 the subject lot have structures of equal or greater type which do not meet front setback requirements"  
119 and Mr. Grant has shown three lots that do not meet the setbacks but there are possibly eight lots that  
120 need to be counted. Mr. Larrow asked and Vice Chair Simpson said that it does not matter if the lots do  
121 not have structures as they must be counted and there would be less than 50%. There was further  
122 discussion regarding this matter.

123 Mr. Grant said that this road is not surveyed so it is difficult to tell where the centerline is located. Mr.  
124 Platt said that the Board is working with what he presented to them. Mr. Grant said that the width of  
125 the road varies; he believes that the road itself is non-conforming. There was further discussion  
126 regarding the road.

127 Mr. Neuwirt asked if the qualifying criteria does not say that that a lot should only be counted if there is  
128 a structure on it. Vice Chair Simpson said that he thinks any lot that is within 500 ft of the subject lot is  
129 counted. Mr. Neuwirt asked why the lot would be counted if it is within 500 ft but does not have a  
130 structure; the requirement is specific as it says the lot has to have a structure on it to be counted. Vice  
131 Chair Simpson disagreed as the Ordinance says "the majority of lots". There was further discussion  
132 regarding this matter.

133 Mr. Platt said that the Board can ask for more clarification for the distances, which may give the  
134 applicants the opportunity to file for a Variance if needed. Vice Chair Simpson said it is up to the  
135 applicant to ask for a continuance. They can apply for a Variance but the Board can only go with what  
136 they have been presented and there are only three structures noted on the plan that shows at least  
137 eight lots. Vice Chair Simpson asked Mr. Grant how he would like to proceed because if the Board votes  
138 then the case is done but if it is continued then he can go and do the measurements to determine the  
139 correct calculations and possibly get a surveyor to measure the centerline of the road. Mr. Neuwirt  
140 asked and Vice Chair Simpson confirmed that if the Board votes on the Special Exception and it is denied  
141 they have the opportunity to apply for a Variance.

142 Mr. Grant asked if he said that Lots 25 and 26 are non-conforming who would prove him wrong. Mr.  
143 Platt said that the Board typically takes people at their word. Mr. Grant said that he does not know  
144 where the centerline of the road is located so if a structure was close to 50 ft from the centerline he did  
145 not include them; he could change the application to say that Lots 25 and 26 do not comply. Vice Chair  
146 Simpson said that Mr. Grant could do that and the Board can vote, or Mr. Grant can choose to continue  
147 the case and determine the centerline and which properties actually fit. Mr. Grant said that he did

148 measure and they are just about 50 ft but he did not include them because he was guessing the  
149 centerline of the road. The only spot on the road that has a stake is right across from where the garage  
150 will be located. There was further discussion regarding the road and if Water and Sewer may have a  
151 survey of the road.

152 Mr. Neuwirt said that to meet the technical criteria the burden is on the applicant to evaluate if a  
153 professional is required in order to determine the location of the centerline of the road. It is difficult in  
154 these situations because they are a mess, which the Board understands; the road is supposed to be 32 ft  
155 wide and is not. It is difficult when there are properties that are close to not being within the setback,  
156 however, it is up to the applicant to show how these properties were measured and their location from  
157 the centerline. Mr. Platt said that if the distance was measured to the center of the traveled way that  
158 can also be acceptable in some instances.

159 Ms. Gage apologized for not being clear about Lots 30 and 31 being counted even if they do not have  
160 structures. Mr. Grant said that he and Ms. Gage measured the distance on the computer and the 500 ft  
161 did not go into Lot 30. There was further discussion regarding this matter.

162 Vice Chair Simpson said that he does not know how the application meets the criteria unless some of  
163 the other lots along the 500 ft have structures that are closer than 50 ft to the centerline. However, Mr.  
164 Grant has the opportunity to go back and measure or the Board can vote on the case. Mr. Claus asked  
165 and Vice Chair Simpson said that he thinks that there are at least eight lots that need to be counted. Mr.  
166 Claus asked and Vice Chair Simpson said that he is not sure if Lot 21 should be counted. Ms. Gage said  
167 that she spoke to the Highway Director about the portion of the road that is shown as private on the Tax  
168 Map and was told that it is still part of North Shore Rd.

169 Vice Chair Simpson asked if Mr. Grant would like the Board to vote on the case. Mr. Grant asked and  
170 the Board confirmed that if they vote on the case and it is denied then he will need to apply for a  
171 Variance. Mr. Grant asked the Board to continue the case so that he can measure the distance and  
172 structures along the road. There was a discussion about how to measure the distance and the Board  
173 agreed that Mr. Grant can use the centerline of the traveled way if he cannot find any markers or pins or  
174 a survey.

175 Vice Chair Simpson said that if Mr. Grant does not find that there are more properties that fit the criteria  
176 then he can apply for a Variance. Mr. Platt asked the Board if they should look at the rest of the criteria  
177 so Mr. Grant can determine if he should apply for a Variance.

178 Vice Chair Simpson read the next Special Exception criterion "the proposed structure for which the  
179 Special Exception is being sought shall be no closer to the centerline of road right-of-way than any other  
180 structure of equal or greater type used in the comparison in Paragraph 2". Vice Chair Simpson asked  
181 and Mr. Grant confirmed that he is asking for 32 ft and the structure on Lot 24 is 29 ft.

182 Vice Chair Simpson read the next Special Exception criterion "the proposed structure shall be no closer  
183 than 10' to the right-of-way line of the road" and said that the proposal meets this requirement.

184 Vice Chair Simpson read the next Special Exception criterion “the portion of the proposed structure  
185 encroaching on the front setback shall be no higher than 25 ft”. Mr. Grant said that the building will be  
186 20 ft high and he measured from the lowest elevation to the top of the peak.

187 Mr. Larrow asked and Mr. Grant requested that the Board continue the case and if they need to, they  
188 can put together the application for the Variance.

189 Mr. Platt made a motion to continue Case #19-14: Parcel ID: 0115-0022-0000: seeking a Special  
190 Exception of Article III, Section 3.50 (b); until the next Zoning Board hearing. Mr. Larrow seconded the  
191 motion. Vice Chair Simpson said that if Mr. Grant does not want to rely on the numbers on the Tax Map  
192 he should show the measurements and he should measure from the west corner towards the west and  
193 east corner towards the east. The motion passed unanimously.

194 Ms. Gage said that if Mr. Grant determines that they want to apply for a Variance the deadline was  
195 September 4<sup>th</sup>; however, if the application is in the office by next Thursday at 12:00 then she believes  
196 that they will still have time to notice the hearing.

197 **CASE #19-15: PARCEL ID: 0148-0025-0000: SEEKING A VARIANCE OF ARTICLE III, SECTION 3.40 (C)**  
198 **FROM 50 FT SETBACK FROM WATER; 7 MORNING SIDE DRIVE; LANCE & CHRISTINA HARBOUR**

199 Lance Harbour presented the merits of the case.

200 Mr. Harbour explained that they are requesting a Variance from the 50 ft waterfront setback under  
201 Article III, Section 3.40(c). They would like to replace their existing deck and add on a three-season  
202 room on the westerly side. They will be replacing a wood deck with a trex-material deck and would like  
203 to add a triangular deck to connect the deck to the three-season room. They will not be doing any  
204 ground disturbance because they will be using helical piers for all the supports. They would also like to  
205 add a small 6 ft x 6 ft deck on the other end of the three-season room.

206 Vice Chair Simpson asked and Mr. Harbour confirmed that the entire house is located within the 50 ft  
207 setback. Mr. Claus asked if the State’s 20 ft setback makes it so they cannot do the deck or the screened  
208 porch. Mr. Harbour said that he did receive a Permit by Notification (PBN) by DES. Mr. Claus said that  
209 Mr. Harbour said on his permit that he was not installing or expanding any accessory structures, such as  
210 a patio or shed, within 50 ft of the reference line. The State does not allow anything to be built within  
211 20 ft of the reference line. Mr. Harbour asked and Mr. Claus said that if you go through the State’s  
212 checklist to determine which permit to use, he does not think that it would have said that Mr. Harbour  
213 should apply for a PBN. Mr. Harbour asked and Mr. Claus said that he is sure that you cannot build  
214 anything within 20 ft; therefore, the expansion of the deck and the screened porch would not be  
215 allowed. Vice Chair Simpson asked and Mr. Claus said that he does not think that it would be allowed  
216 under any permit. There was further discussion regarding this matter.

217 Mr. Claus said that the other issue that might come up with the State is that if you expand within the 50  
218 ft setback you have to prove you are making the house less non-conforming. They will not let you build  
219 closer to the reference line and it does look as though the corner of the screened porch will be closer

220 than the other corners. Mr. Harbour disagreed with Mr. Claus and said that the whole point of angling  
221 the porch was to try and make sure that it was not closer to the lake.

222 Mr. Claus explained that on the PBN application under Question 8, Mr. Harbour checked “no” and  
223 should have checked “yes”. Mr. Harbour said that he did not think that what they were doing was a  
224 patio or shed. Mr. Claus said that there are other definitions as to what constitutes an accessory  
225 structure.

226 Ms. Gage suggested if the Zoning Board approves the application then they can have a condition that  
227 they receive proof from the State that this proposal is approved by them.

228 Vice Chair Simpson asked and Mr. Harbor explained what he submitted to the State with his PBN  
229 application. Mr. Claus said that based on the amount of shoreland frontage, the State would allow  
230 approximately 178 sq ft of accessory structure and the existing deck already meets that amount. Mr.  
231 Harbour said that he sent in the same pictures and plans that he submitted to the Board.

232 Mr. Platt said that his concern is that the Town’s regulations would probably allow them to build on the  
233 backside of the house away from the lake. Mr. Harbour said that location is not feasible as their septic is  
234 there and the kitchen is off the back of the other side of the house. Mr. Platt said that they occasionally  
235 have requests to expand closer to a lake but he cannot think of one that the Board has approved.

236 Mr. Claus said that his other concern is that if Mr. Harbour starts constructing and the neighbors call DES  
237 and even with a PBN, Mr. Claus knows of several projects that have been required to be removed. Mr.  
238 Harbour said that he is aware of how people react along lakes.

239 Vice Chair Simpson said that Mr. Harbour is replacing one thing and requesting permission to build three  
240 things. Mr. Platt said that the replacement of the deck does not require approval. Mr. Harbour said that  
241 if he does not get approval then he will just replace the deck. Vice Chair Simpson asked and it was  
242 confirmed that all the proposed construction is within the 50 ft setback. Vice Chair Simpson asked and  
243 Mr. Harbour explained that off the screened porch will be a new 6 ft x 6 ft deck and then next to that  
244 they are going to pour a 6 ft x 6 ft pad for a hot tub. Vice Chair Simpson asked and Mr. Platt said that he  
245 does not believe that a pad is a structure; the 6 ft x 6 ft deck is a structure. Mr. Claus said that he thinks  
246 that a 36 sq ft deck is allowed. Mr. Harbour said that they exceed the minor structure allowance. Mr.  
247 Larrow asked and Mr. Harbour said that the 6 ft deck is to have a landing on the other side of the  
248 screened porch.

249 Mr. Larrow asked and Mr. Harbour confirmed that if they do not have the screened porch they will not  
250 require the triangular decking shown on the plan. Mr. Larrow asked and Mr. Harbour said that he will  
251 not have the 6 ft deck if he does not have the screened porch.

252 Vice Chair Simpson asked Mr. Harbour to go over the criteria supporting the Variance request.

253 Mr. Harbor said that for criterion number one, they are not going to go any closer to the water and are  
254 not violating any other setback requirements with the addition. Vice Chair Simpson said they are  
255 increasing the non-conformity of the structure with the density of the lot because the use of the

256 shorefront is denser. Mr. Harbour said that they are adding the drip edge to try and alleviate some of  
257 that additional impervious surface and / or impingement on the shore.

258 Mr. Harbour said that if the Variance were granted, the spirit of the Ordinance would be observed  
259 because they are not building any closer to the lake and they will add approximately 42 ft of drip edge  
260 around the back side of the house. The spirit of the Ordinance is to not build within the 50 ft setback,  
261 which he understands. The house was built in 1949, which was well before Zoning; and any expansion  
262 of the house was also done before there was Zoning. He is adding the drip edge to be able to put some  
263 water back into the ground.

264 Mr. Harbour said that the next criteria is met because it is just him and his wife and they live with their  
265 93-year-old grandmother. This project is something that they have been talking about for a long time  
266 and is finally something that they can do.

267 Mr. Harbor said that if the Variance were granted, the values of the surrounding properties would not  
268 be diminished because their lot is one of the larger ones on the lake and they will not be going close to  
269 the property on the west side. The addition should increase their property value, which would then  
270 have a positive impact on the homes on the rest of the lake. Vice Chair Simpson asked and Mr. Harbour  
271 said that their property is one of the larger ones on the lake as they have almost ½ an acre; there are not  
272 many close to that size that are near or around their home. Vice Chair Simpson asked and Mr. Harbour  
273 said that there are quite a few houses in the neighborhood that are bigger; he thinks that theirs is on the  
274 smaller side at just over 1,000 sq ft.

275 Mr. Harbor said that no fair and substantial relationship exists between the general public purses of the  
276 Ordinance provision and the specific application of that provision to the property because their lot is  
277 substantially larger than most lots on the lake and one of the smaller homes on the lake. This is the best  
278 area to expand without having a major impact on the percentage of impervious surface on the lot.

279 Vice Chair Simpson asked what are the special conditions of the property that distinguish it from other  
280 properties and creates a hardship. Vice Chair Simpson continued that Mr. Platt asked why they are not  
281 building on the back. Mr. Harbour said that their septic system is in the L-shaped area by the house and  
282 showed the Board the location of the septic system and also showed the Board the pictures showing the  
283 green caps of the septic system and explained that they just had the system replaced last year and it is a  
284 Clean Solutions System.

285 Mr. Larrow said that it appears as though they have a big enough lot that the house can be picked up  
286 and moved to the other side of the 50 ft setback. Mr. Harbour said that would be wonderful but he is  
287 not sure if it is feasible due to drainage; there is a drainage ditch on the property that drains from Route  
288 103. Moving the house closer to the drainage ditch would create a lot of problems. Mr. Harbour  
289 continued that he is not sure that it financially makes sense either.

290 Vice Chair Simpson asked if they considered putting the three-season room off another side of the  
291 house. Mr. Harbour explained that where Vice Chair Simpson is talking about is their kitchen and he  
292 does not think that it makes sense for them to have it there. Vice Chair Simpson said that they would



293 also be dealing with a side setback issue in that location but Variances for side setbacks are easier for  
294 the Board than shorefront setbacks.

295 Mr. Harbour said that this property is a place of respite for them; they care for their 93-year-old  
296 grandmother and with one kitchen, one living room, and one bathroom, the house is crowded. This is  
297 something that they have discussed doing for the past 11 years and are finally financially able to do it.

298 Vice Chair Simpson closed the meeting to public comments.

299 Mr. Neuwirt said that this application does not meet the hardship criteria. He cannot remember the last  
300 time the Board has approved a project like this within the shorefront setback. Mr. Claus said that he is  
301 looking at the hardship requirement and feels as though the hardship is that the entire house is within  
302 the 50 ft and nothing can be done without being in some violation and asked if it is up to the Board to  
303 determine which way the expansion goes. Vice Chair Simpson said that the Board talks about less non-  
304 conforming as a guide to make a decision on hardship. Mr. Larrow said that he agrees with Mr. Claus  
305 that no matter what they do, there will be trouble. Nothing can be done to this property because it will  
306 be against regulations. Based on what Mr. Claus said about not building in the 20 ft setback, if the State  
307 said that they do not have a problem with this then he does not have a problem with the small addition.  
308 This is reasonable and there is a rational to do it. If it was not something that should be allowed then  
309 the State should not have approved it. Mr. Neuwirt asked and Mr. Larrow confirmed that there was a  
310 case where the State approved an expansion due to the applicant not being able to go up the stairs. Mr.  
311 Claus said that lateral expansions are permitted if the applicant jumps through hoops but it is not  
312 permissible to expand living space on non-conforming structures closer to public waters and he thinks  
313 that this is closer than any other portion of the house; also, this falls within the 20 ft reference line. Mr.  
314 Neuwirt asked how the Board should come to terms with State regulations that not every Board  
315 member is familiar with compared to Town and local regulations. Vice Chair Simpson said that the  
316 Board could make a condition on an approval.

317 Mr. Platt said that there are a lot of houses in similar situations and the Town's regulations support  
318 building away from the lake. He understands that with the septic system it is not as feasible of a  
319 situation. Mr. Larrow asked if the screened porch could be moved back if the corner is closer to the lake  
320 than other portions of the house. Mr. Claus explained how that corner needs to be measured but  
321 confirmed that the addition could be moved back.

322 Vice Chair Simpson opened the meeting to public comments

323 Mr. Harbour said that he will have to get someone to measure the front of the deck because he does  
324 not think that it is closer. Mr. Claus said that the State looks at the structure, not the deck. Mr. Claus  
325 said that he does not want to mislead Mr. Harbour and speak for the State but thinks that Mr. Harbour  
326 should look into these things.

327 Vice Chair Simpson closed the meeting to public comments.

328 Mr. Platt said that he is concerned because there have been other proposals that the Board has not  
329 approved and they have been fairly consistent with voting on expansions of decks or new decks and he  
330 thinks that it is a consistency the Board needs to keep. The hardship on this is personal.

331 Vice Chair Simpson said that he knows that the Board is not looking at this, however, the proposal falls  
332 under Section 3.50(k) which allows for a Special Exception if a house is located entirely within the 50 ft  
333 water body setback. Mr. Platt said the house is not 40 ft from the waterbody so it would not meet the  
334 criteria for the Special Exception.

335 Vice Chair Simpson said that he agrees with Mr. Platt that the Board has not allowed these requests. He  
336 also agrees with Mr. Larrow that this is a modest expansion; however, given the Board's prior rulings,  
337 this would be a problem.

338 Mr. Platt said that there is a possibility to expand up with the State and the Town regulations. Mr. Claus  
339 said that they are doing that now because of the restrictions. Ms. Gage said that it cannot be done by  
340 right. Mr. Platt said that you can go up 10 ft by Special Exception.

341 Mr. Claus made a motion to approve the Variance on Case #19-15 for expansion within the 50 ft setback  
342 from the water conditioned on an approved Shoreland Permit and Wetlands Permit. Vice Chair Simpson  
343 said that the Board has been provided with a copy of a PBN. Mr. Claus said that it is his understanding  
344 that the PBN is not correct and he would like verification from the State. Mr. Neuwirt asked and Mr.  
345 Claus said that a Wetlands Permit is required within 20 ft of the Shoreland. Mr. Platt said that one  
346 condition is to receive confirmation from NH DES that the Permit by Notification is appropriate and / or  
347 a Shoreland Permit is required. Vice Chair Simpson said that Mr. Claus noted that there is something  
348 missing or misstated and he would reference that. Mr. Claus said that the conditions for his motion are  
349 that the applicant verify with NH DES that the PBN that they submitted and was approved is correct  
350 based on the answer to Question 8 on the PBN application, which refers to the expansion of accessory  
351 structures. Vice Chair Simpson asked and Mr. Claus said that the State will tell them if a Wetlands  
352 Permit is required. Mr. Platt seconded the motion. The motion failed with two in favor and three  
353 opposed.

354 **CASE #19-16: PARCEL ID: 0113-0028-0000: SEEKING A SPECIAL EXCEPTION OF ARTICLE III, SECTION**  
355 **3.50 (i) FOR RAISING A ROOFLINE ON A NON-CONFORMING STRUCTURE 7 FT 5 IN; 7 RIDGEWOOD**  
356 **POINT RD; SHAUN & SUE MURPHY.**

357 Mr. Neuwirt recused himself from the case in order to present the merits of the application along with  
358 Shaun Murphy.

359 Vice Chair Simpson said that there are four voting members for the case and the applicants can choose  
360 to postpone the hearing until there are five members. Mr. Neuwirt said that they would like to proceed  
361 with the hearing.

362 Mr. Neuwirt explained that they have started this project based on a fire that happened at the Murphy's  
363 home. It did not seem like a big deal until the insurance agency became involved and it became more

substantial than first realized. They are going to fix some things and add a master bedroom on the proposed additional floor. They have tried to design an addition that is only a half story so the addition does not look that tall. This will add two bedrooms to the top floor and remove the master bedroom from the downstairs to end up with four bedrooms.

Mr. Neuwirt went over the criteria to satisfy the Special Exception requirements under Section 3.50(i).

Mr. Neuwirt said that the proposal is not expanding the horizontal dimensions of the structure; there is an added deck that is under 18 inches in width so it falls under the allowed roof overhang. Vice Chair Simpson asked and Mr. Neuwirt explained that the Town allows an 18 in overhang. Ms. Gage said that the definition of "setback" allows for a roof projection up to 18 in into the setback. Mr. Neuwirt said that he was interpreting the 18 in overhang as anything that falls under that overhang would not be considered an expansion of the structure. Mr. Claus said that he thought that this meant that the eaves were allowed to project into a setback. Vice Chair Simpson said that he thought this meant that you just did not count the eaves if they are 18 in or less. Mr. Claus said that if it stays under the 18 in then there is no expansion to the footprint of the house.

Mr. Neuwirt asked to go through the remaining criteria. Mr. Neuwirt said that the existing structure is a house that is less than 24 ft in height. He measured the distance from the peak down to the grade and it is 23 ft 3 inches. Mr. Claus asked and Mr. Neuwirt said that there has been confusion as to which Ordinance regarding "height" to use and he is choosing to apply height as directly below the violating part of the house; not maximum structure height. The difference between the grade below the peak and the patio is 3 ft 4 in so if maximum structure height would be used then they do not qualify for a Special Exception. However, measuring from the peak to the grade directly below it falls under the 24 ft height requirement.

Mr. Neuwirt said that the vertical expansion will be no more than 10 ft higher than the pre-existing structure; currently the structure is 23 ft 3 in and they are requesting 7 ft 5 in of additional height, making the total ridge height to the grade directly below it 30 ft 8 in. Mr. Neuwirt said that the roof changes are within the height requirements in the Ordinance because the proposed roof is under the 40 ft maximum height, even if they add in measuring the additional 3 ft 4 ft from the patio.

Mr. Neuwirt said that regarding the requirement that, "in the opinion of the ZBA, no abutter will be adversely affected by the enlargement is a question because", there are no abutters present to state whether they would be adversely impacted or not. It is hard for an applicant to satisfy that criteria; however, he does not believe that there will be any adverse impact because they are still 6 ft below the maximum height that the Town allows and are not engaged in any horizontal expansion. Vice Chair Simpson asked and Mr. Neuwirt said that even if they include the additional 3 ft 4 in measurement from the patio grade, they are below 40 ft maximum height requirement by 6ft. Vice Chair Simpson asked and Mr. Neuwirt said that the house is 20 ft from the lake. Vice Chair Simpson asked why the maximum height is not 25 ft instead of 40 ft according to Section 3.10. Ms. Gage said that is for reduced side setbacks for smaller lots.

401 Mr. Neuwirt said he does not believe that there are any State permits required for this job. Mr. Neuwirt  
402 was asked and said that they will only require a man lift and most of the project can be reached by the  
403 driveway; there will not be any land disturbance.

404 Mr. Neuwirt said that regarding the criterion "if the enlargement or replacement, in the judgment of the  
405 ZBA, is consistent with the intent of the Ordinance", they tried to stay well below the maximum height  
406 that the Town allows. They are trying to stay consistent with the intent of the Ordinance. Mr. Neuwirt  
407 continued to discuss this matter.

408 Ms. Gage asked and Mr. Neuwirt confirmed that this project is an expansion, not a full replacement.  
409 The area that they are taking off was burned in a fire and the living and kitchen room are staying; the  
410 wall to the current master bedroom is being removed; and they are adding a master bedroom in the  
411 new area.

412 Mr. Larrow asked and Mr. Neuwirt confirmed that the entire house is within the setback.

413 Mr. Murphy said that they originally wanted a bigger front deck and brought it back under the eaves.  
414 They are also losing sleeping space by doing this project.

415 Ms. Gage said that she did not have time to look into the background of this property, however, the  
416 property card does show that the house was build in the 70s, which is prior to Zoning.

417 Vice Chair Simpson asked if there were any additional questions before closing the meeting to public  
418 comments.

419 Mr. Platt said that the deck does seem like a small horizontal expansion and asked about its purpose.  
420 Mr. Neuwirt said that he likes these gable features and decided to do it to break up the plainness of the  
421 lakeside wall of the house. It is nice to be able to open the doors and have a space that accents the  
422 bedroom. Mr. Platt asked and Mr. Neuwirt confirmed that it is a decorative feature that has limited use.  
423 Mr. Claus said that the definition of "expansion" says "any outward change to the existing envelope"  
424 and he thought that the envelope is the footprint. Ms. Gage said that "envelope" has its own definition.  
425 Mr. Claus read the definition of "envelope" which says "the exact exterior dimensions of a structure  
426 including length, width, and height". Vice Chair Simpson said that would mean that they would require  
427 a Variance or Special Exception for the deck.

428 Vice Chair Simpson said that he is struggling with the height issue.

429 Mr. Neuwirt said that if the Board has major problems with deck and interprets it as an expansion then  
430 they can just change them to windows and remove the deck; they just wanted to have the feature. Vice  
431 Chair Simpson said that he does not want to have a discussion with Mr. Neuwirt as he has closed the  
432 meeting. Mr. Platt said that he did not know that the meeting was closed. Vice Chair Simpson said that  
433 he thought that there was going to be one question and then the Board would go into a deliberation.  
434 Vice Chair Simpson asked if there were any other questions for the applicant then the Board should ask  
435 them so they can deliberate. Mr. Neuwirt said that he knows that Vice Chair Simpson has had issues

436 with the definition of height and the Zoning Ordinance needs to be clearer; if “maximum structure  
437 height” should be used in all situations then that is how it should be worded.

438 Mr. Claus asked and Vice Chair Simpson said that there are different uses of “height” throughout the  
439 Ordinance.

440 Vice Chair Simpson said that regarding non-conforming structures, under Article VI Section 6.11  
441 Continuance it says that “existing structures and existing uses shall not be affected by this Ordinance,  
442 nor shall structures under construction at the time passage of this Ordinance. Future changes to the  
443 structure or usage changes shall be consistent with this Ordinance”. He sees an expansion within the  
444 front setback and wonders why the Board is not looking at the 25 ft limit if the new construction has to  
445 comply with the Ordinance. Vice Chair Simpson asked if the waterfront setback is a rear setback and  
446 Mr. Platt said that it is not, it is the waterfront setback. Vice Chair Simpson said that there are side, rear,  
447 and front setbacks, not waterfront setbacks. There was further discussion regarding this matter.

448 Ms. Gage said that she asked Mr. Marquise about the part under Section 3.10 that talks about height  
449 and it means that if the lot is too small for the Zone it gets a 15 ft setback instead of the 25 ft and then  
450 the maximum height allowed is 25 ft between the 15 ft and 25 ft. For CZCs she has been using the 50 ft  
451 shoreland setback. Vice Chair Simpson asked and Ms. Gage said that she does not believe there are any  
452 reduced height requirements within the 50 ft shoreland setback. Mr. Larrow said that there is a  
453 restriction under Section 3.50(k).

454 There was a discussion regarding all the areas in the Ordinance that “height” is mentioned.

455 Mr. Claus said that it is confusing to him because there are other changes to the roof height. Mr. Platt  
456 said that he believes that there are provisions in the Ordinance that allow for alterations to the rooflines  
457 for things such as dormers if you are not going higher. Mr. Neuwirt said that the increase in height in  
458 the middle is 10 ft 9 in as it is 3 ft 4 in from the grade that is directly below the peak and the lowest  
459 adjacent grade. Vice Chair Simpson asked if Mr. Platt knows which section of the Ordinance allows for  
460 dormers and changes to the roofline. Mr. Platt said that they are allowed under Section 3.40(h) which  
461 says “dormers, gables, skylights, and other roof changes shall be allowed on non-conforming structures  
462 provided that such additions are no higher than the existing predominant roof lines of the subject  
463 structure and do not extend beyond the horizontal footprint”. Mr. Claus said that it says “no higher  
464 than the existing predominant roof line” and this is a new roofline. Mr. Platt said that he is pointing out  
465 that there may be a certain section of roofline that is higher than the other but within the Ordinance the  
466 relationship to the total height is also important.

467 Mr. Larrow said that the Board needs to address that the height is going to change. Mr. Larrow  
468 continued that Mr. Neuwirt already admitted that if he measured from the patio that would not be  
469 right. The Board has to decide where they want the measurement to be and if what Mr. Neuwirt is  
470 talking about is correct. Mr. Platt said that he thinks that if the Ordinance meant it to be “maximum  
471 building height” it would say it and if it says “height” it should be measured straight down. Mr. Larrow  
472 agreed with Mr. Platt but looked at Section 3.50(k), which says that if the entire structure is within the  
473 50 ft setback then the addition cannot be more the 25 ft.

474 Mr. Claus said that he has no problems with the expansion, however, if the Board has to go by the  
475 Ordinance the measurement of the height is funny. Section 3.50(i)(4) says that "vertical expansion will  
476 be no more than 10 ft higher than the pre-existing structure" and it is not on the lake side because it will  
477 be 10 ft 9 in. Mr. Platt said that it is still lower than maximum height; maximum height is measured  
478 from the highest point of the building to the lowest point anywhere on the ground. Mr. Larrow said that  
479 the addition does not exceed maximum height. Vice Chair Simpson said that you are not allowed to go  
480 more than 10 ft higher than the existing structure and the addition is going more than 10 ft higher on  
481 the lake side of the building due to the dormer. Mr. Platt said that they can build the addition without  
482 the dormer and then after the building is built request to add the dormer and it will be allowed. Mr.  
483 Platt asked why the Board would deny the dormer if it will ultimately be allowed. Mr. Claus said that he  
484 thinks that "maximum height" takes the confusion out of all of this. Vice Chair Simpson asked if Mr.  
485 Claus thinks that the Board should be applying "maximum height" in this case. Mr. Claus said that it  
486 seems as though this is an issue in the Ordinance. Mr. Platt said that the Zoning Board tried to get a  
487 definition of "height" added to the Ordinance and failed. Mr. Claus said that he has no issue with the  
488 expansion, he just is not sure it meets all the criteria but if the Board uses "maximum height" then the  
489 confusion goes away in this instance. Vice Chair Simpson said that he agrees with Mr. Platt that it is  
490 absurd to not agree to the dormer. Mr. Platt said that he thinks the Board has some leeway to be able  
491 to say that the dormer is acceptable. Mr. Larrow said that the measurement is below 10 ft in the front  
492 of the house. Mr. Claus said that it says that the roof of the new structure shall not be more than 10 ft  
493 higher than the existing structure, however, it depends on where it is measured. Mr. Larrow said that as  
494 long as the Board agrees that where Mr. Neuwirt is measuring is acceptable then it will be fine. There  
495 was further discussion regarding the height and the wording of the Ordinance.

496 Mr. Platt made a motion to approve Case #19-16: Parcel ID: 0113-0028-0000: seeking a Special  
497 Exception of Article III, Section 3.50 (i) for raising a roofline on a non-conforming structure 7 ft 5 in; 7  
498 Ridgewood Point Rd; Shaun and Sue Murphy; with the condition that all the construction will comply  
499 with State of NH Shoreland Regulations. Mr. Claus seconded the motion. Vice Chair Simpson said that  
500 he is struggling with if the applications meets the third and fourth requirements. The motion passed  
501 with three in favor and one opposed.

## 502 **MINUTES**

503 Changes to the minutes from August 1, 2019: Change Line 108 to read "...18 Cary Farm Rd." Change  
504 Line 161 to read "...that it needs to be..." Change Line 176 to read "...1" for every 40 ft and..." Change  
505 Line 218 to read "there up and it has been..." Change Line 243 to read "...Rural Residential District,  
506 many of the things..." Change Line 270 to read "...that her property value will..." Change Line 401 to  
507 read "Mr. Lyons thinks that..." Change Line 406 to read "...he would like a requirement..." Change Line  
508 451 to read "...that dogs are vaccinated for rabies." Change Line 504 to read "...there is nothing existing  
509 it must..."

510 Mr. Larrow made a motion to approve the minutes as amended. Mr. Claus seconded the motion. The  
511 motion passed unanimously.

512 Mr. Larrow made a motion to adjourn the meeting at 9:25 pm. Mr. Neuwirt seconded the motion. The  
513 motion passed unanimously.

514 Respectfully submitted,

515 Melissa Pollari

516

517 Zoning Board of Adjustment

518

519 Daniel Schneider, Chair

Aaron Simpson, Vice Chair

520

521 James Lyons, Jr.

Clayton Platt

522

523 George Neuwirt

William Larrow, Alternate

524

525 Jeffery Claus, Alternate