

1 **TOWN OF SUNAPEE**

2 **ZONING BOARD**

3 **NOVEMBER 7, 2019**

4 **PRESENT:** Daniel Schneider, Chair; James Lyons, Jr.; George Neuwirt; Clayton Platt; Jeffrey Claus,
5 Alternate; Bob Henry, Alternate; Nicole Gage, Zoning Administrator

6 **ABSENT:** Aaron Simpson, Vice Chair; William Larrow, Alternate;

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

8 Chairman Schneider called the meeting to order at 7:04 pm.

9 Mr. Lyons made a motion to appoint Jeff Claus and Bob Henry as voting members. Mr. Neuwirt
10 seconded the motion. The motion passed unanimously.

11 **CONTINUATION: CASE #19-17: PARCEL ID: 0133-0101-0000: SEEKING A SPECIAL EXCEPTION OF**
12 **ARTICLE IV, SECTION 4.90 TO ALLOW FOR AN ACCESSORY DWELLING UNIT; 14 MAPLE COURT; JOSEPH**
13 **& JILL BUTLER**

14 Joseph Butler presented the merits of the case.

15 Mr. Butler explained that they are requesting to have an ADU unit in the addition that they are building.
16 The Board requested that they put the dimensions of all of the rooms of the addition on the plan in
17 order to calculate the square footage of the ADU and the other rooms of the addition. They meet all the
18 Special Exception criteria under Section 4.90 and will not be in violation of any of the Ordinances.

19 Chairman Schneider asked and Mr. Butler said that he did not submit plans for the existing house. Mr.
20 Butler said that the architect did give the existing square footages of the ground and upper floors of the
21 house.

22 Chairman Schneider said that the proposed ADU does not have a living room / sitting area but there is a
23 sitting room on the upper floor of the addition and a stairway to it, which he thinks is a poor design. Mr.
24 Butler asked if a living room is a requirement under Section 4.90. Chairman Schneider said that it is not
25 part of the requirements but is part of the proposal. Mr. Butler said that it is not part of the ADU.
26 Chairman Schneider said that just because Mr. Butler defines the ADU as he wants to, it does not mean
27 that the Board will look at it the same way. Chairman Schneider asked if the sitting room is not part of
28 the ADU then why are their stairs to it; he thinks that the sitting room should be part of the ADU
29 because it seems like the design of the project is to provide a sitting room to the ADU in the upstairs.
30 Mr. Butler said that is not part of the requirement. Chairman Schneider said that he is not talking about
31 the requirements, he is talking about the intent. Mr. Butler said that the intent is to allow people to
32 watch TV in the eating area or their bedrooms; there does not have to be a sitting room. Chairman
33 Schneider asked about the purpose of the stairs. Mr. Butler said that they are access from the existing
34 living space to the ADU. Chairman Schneider said that it is not existing living space, it is going to be

constructed living space. Mr. Butler asked what the difference is between if it is new or existing. Chairman Schneider said that, in his opinion, it has yet to be determined if the new space will be part of the existing house or part of the ADU. The purpose of an ADU is to have a small dwelling unit, not a two-family dwelling, and this proposal seems like they are trying to bend the rules to get a two-family dwelling. Mr. Butler said that they are requesting an ADU, not a two-family dwelling, and meet all of the criteria under Section 4.90. Mr. Neuwirt asked and Chairman Schneider said that he thinks that the sitting room is part of the ADU and is not calculated in the square footage. Mr. Lyons said that if it is part of the ADU it would exceed the 1,000 square feet allowance.

Mr. Claus asked if this were an existing home with a stairwell and the proposal was to turn the first floor of less than 1,000 square feet into an ADU, if the Board be taking the same position. Chairman Schneider said that there would be no reason for the stairwell to exist because there is nothing there. Ms. Gage said that area could be a storage room or a garage; the current structure is 2,898, which includes the garage and the addition is 1,924 square feet and half is for the ADU and half is for Mr. Butler's side of the house. There also is a requirement for an interior heated door. Chairman Schneider said that there is a door to a hallway. Mr. Claus said that there are two proposed interior doors. Mr. Henry said that the design does look silly because there is no sitting area; if bedroom #2 had been called a sitting room then there would be no problem; it is because it shows no place for anyone to sit down, which seems strange. Mr. Butler said that he manages a lot of apartments which are tighter than this proposal; whomever rents or uses the ADU could use one of the bedrooms as a sitting area if they wanted to. Chairman Schneider said that then there is no reason for the stairs to be there. Mr. Butler said that there are no requirements on access. Chairman Schneider asked why the stairs are there; he is not talking about requirements; he is talking about intent. Mr. Butler asked if he puts his mother-in-law in the ADU if Chairman Schneider is saying that he cannot have access to go see her. Mr. Claus said that he would have access from the other entrance. Mr. Butler said that he should be able to go from the second floor down to see her; it is just another access to the ADU. Also, she should be allowed to go up and use the pool and deck if she wants.

Mr. Neuwirt asked what objections there were to the plan the last time Mr. Butler was before the Board. Mr. Lyons said that there were no dimensions on the plan. Mr. Neuwirt asked if there was any discussion about the layout. Chairman Schneider said that the layout was discussed at the last meeting and the case was continued due to the lack of dimensions on the drawings. Ms. Gage said that the Board also requested a distinction between the ADU and the main dwelling area, which has been provided.

Mr. Claus asked and Mr. Butler said that the existing room that will be connected to the sitting room is currently a three-season porch. Mr. Claus asked and Mr. Butler said that it will be converted to a four-season room as part of this project.

Mr. Neuwirt asked and Mr. Butler confirmed that the square footage of the proposed sitting room is not part of the square footage of the proposed ADU. Mr. Henry said that he mentioned using a one of the bedrooms as a sitting room as it would be a little strange to have the sitting room a floor above the rest

73 of the unit. Mr. Neuwirt asked and Mr. Butler said that the proposed sitting room does not currently
74 exist, it will be constructed to allow for access to the pool, deck, and exercise room.

75 Mr. Neuwirt asked and Mr. Butler confirmed that the sitting room is not being considered by Mr. Butler
76 to be part of the ADU so the ADU is under 1,000 square feet. Mr. Neuwirt asked and Chairman
77 Schneider confirmed that he thinks that the sitting room will be used by the ADU and, therefore, should
78 be part of the ADU square footage. Mr. Neuwirt said that there are often plans that come in with things
79 disguised as other things and the Board does not know it. At some point there has to be an honor
80 system that says that the applicant is applying for something and the Board should not be questioning
81 the applicant's integrity or truthfulness or honesty; it is important for the Board to make a judgement
82 based on the information that is presented. Mr. Claus said that the Board should also look at the intent
83 of an ADU, which is to have a mother-in-law suite or something like that. If the intent of the ADU is to
84 allow someone to live with a family member, why would the Board restrict access to the house. Mr.
85 Lyons said that the Ordinance distinguishes between an ADU and a two-family dwelling and he believes
86 that is one of the reasons that the ADU is limited to 1,000 square feet. Ms. Gage said that Section
87 4.90(b) says that the purpose of the ADU is for aging homeowners, recent college graduates, care givers,
88 disabled persons, etc. so the applicant could have one of those situations where someone is using the
89 ADU for that purpose. Mr. Butler said that their intent is not to rent the unit but to use it for family. Mr.
90 Neuwirt said that he thinks that it is important that the Board stick to the facts and if the applicant has
91 not presented a case that is factual then there will be a complaint in the future that is brought to the
92 Board. He is not going to judge Mr. Butler's integrity; it is not the Board's place, it is the Board's place to
93 make decisions based on the information presented.

94 Chairman Schneider asked and there was no one else present with any questions or comments
95 regarding the case.

96 Mr. Lyons said that he saw in one of the documents submitted that one of the intents is to rent the ADU
97 for additional income. Mr. Butler said that he is not going to say if he passes away that the unit will not
98 be rented if his wife needs the money. Mr. Lyons asked and Mr. Butler said that he does not believe
99 that was part of the application. Mr. Neuwirt said that even if it was in the application it should not
100 make a difference. Mr. Butler said that they do not need to rent the unit at this point. Ms. Gage said
101 that an ADU becomes a legal dwelling unit that could be rented. Mr. Lyons said that is perfectly
102 reasonable as long as all of the ADU requirements are met.

103 Chairman Schneider asked and there were no additional questions from the Board regarding the case so
104 he closed the meeting to public comments.

105 Mr. Neuwirt made a motion to approve Case #19-17: Parcel ID: 0133-0101-0000: seeking a Special
106 Exception of Article IV, Section 4.90 to allow for an Accessory Dwelling Unit at 14 Maple Court; Joseph
107 and Jill Butler. Mr. Claus seconded the motion. The motion passed with four in favor and one opposed
108 (Chairman Schneider).

109 **CASE #19-21: PARCEL ID: 0125-0013-0000: SEEKING A VARIANCE FROM ARTICLE III, SECTION 3.10**
110 **AND 3.20 TO PERMIT A FRONT YARD SETBACK OF 28 FT, A SIDE SETBACK OF 4 FT 4 INCHES, A SIDE**

YARD SETBACK OF 9 FT 5 INCHES, AND A SIDE YARD SETBACK OF 6 FT, 8 INCHES, TO PERMIT A PORTION OF THE STRUCTURE IN THE AREA OF REDUCED SETBACK TALLER THAN 25 FT, AND TO PERMIT A 39% IMPERMEABLE SURFACE WITHIN THE SHORELINE OVERLAY; 34 JOBS CREEK RD; SCHIRMER REVOCABLE TRUST OF 2019, KAREN A BERG, TRUSTEE.

Chairman Schneider said that there are six different actions needed by the Board for this case. Ms. Gage confirmed this and said that she thinks that the Board needs to vote separately on each one. There was further discussion regarding this matter.

Frank Anzalone and Karen Berg presented the merits of the case.

Mr. Anzalone said that the land was developed in the 1940s and the house was built in the 1940s as well. The house is on piles for a foundation and the piles have started to slip. The Zone where the lot is located has a minimum lot size of 1.50 acres so they are trying to apply the restrictions required for a 1.50-acre lot to a 5,000 square foot lot. This leaves them with a 371 square foot buildable area, which is impractical. Tearing the house down and trying to build in the same envelope is more of a challenge because today's standards are very different than the 1940s.

Ms. Berg said that her parents bought the cottage in 1969 and they have enjoyed it for the past 50 years. Their family has expanded since the cottage was purchased and this is the place where the family gathers. They would like to be able to come year-round and want to continue to use the cottage for many years to come and pass the house down to her children and grandchildren.

Mr. Anzalone said that the current cottage has a footprint of 1,087 square feet; the new house seems like it will take up a lot of the lot but they have only increased the footprint by 446 square feet so the total footprint is 1,533 square feet. Mr. Lyons asked and Mr. Anzalone said that is the footprint for the whole house, including the decks and porch. Mr. Lyons asked and Mr. Anzalone confirmed that the proposed house will have a second story. Mr. Claus asked and Mr. Anzalone said that the proposed house will be approximately 2,500 square feet including the walkout basement and first and second floors. Mr. Claus asked and Mr. Anzalone said that the current house is 1,087 square feet as it is a one-story house.

Mr. Anzalone explained that Sheet A-2 of the submitted plans shows that when all of the setbacks are applied they are left with a very small buildable area and the current house just touches that area. Mr. Lyons said that the current house is not in the allowed buildable area and is bigger than the allowed buildable area. Mr. Anzalone said that trying to build a house with a proper foundation and lower level walkout that would stay within the envelope would be difficult and almost impossible.

Mr. Anzalone said that one of the concerns that the owners have is that the whole site for White Shutters is sloped and, currently, water from the land and part of the road runs down the hill into the neighbor's property. They are proposing tiering the property to reduce and prevent water from continuing to roll down the hill.

Mr. Platt arrived at the meeting.

147 Mr. Anzalone said that on the roadside of the structure they will add a drip edge to allow the water to
148 infiltrate the ground and on the lake side they have added a storage containment drip edge. Mr.
149 Anzalone said that they are currently asking for the impermeable lot coverage in the Shoreland Overlay
150 to be 39% but they will be reducing the parking area from 470 square feet to 421 square feet. They are
151 also adding storm water management to that area.

152 Mr. Anzalone said that the owners would like to begin spending more time at the property so they have
153 added parking and access at the street level and a first-floor bedroom.

154 Ms. Gage asked and Mr. Anzalone said that the only change to the plans he brought for the Board to
155 look at and the ones submitted is there was a typo that changed one calculation by five tenths of a
156 percent.

157 Mr. Anzalone said that the impermeable surface of the lot is currently 44.3% and it will be reduced to
158 39.7% within the 250 ft shoreland setback. Mr. Claus asked and Mr. Anzalone said that they are
159 removing the driveway within the 250 ft shoreland setback and expanding part of the house into the
160 setback. Mr. Anzalone continued that they have applied for a Shoreland Permit from DES. Mr. Lyons
161 asked if the proposed expansion or the current driveway is closer to the lake. Mr. Anzalone said that
162 they are about the same; there is a corner of the driveway that is closer but it is not a dramatic
163 difference. Mr. Anzalone said that currently there is no storm water control on the site to prevent water
164 from running down the property. Chairman Schneider asked and Mr. Anzalone explained which plans
165 shows the existing and proposed impermeable surfaces. Mr. Lyons asked and Mr. Anzalone explained
166 that the existing lot coverage is 21.5% and the proposed lot coverage will be 34.3%, what is being
167 reduced is the impermeable lot coverage within the 250 ft protected shoreland setback. Also, 144 sq ft
168 of the total shoreland impermeable surface is decking, and though the State does not view decks as
169 permeable water does run through them. Mr. Lyons said that water still runs off of them and snow has
170 to be shoveled off of them. Mr. Claus asked and Mr. Anzalone said that they are not putting anything
171 under the deck, just what decides to grow there. Ms. Gage said that the proposed lot coverage for the
172 area outside the shoreland setback is under the 40% total allowed. Ms. Gage asked and Mr. Anzalone
173 confirmed that the impermeable surface area in the shoreland will be reduced. Mr. Anzalone said that
174 they will also have a method to collect the water that runs off the site.

175 Mr. Claus asked and Mr. Anzalone said that they did not include a storm water management plan as it is
176 such a small area. They have a drip edge off the roof which is a 2 ft x 3 ft containment area where water
177 is collected and eventually infiltrated into the ground. Mr. Platt asked and Mr. Anzalone said that the
178 area is just for the section of roof that slopes towards the lake. Mr. Claus asked about the other portion
179 of roof and Mr. Anzalone said that they will also have drip edges but not to the same scale. It is more
180 complex on the upside of the house as they will have a system to collect the water. Mr. Platt asked and
181 Mr. Anzalone confirmed that the impermeable area in the shoreland setback is being reduced.

182 Mr. Anzalone said that they have tried not to go closer to the road or a lot closer to the side setbacks as
183 these are the setbacks that effect the neighbors.

184 Chairman Schneider asked about a portion of the proposed house that is irregularly shaped and Mr.
185 Anzalone said that it is a deck and stairs.

186 Ms. Gage said that she will require erosion control plans and a land disturbance bond before a CZC is
187 issued.

188 Chairman Schneider asked if anyone in the audience has questions or comments.

189 Regina McCalmont, 3 White Shutters Rd, said that she lives down the hill from the subject property and
190 she supports the proposal.

191 Chairman Schneider asked and there were no additional questions or comments from the audience.

192 Chairman Schneider said that he thinks that the Board needs to discuss each of the requests separately
193 and vote.

194 Mr. Claus asked and Mr. Anzalone said that they are applying for a Permit by Notification (PBN). Mr.
195 Claus asked and Mr. Anzalone confirmed that they are disturbing just over 1,000 square feet of the
196 portion of the lot that is within the Shoreland setback. Mr. Claus asked and Mr. Anzalone confirmed
197 that DES only looks at the portion of the lot that is within the setback. Mr. Claus asked and Mr.
198 Anzalone said that they are reducing the impermeable surface within the setback so they can do the
199 PBN; if there was nothing there, they would have to do a full Shoreland Permit application. Mr. Lyons
200 asked and Mr. Anzalone confirmed that the project is increasing the impermeable surface of the whole
201 lot. Mr. Anzalone said that they are adding storm water management.

202 Chairman Schneider asked if anything has been received from the neighbor whom the 6 ft 8 inch setback
203 is being requested. Mr. Anzalone said that property is owned by the Delfosse family. Mr. Neuwirt asked
204 and Ms. Gage said that the Board did not receive any letters of objection. Mr. Anzalone said that the
205 current setback on that side is approximately 4 ft.

206 Mr. Neuwirt asked if Mr. Anzalone should go over the facts supporting the Variance request in order to
207 get them on record. Mr. Anzalone read the facts supporting the Variance from the submitted
208 application.

209 Mr. Anzalone said that granting the Variance would not be contrary to the public interest because it will
210 in no way threaten the public health, safety or welfare or conflicts with the primary Zoning objectives.
211 The intended use is residential and this is allowed in the Rural Residential Zone. If the Variance were
212 granted, the Spirit of the Ordinance would be observed because it does not injure public or private
213 rights and it will not alter the character of the neighborhood.

214 Mr. Anzalone continued that granting the Variance would do substantial justice because granting the
215 Variance does not cause harm to the general public that outweighs the benefit to the owner. No harm
216 will be done to the general public. There will be no harm to the private rights of any of the abutters.
217 Granting the Variance will allow the owner to use this property in a similar fashion as the neighboring
218 properties.

219 Mr. Anzalone said that if the Variance were granted, the values of the surrounding properties would not
220 diminish because the Variance will increase the value of this property. A new energy efficient and
221 attractive home with permanent erosion control and beautiful landscaping is a positive asset for the
222 neighborhood. These positive aspects will contribute to the assessed and market values of this property
223 and the increased value of this property is a benefit to the abutting properties.

224 Mr. Anzalone continued that regarding unnecessary hardship, owing to the special conditions of the
225 property that distinguish it from other properties in the area, denial of the Variance would result in the
226 hardship because: no fair substantial relationship exists between the general public purposes of the
227 Ordinance provision and the specific application of that provision to the property because the Zoning
228 Ordinance establishes setbacks of 50 ft at the front from the centerline of the road right of way and 15 ft
229 for the rear and side yard. This has created a very small and impractical buildable area of 389 sq ft. This
230 lot and house were created prior to the Zoning regulations. Also, the shape and size of the lot were all
231 created prior to when Zoning was put in place so the Zoning has made this lot difficult to build on, which
232 is an unnecessary hardship to the owner.

233 Ms. Gage said that both the Fire Chief and Highway Director were given copies of the application and
234 neither had any comments.

235 Chairman Schneider asked and Ms. Berg confirmed that White Shutters Rd is drivable. Chairman
236 Schneider asked and Mr. Anzalone confirmed that the corner of the house will be 5 or 6 ft from White
237 Shutters Rd. Mr. Anzalone said that White Shutters Rd is a private road and the Town does not plow it.
238 Chairman Schneider asked if the distance gives enough room to plow and Mr. Platt said people plow
239 closer to houses than that for driveways and such. Mr. Platt asked and it was said that there are five or
240 six houses past this house on White Shutters Rd. Mr. Anzalone said that they are talking about a porch
241 post in that setback.

242 Ms. Gage asked and Mr. Anzalone confirmed that the White Shutters Association has their own rules
243 and they have a 4 ft setback requirement.

244 Mr. Henry asked and Mr. Anzalone explained that they kept the house on the same line in the front but
245 it extends slightly further on the left side so the front setback is reduced by 4 inches. Mr. Henry asked
246 and Mr. Anzalone confirmed that currently one of the side yard setbacks is less the 4 ft and it will be
247 increased to 6 ft 8 inches.

248 Chairman Schneider asked if there are any additional questions for the applicants regarding the
249 setbacks; there were none so he closed the meeting to discuss the case and requested a motion to
250 approve the Variance for the setbacks. Each setback will need to be voted on separately and Mr. Platt is
251 not a voting member for the case as he arrived late.

252 Mr. Neuwirt spoke about his thoughts regarding the process of designing a house and how it works with
253 the Zoning requirements. Whether or not the development is reasonable, if the Board does not allow
254 relief from the Zoning Ordinance, the applicant does not have a reasonable use of the property.
255 Chairman Schneider said that the applicants are asking for what they believe is a reasonable use. Mr.

256 Neuwirt agreed and said that what the applicants are presenting is what they believe is a reasonable use
257 and they are asking the Board to agree that it makes sense. Mr. Lyons said that he thinks that there may
258 be more than one reasonable alternative. Mr. Neuwirt agreed and said that the Board has a set of
259 standards that are interpretational and subject to their own feelings but it is a strange relationship for
260 someone coming before the Board with something they think is reasonable and trying to convince the
261 Board and at some point the two either mesh or clash.

262 Mr. Anzalone requested and Chairman Schneider opened the meeting to public comments.

263 Mr. Anzalone said that there are court decisions regarding the issues that Mr. Neuwirt is discussing.
264 Chairman Schneider said that he thinks that everyone on the Board votes how they see things and he
265 thinks that there are frequent times that reasonable people disagree. Mr. Claus said that he thinks that
266 the discussions during closed sessions are important. Mr. Anzalone said that the courts have made
267 decisions on reasonable use and what they look at is what the neighbors have. Mr. Neuwirt said that he
268 is not making comments on whether or not he supports the proposal, he is discussing how strange the
269 process can become and how it is the responsibility of the applicant to argue reasonable use and the
270 Board to ascertain whether or not they agree. Mr. Claus said that he does think that the discussion
271 amongst the Board members is important because they can evaluate and discuss whether the five
272 criteria are met. There was further discussion regarding this matter.

273 Chairman Schneider closed the meeting to public comments.

274 Mr. Claus said that he looks at this project like a size ten foot trying to be shoved into a size six shoe. He
275 has worked with projects having restrictions for many years and it is hard for him to hear that it is
276 impossible to build in the existing footprint as it is almost an 1,100 square foot footprint and they could
277 build three stories there. The mass of the structure with the height of the structure seems like it will
278 dwarf the other houses in the area. Mr. Lyons said that the elevation slopes rather dramatically until it
279 levels towards the lake so there are other large houses but they are lower in elevation. Mr. Neuwirt said
280 that he works on the house at the end and four of the proposed houses could fit inside it. Mr. Claus said
281 that he was talking about how it would look along Jobs Creek Rd.

282 Chairman Schneider said that the Board needs to look at each setback request individually as they may
283 find one reasonable while another not reasonable.

284 Chairman Schneider said that the first request is to have a front yard setback of 28 ft.

285 Mr. Lyons requested that the Board look at the 39% impermeable surface first and then go through the
286 setbacks. Chairman Schneider asked and Mr. Lyons said that he thinks it would be easier. Mr. Henry
287 said that he thinks the setbacks should be discussed first. Chairman Schneider said that if one or more
288 of the requests are not approved by the Board it is possible for them to return with a different plan so
289 he prefers to take them in the order given.

290 Mr. Neuwirt said that he thinks that it is important for the Board to consider the four letters in favor of
291 the proposal from the neighbors because this is something that they will have to deal with. Mr. Lyons

292 said that the Board also has a duty to the public. Mr. Neuwirt said that the people near them will be the
293 most effected. Chairman Schneider said that the other side of the coin is that people near them will
294 want to do something similar.

295 Chairman Schneider said that the first request is to have a front yard setback of 28 ft from Jobs Creek Rd
296 where the existing setback is 28 ft 3 inches.

297 Mr. Lyons made a motion to grant a Variance for a front yard setback of 28 ft for Case #19-21, Parcel ID:
298 0125-0013-0000. Mr. Henry seconded the motion. Mr. Henry said that it appears that the setback is
299 only inches closer than the current house and he sees it as a continuation of what it is today. Driving up
300 the road other houses are just as close so he does not see a problem with this Variance. The motion
301 passed unanimously.

302 Chairman Schneider said that the second Variance being requested is a side yard setback of 4 ft 4 inches;
303 this is for the front corner of the building towards White Shutters Rd.

304 Mr. Claus made a motion to approve the Variance for the side setback of 4 ft 4 inches. Mr. Lyons
305 seconded the motion. Mr. Lyons said that this one takes the existing footprint and makes it more non-
306 conforming. Mr. Anzalone asked and Chairman Schneider said that he would not open the meeting to
307 public comments. Mr. Anzalone said that he thinks that the plans are not being read correctly. Mr.
308 Claus said explained that the existing structure is much closer to the side setback. Chairman Schneider
309 asked if any of the Board members wanted to reopen the meeting to public comments. Mr. Neuwirt
310 requested the meeting be reopened so Chairman Schneider opened the meeting. Mr. Anzalone said
311 that the existing side setback is less than 1 ft. Mr. Lyons said that he is talking about the part the comes
312 towards the lake and showed which part of the proposed structure that they are discussing. Chairman
313 Schneider asked and Mr. Anzalone said that they are requesting swapping one non-conformity for
314 something less non-conforming. Mr. Henry said that this corner is being measured from the angle, not a
315 side, and asked how it is defined. Mr. Anzalone said that it could be called a side or a rear setback but it
316 is the same dimensional requirement. Because it is angled, they chose the bottom line to be the rear
317 and the angled line to be the side but it is a 15 ft setback either way. Chairman Schneider closed the
318 meeting to public comments. Chairman Schneider said that he looks at if not granting this Variance
319 would be a hardship. Mr. Platt said that the scale of this is that it is reasonable to what has been
320 approved before; proportional to the lot the house looks big but it is a fairly modest addition to the
321 footprint. Mr. Claus said that if it was one setback he could be persuaded to be in favor of it but it is a
322 combination of this portion of the addition that is affecting three setbacks. Mr. Henry said that he
323 thinks that the key to this is the setback off White Shutters Rd because they are both the same corner.
324 Chairman Schneider said that he thinks that this corner is too close to the property line and to the road
325 and sets a bad precedent and is not necessary to rebuild the house so in his mind does not meet the
326 hardship test. The motion failed with two in favor (Mr. Neuwirt and Mr. Henry) and three opposed
327 (Chairman Schneider, Mr. Lyons, and Mr. Claus).

328 Chairman Schneider said that the third request is to have a side yard setback of 9 ft 5 inches from the
329 house towards the south property line. Chairman Schneider opened the meeting to ask Mr. Anzalone

about the measurement as it says 9 ft 4 inches on the plan. Ms. Gage said she rounded the number and Mr. Anzalone confirmed that 9 ft 5 inches is acceptable. Ms. Gage said that for a private road the normal side setback is 15 ft it is a little grey if the setback is measured from the side of the road as opposed to the centerline. Mr. Platt said that he thinks that the 4 ft 4 inches was also measured to the property line and not the centerline of the road. Chairman Schneider closed the meeting to public comments.

Mr. Lyons made a motion to approve the side yard setback of 9 ft 5 inches in Case #19-21, Parcel ID: 0125-0013-0000. Mr. Claus seconded the motion. Mr. Lyons asked and Mr. Claus confirmed that this is the only setback that the current house conforms to. Chairman Schneider said that this setback does not bother him. Mr. Claus said that the merits of asking for a 25% reduction of a setback does not sound bad but four or five reductions does. Mr. Claus asked if the Board must vote on each setback separately if it is an accumulation of approvals and denials. Mr. Platt said that they cannot build a house 4 ft 4 inches from the setback but could redesign it if needed. Mr. Henry said that this proposed setback is the most egregious as it is closer than the existing house but the one that was just denied is further than the existing house. Mr. Claus said that he is just struggling with breaking this down. Chairman Schneider said that if the Board does not like something, he thinks that they need to tell the applicants what they do not like and why. Mr. Henry said that the White Shutters Lodge building has more areas that are in non-compliance than this proposed structure. If everyone had the same setback for a garage then the Board would grant it because it would conform with the other properties. In some instances, he thinks that the same argument can be made for some of these setbacks because many of the properties in White Shutters have less setbacks because they were built before Zoning. The cottage being discussed was built in 1966, his grandfather used to own White Shutter Lodge and sold it in 1965 and the building that has happened since then but before Zoning has resulted in many buildings being in violation. Chairman Schneider said that he is sure that there are many pre-existing non-conforming structures. The motion passed with three in favor (Chairman Schneider, Mr. Claus, and Mr. Neuwirt) and two opposed (Mr. Lyons and Mr. Henry).

Chairman Schneider said that the next request is for a side setback of 6 ft 8 inches. Mr. Claus made a motion to grant a Variance for a side setback of 6 ft 8 inches. Mr. Henry seconded the motion. Chairman Schneider said that the proposed house is a bit closer to the setback, though it is not as close as the existing porch and stairway. Mr. Claus asked and Chairman Schneider agreed that this is increasing the area of the non-conformity. The motion failed with two in favor (Mr. Henry and Mr. Neuwirt) and three opposed (Chairman Schneider, Mr. Lyons, and Mr. Claus).

Chairman Schneider said that the next request is to permit a portion of the structure in the area of reduced setback to be taller than 25 ft. Mr. Anzalone requested and Chairman Schneider agreed to reopen the meeting to public comments. Mr. Anzalone said that one of the difficulties with this property is the slope. Even if they stayed within the footprint to rebuild the house, they would need to change the envelope of the house. It would be difficult to build within that envelope due to the ceiling heights and slope and grade. Sunapee measures the height from the lowest point of the property to the highest point so the slope is why they need to request the Variance. Mr. Platt asked and Mr. Anzalone said that from the street side, the house will be 19 ft 8 inches but measuring from the lowest point to

the highest point is 35 ft 11 inches. The other difficulty is that there are portions of the house that are within the setbacks; no matter what, because of the size and slope of the lot if they build a two-story home, they will be above the 25 ft allowance and will need a Variance. Chairman Schneider asked and Mr. Anzalone confirmed that the Variance is only for the portion of the structure that is within the setbacks. Mr. Anzalone said that they cannot build anything taller than 25 ft except for in the small buildable area shown on the plan. There is a 14 ft drop from front to back and unless they build a 9 ft tall house they will need to request a Variance. Mr. Claus asked and Mr. Anzalone confirmed that from the maximum high and maximum low the structure will be 35 ft 10.5 inches. Chairman Schneider asked and Mr. Anzalone said that even if the house was located within the setbacks, they would still need a Variance for the height because if you apply the 25 ft setbacks there is no buildable area on the lot. Chairman Schneider asked and Mr. Anzalone confirmed that this is a pre-existing and non-conforming lot so different setbacks are applied and they are 15 ft, not 25 ft. Mr. Anzalone said that anything in the 25 ft setback has a 25 ft height restriction and the way Sunapee measures the height is from the lowest point to the highest point. Mr. Lyons asked and Mr. Anzalone said that on the lake side, the house is 21 ft tall in one area and approximately 30 ft in another area. There was further discussion regarding the height and slope of the lot.

Mr. Claus asked and Mr. Anzalone said that the pitch on the existing house is less than 4. Mr. Anzalone said that the existing house is approximately 27 ft from the lowest point to the highest point because of the grades. Mr. Platt asked and Mr. Anzalone confirmed that the proposed structure will be approximately 9 ft higher. Chairman Schneider said that the Jobs Creek Rd side of the proposed house will be approximately 20 ft and asked how tall the existing house is. Mr. Anzalone said that the existing house is approximately 16 ft; the ridge runs parallel to the road and the measurement is from the grade to the ridge, not the grade to the eave, the grade to the eave is approximately 11 ft.

Chairman Schneider said that, given the actions of the Board, in respect to the other two Variances, it is not clear to him if they do approve the Variances for the height and impermeable surface, it is not clear what they will be approving because some Variances have not been approved. Mr. Anzalone said that because of the slope of the lot they still need a Variance. Chairman Schneider said that if they build a house farther from the southern property line then there will be less slope to deal with. He suggested withdrawing the other two Variance requests until the applicants return to the Board with a new plan. Mr. Anzalone said that if they move the house into the setback, they are looking at a difference of 1 ft in height if they build a two-story structure. Mr. Claus asked why it matters if the Board votes on the Variance today or when the applicants return to the Board with a new plan. Chairman Schneider said that the Board cannot just approve a Variance for more than 25 ft so the height would need to be approved according to the plan which shows 35 ft 10.5 inches. Mr. Anzalone said that if they move the house back to the allowable buildable area, he can calculate what the height would be and is requesting the Variance be changed to that height. Mr. Platt asked if the 2 feet is that much different. Chairman Schneider said that it is a judgement call. Mr. Platt said that if the Variance is approved for 36 ft and they come back with a house that is 34 ft then it should not make a difference. Mr. Anzalone said that he would like to request a 33 ft 10 inch height, which would be based on if the house gets reduced into the buildable area. Ms. Gage said that this would be like doing a Variance for a house in a larger

410 envelope. Mr. Anzalone said that if he must go back and redesign this house, he would like to have
411 more guidelines to know what he is able to do so this Variance would be helpful. Chairman Schneider
412 said that it is not the Board's place to make the Zoning recommendations. Mr. Platt said that Mr.
413 Anzalone is requesting the Variance for the height and the Board should not deny him the right to vote
414 on it. Chairman Schneider said that the Variance should be that the maximum structure height shall be
415 34 ft.

416 Mr. Claus made a motion to approve a Variance for a maximum height of 34 ft. Mr. Lyons said that the
417 maximum height would be within the setback areas. Chairman Schneider said that the motion should
418 be to permit a portion of the structure within the area of a reduced setback to be taller than 25 ft and
419 no taller than 34 ft.

420 Mr. Claus made a motion to approve the height of the structure within the reduced setback to be
421 greater than 25 ft with a maximum of 34 ft. Mr. Lyons seconded the motion. Mr. Lyons said that he has
422 no idea what he is voting on and is not comfortable voting for something he does not have a plan for.
423 Chairman Schneider asked if the Board would like to make a motion to continue the hearing. Mr.
424 Neuwirt said that he thinks if the Board approves the motion and the applicant submits a plan to Ms.
425 Gage that shows the requirements have been met then there is no difference. Mr. Henry said that this
426 is a unique piece of property and if the Board is going to delay the approval it might be useful for them
427 to visit the property and see if the 35 ft height is a lot higher than the other buildings in the area, which
428 would make him not want to approve it. However, if the height is like the other buildings then it would
429 just become one of many; he does not know how many have similar heights. Mr. Claus said that all the
430 adjacent neighbors are similar to what is currently there. Mr. Henry said that the proposed structure
431 would look strange next to what they are next to. Mr. Platt said that the neighbors may want to change
432 their properties in the next few years. Mr. Neuwirt said that the neighbors will then have a chance to
433 weigh in on the decisions. Mr. Platt said that you can presumably raise your house one story with a
434 Special Exception, not a Variance so any of those buildings can be raised by 10 ft. Mr. Claus said that the
435 Board has been told that the existing structure is approximately 27 ft from the lowest grade. Chairman
436 Schneider said that 34 ft is pretty tall. Mr. Claus said that it is approximately a 36% increase over 25 ft.
437 The motion failed with two in favor (Mr. Neuwirt and Mr. Henry) and three opposed (Chairman
438 Schneider, Mr. Lyons, and Mr. Claus).

439 Chairman Schneider said that the last Variance is to permit a 39% impermeable surface within the
440 Shoreland Overlay where the maximum is 25%. Mr. Claus asked and Chairman Schneider confirmed that
441 this is a reduction from the existing impermeable surface area. Chairman Schneider asked and Mr. Claus
442 said that the math was a little difficult to calculate but they are using the existing driveway and
443 proposed house and they are saying that there will be less house than there is driveway in the 250 ft
444 Shoreland Overlay though it is not visually easy to see. There was further discussion regarding this
445 matter.

446 Chairman Schneider asked and Ms. Gage confirmed that that total lot coverage will be within the
447 allowed amount. Mr. Claus said that there is still a driveway coming off White Shutters Rd to go to the
448 garage. Ms. Gage said that the driveway permit has gone to the Highway Director and he has no

concerns. Mr. Claus asked and Ms. Gage confirmed that she is talking about the driveway off of Jobs Creek Rd. Mr. Claus asked and Ms. Gage confirmed that if there is a garage off White Shutters Rd there will need to be some type of driveway for access but a driveway permit will not be required.

Mr. Lyons asked and Mr. Anzalone confirmed that the existing lot coverage is presently 21.5% for the entire lot with the proposed structure it will increase to 34.3%. Chairman Schneider said that they are permitted to have 40% lot coverage. Mr. Lyons said that it is a pre-existing non-conforming lot and the lot coverage is increasing.

Mr. Claus asked and Mr. Anzalone said that the driveway off White Shutters Rd will be pervious, probably grass with pervious blocks.

Mr. Claus made a motion to allow the Variance of a 39% impermeable surface within the Shoreland Overlay. Mr. Neuwirt seconded the motion. Mr. Lyons said that if the Board grants the proposal without a plan they do not know what it is 39% of because they do not know what it would be in a new proposal; he does not know what he is voting on. Mr. Claus said that they are reducing the amount of impermeable surface and this would need to have a Shoreland Permit. Chairman Schneider suggested amending the motion to make it conditioned upon the receipt of the Shoreland Permit. Mr. Claus amended the motion to include that the Variance is subject to approval of a Shoreland Permit and subject to the conditions of the Shoreland Permit. Mr. Henry seconded the motion to amend. The motion for the amendment passed unanimously. Mr. Lyons made a motion to amend the motion to include that the 39% represents a reduction from the 44%. Mr. Claus seconded the motion. The motion to the amendment passed unanimously. Mr. Platt said that he does not know why a Variance is required to reduce the lot coverage. The amended motion passed unanimously.

MINUTES

Changes to the minutes from October 3, 2019: There were no changes to the minutes.

Mr. Lyons made a motion to approve the minutes. Mr. Claus seconded the motion. The motion passed unanimously.

MISCELLANEOUS

There was a brief discussion regarding a past case on Mountain View Lake and if there is a requirement to have a survey for applications for Shoreland setbacks.

Ms. Gage said that the handbook provided from the State gives guidelines regarding denying Variances which includes reasons for the record as to why the Variance is denied. The denials for these cases were not clear and could be difficult for the Notice of Decisio. For future cases, the five criteria should be discussed and a decision should be clear with the reasons that something is denied.

Mr. Lyons requested having large scale plans included in their packets for future meetings.

482 Ms. Gage said that the Board needs to work on updating their Rules and Procedures as Vice Chair
483 Simpson has said that he is not able to work on them at this time.

484 Mr. Platt made a motion to adjourn the meeting at 9:20 pm. Mr. Lyons seconded the motion. The
485 motion passed unanimously.

486 Respectfully submitted,

487 Melissa Pollari

488 Zoning Board of Adjustment

489 _____

490 Daniel Schneider, Chair Aaron Simpson, Vice Chair

491 _____

492 James Lyons, Jr. Clayton Platt

493 _____

494 George Neuwirt William Larrow, Alternate

495 _____

496 Jeffery Claus, Alternate