

1 **TOWN OF SUNAPEE**

2 **ZONING BOARD**

3 **JANUARY 2, 2020**

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

6 **ABSENT:** Jeffrey Claus, Alternate; Bob Henry, Alternate

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

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

9 **MINUTES**

10 Changes to the minutes from November 7, 2019: Change Line 479 to read "...and could be difficult for  
11 the Notice of Decision."

12 Mr. Lyons made a motion to approve the minutes as amended. Mr. Larrow seconded the motion. The  
13 motion passed unanimously.

14 **CASE #ZBA19-22 & CASE #ZBA19-23: PARCEL ID: 0133-0026-0000; VARIANCE FOR REAR SETBACK AND**  
15 **VARIANCE FROM FRONT SETBACK, PER ARTICLE III, SECTION 3.10, TO PERMIT A PROPOSED NEW**  
16 **COMMERCIAL BUILDING 7 FT FROM THE REAR PROPERTY LINE, 11 FT FROM THE EDGE OF THE GARNET**  
17 **STREET RIGHT OF WAY, AND 29.7 FT FROM THE CENTERLINE OF GARNET STREET; 5 GARNET STREET;**  
18 **ZONE VC W/ SHORELINE OVERLAY; ROYCE ENTERPRISES, LLC**

19 Travis Royce presented the merits of the case on behalf of the applicants. Vice Chair Simpson asked and  
20 Ms. Gage confirmed that there is a letter on file that permits Mr. Royce to speak on behalf of Royce  
21 Enterprises, LLC.

22 Mr. Royce explained that this is an existing building that pre-dates Zoning and the owners would like to  
23 modify the footprint slightly and move the building towards the north. The current building has a bump  
24 out and a wood deck going towards Garnet Street and the owners would like to change the building so it  
25 is just a rectangle. This change will allow the building to have less depth than it currently does so they  
26 will be improving the current setbacks; the improvement will be approximately 4 ft on the roadside and  
27 7 inches on the back side. The ridgeline of the proposed building will match the current building per a  
28 stipulation in the deed. They would like to move the building to allow space for a driveway as, currently,  
29 there is no driveway access. There was further discussion regarding the locations of the existing and  
30 proposed buildings.

31 Chairman Schneider asked and Mr. Royce said that the length of the proposed building is approximately  
32 2 ft longer than the existing building; the square footage of the current bump out will be added to the  
33 length of the building and the width is being reduced.

34 Mr. Platt asked and Mr. Royce said that the proposed structure is 4 ft further away from the road and 7  
35 inches further away from the back line because the building is becoming narrower. Chairman Schneider  
36 asked and it was confirmed that the structure will be slightly less non-conforming.

37 Chairman Schneider asked and none of the Board members had any questions for Mr. Royce.

38 June Fichter, Lake Sunapee Protective Association (LSPA), said that she spoke with Mr. Royce and they  
39 are fine with the proposal. They were concerned about the height but the proposal respects that  
40 requirement. Ms. Fichter asked what the use of the building will be and Mr. Royce explained that the  
41 property is currently used as retail and some office space that was used for the retail business. The  
42 owners are proposing having retail space and professional office space.

43 Chairman Schneider asked and Mr. Royce said that he has just submitted the Shoreland Permit  
44 application to DES. Chairman Schneider asked and Mr. Royce said that he has not applied for a driveway  
45 permit yet and he does not know if the owners have. The owners have spoke to the Highway Director  
46 and it sounds as though he is on board. Ms. Gage said that there has been a review of the proposed  
47 driveway by the Highway Director and the driveway will be reviewed at the Site Plan.

48 Chairman Schneider asked and Ms. Gage confirmed that the owners will need to do a Site Plan Review  
49 and the two proposed uses, retail and office space, are allowed in the Zone. Chairman Schneider asked  
50 and Ms. Gage explained that they are making changes to the site for parking, the deck, etc., and that will  
51 need to go to Site Plan.

52 Vice Chair Simpson asked and Mr. Royce confirmed that the proposed driveway will be on the southwest  
53 side of the building.

54 Vice Chair Simpson asked and Mr. Royce said that the current plan does not include a basement but the  
55 question did come up. Vice Chair Simpson said that a basement does not affect Zoning. Mr. Royce said  
56 that he would not be surprised if the owners decide they want to have a basement area for the utilities.  
57 Vice Chair Simpson said that a bulkhead might change the footprint and would not be approved. Mr.  
58 Royce asked and Vice Chair Simpson said that if they were to do a basement and have a bulkhead that  
59 met the setbacks it would not require Zoning approval.

60 Mr. Lyons asked if there are deed restrictions for drainage that affect the property or construction of a  
61 basement. Mr. Royce said that he is not aware of any; he saw a sewer line easement in a previous deed  
62 and believes that the sewer line is not in use anymore. Ms. Fichter said that she believes the drainage  
63 line is still in effect and is not sure how having a basement would affect it.

64 Chairman Schneider said that there are two conditions for an approval, a DES permit and a driveway  
65 permit. Vice Chair Schneider said that they will also need to put a condition on going to the Planning  
66 Board.

67 Vice Chair Simpson asked and Mr. Platt said that the impermeable area will be the same that it currently  
68 is. Mr. Royce said that the existing and proposed plan shows the calculations for the pervious and  
69 impervious areas.

Mr. Platt made a motion to approve the Variance for the rear setback and the Variance for the front setback per Article III, Section 3.10 to permit a commercial building 7 feet from the rear property line and 11 feet from the Garnet Street right of way, and 29.7 feet from the centerline of Garnet Street, Case #ZBA19-22 and 19-23; Parcel ID: 0133 Lot 26; conditional upon acquiring a Shoreland Permit from NH DES and all construction to proceed according to said permit and receiving Site Plan Review from the Sunapee Planning Board and to receive a driveway permit. Chairman Schneider closed the meeting to public comments. Mr. Lyons seconded the motion.

Vice Chair Simpson said that there are “pervious patios or decks” indicated on the plan. Ms. Gage said that the owners did say that they will just make them patios if they are areas of concern for the Board. Ms. Gage asked and Mr. Royce said that the decks are not in conforming areas. Mr. Royce said that the proposed patios / decks are on each ends of the building; the one to the south would have the same setback as the rear of the building and the one on the north lines up with the front of the building so neither would meet setback requirements.

Chairman Schneider reopened the meeting to public comments.

Vice Chair Simpson asked and Mr. Royce said that the retaining walls will be less than 42 inches. Chairman Schneider asked and Mr. Royce explained that there is an existing patio on the south side of the building and an existing deck towards the road; the proposed patios / decks will be in different locations. The patio to the north, though in a different location, would be an improvement. Chairman Schneider asked and Mr. Royce said that the patio / deck to the north is 126 square feet and the other patio / deck is 223 square feet; the patio to the south can just be a pervious patio. Mr. Platt said that the plan shows that they are pervious patios or decks but the impervious area calculations show “0” for decks and the pervious patio shows “1,402 square feet”. Mr. Royce said that if they are decks, they will need to get approved by DES as they will be impervious so it is more likely they will be patios. Vice Chair Simpson said if the Board does not know their dimensions, they cannot know what the total lot coverage is. Mr. Platt said that the Board must take Mr. Royce’s word as to what he put on the plan that he has signed. Mr. Lyons said that the motion should be amended to state that all the decks mentioned on the plan are going to be patios.

Mr. Platt made a motion to amend the motion to include that the areas shown as pervious patios or decks be installed as pervious patios as described in the proposed impervious area calculations. Mr. Lyons seconded the motion. The motion to amend passed unanimously.

Mr. Platt said that he thinks this proposal is fine as it is not very different from what is currently there; it just moves the building over and adds parking to the harbor. Vice Chair Simpson said that he is going to assume that the pervious walkways are calculated in the proposed area calculations. The lot coverage can be up to 80% but there is no clarification as to where the 1,402 square feet of impervious surface is calculated from. Mr. Platt said that the applicants are not requesting a Variance for the impervious area so it should not be part of the discussion.

The motion passed unanimously.

107 **CASE #ZBA 19-24: PARCEL ID: 0115-0038-0000: SPECIAL EXCEPTION, PER ARTICLE IV, SECTION 4.15, TO**  
108 **PERMIT A HOME-BASE DAYCARE IN THE RR DISTRICT; 57 NORTH SHORE RD; ZONED RR W/SHORELINE**  
109 **OVERLAY; AGNES H & JENNIFER SLAVIN**

110 Vice Chair Simpson recused himself from the case.

111 Mr. Lyons made a motion to approve Mr. Larrow as a voting member for the case. Mr. Platt seconded  
112 the motion. The motion passed unanimously.

113 Chairman Schneider said that after the Board members have had a chance to ask questions, he will open  
114 the floor to questions or comments but he requested that they be brief.

115 Jennifer Slavin presented the merits of the case. Ms. Slavin explained that she lives in the subject  
116 property with three other people. She has run Slavin's Haven Childcare Center in Sunapee for the last  
117 20 years and currently has seven children that she cares for. The new owners of the building she  
118 currently occupies want to take over the space for their business. She is proposing moving her day care  
119 to her house; her mother has always had children and raised eight children and they have also had  
120 foster children.

121 Ms. Slavin said that her house has a fenced in yard with a flat area for the children to play and they will  
122 be removing the current swing set. They will not have the children in front of the house as there is a hill  
123 that goes down to the pond.

124 Ms. Slavin explained the location of her house on North Shore Rd; they have a three-car garage and  
125 additional parking spaces and Ms. Slavin explained the parking spaces to the Board. There is a right of  
126 way that goes to their neighbors' houses and she has already informed parents that they cannot block it.  
127 Ms. Slavin explained a time that she blocked the right of way to the Board and gave further explanation  
128 of the areas of the property that will be used for the daycare.

129 Ms. Slavin said that they currently only have two full-day preschoolers and one half-day and the rest are  
130 after school care.

131 Ms. Slavin explained pictures of the parking spaces to the Board including where she took the pictures  
132 from.

133 Ms. Slavin gave a copy of her attendance records to the Board for their review and said that she will not  
134 exceed the seven to nine children that have been at the property in the past. Ms. Slavin explained all of  
135 the people and children who have lived in the house and said that she has custody of one child who she  
136 is in the process of adopting.

137 Ms. Slavin said that she has been doing childcare for over 20 years and have never had any injuries. At  
138 one point they had over 25 children and are now downsizing but want to still offer childcare for the  
139 residents of Sunapee. Ms. Slavin continued to explain the need for childcare in Sunapee to the Board.

140 Ms. Slavin said that the facility will be a licensed family childcare center, that will have State guidelines  
141 that must be followed. Chairman Schneider asked and Ms. Slavin said that they have not had a childcare  
142 facility at this location before. They started in 1999 at St. Joachim's Church and moved in 2011 to what  
143 was Pete's Shed and have been there since then. The current owners of the property has been wanting  
144 them to move out.

145 Chairman Schneider asked and Ms. Slavin said that the maximum number of children that they will have  
146 will be eight children, including her own child. Chairman Schneider asked and Ms. Slavin said that the  
147 children can be as old as 16. For licensing rules, none of the children will be allowed to leave the fenced  
148 in area. The older children are only cared for after school; the oldest child that she has had was 13 as  
149 most children stay alone after that age. Mr. Larrow asked and Ms. Slavin explained that there could be  
150 10 people in the house at one time as her sister goes to school and is not home until after 5:00 and most  
151 of the children will be gone before she gets home. Chairman Schneider asked and Ms. Slavin said that  
152 none of the children who are not related to her will be staying overnight.

153 Mr. Larrow asked and Ms. Slavin said that they have not taken in any more foster children since her and  
154 her mother started spending all day at the daycare. Mr. Larrow asked and Ms. Slavin said that their  
155 home was never used as a daycare, it was used for foster children and they were allowed up to six foster  
156 children and two emergency respites.

157 Ms. Slavin said that the children they will care for will be potty trained so they will not have diapers. The  
158 property is on Town Sewer and they are in the process of getting their artisan well water tested. They  
159 are currently using bottled water at their daycare because of the issues that the Town is having with the  
160 water as the State will not let them use it.

161 Mr. Larrow asked and Ms. Slavin said that the State Inspector has already done a quick inspection but  
162 will do another after all the paperwork is submitted.

163 Mr. Platt asked and Ms. Slavin said that her family only has one vehicle and her vehicle will be in the  
164 garage. Mr. Neuwirt said that on the submitted Tax Map he does not see the right of way that was  
165 mentioned and asked where it is located. Ms. Slavin showed the Board the location of the right of way.  
166 Mr. Platt asked and Ms. Slavin said that they will have three to four parking spaces available, however,  
167 they have never had more than two parents drop off or pick up at a time. Ms. Slavin continued that  
168 even when she was at the church and had 25 children the staff took up more parking spaces than  
169 parents; drop off is 6:30 am to 9:00 am and pick up is between 12:00 pm and 5:00 pm. Chairman  
170 Schneider asked and Ms. Slavin said that with eight children it will just be her and her mother; they  
171 currently do not have any outside staff.

172 Mr. Neuwirt asked if the Board should consider if the letter submitted by Ms. Slavin addresses the five  
173 Special Exception criteria because he does not see the criteria in the packet. Chairman Schneider said  
174 that the Board does have to address the criteria as the application does not specifically address them.  
175 Mr. Neuwirt asked if the applicant should go on record to answer each of the five questions and how the  
176 Board determines if each of the five criteria are met. Chairman Schneider said that he thinks it can be

177 done during the Board's deliberation. Mr. Platt suggested letting the public speak and then if the Board  
178 has specific concerns they can be addressed before the Board deliberates.

179 Chairman Schneider opened the hearing up to comments; due to the number of people present, he  
180 requested that comments be kept to one minute.

181 Robert Evans, 61 North Shore Rd, said that he is an abutter to the property and is concerned about noise  
182 from the daycare. The walls of the house and garage reflect a lot of the noise from the outside play area  
183 to their property. During the summer of 2019, there was a problem with the Slavin's septic pump and  
184 the alarm sounded approximately once per week. He and other abutters found this to be very  
185 disturbing but the Slavins did not seem to be aware of how disturbing the noise was. Consequently, he  
186 is not assured that the noise from the daycare will be controlled. He also does not know if the septic  
187 pump has been serviced since last summer and he is not sure if the pump is adequate for the proposed  
188 daycare. He cannot see where the proposed parking spaces are located but believes one will be located  
189 across the road, which is on a different parcel, and if they are using that as a parking area he questions if  
190 they properly notified all of the abutters. Chairman Schneider asked and Ms. Gage confirmed that the  
191 parking spaces will be addressed during the Site Plan Review process.

192 Matthew Mazgelis, 55 North Shore Rd, said that he is an abutter and is concerned about the noise. They  
193 purchased the property as a vacation home and plan on it being their retirement home. They are also  
194 concerned about the right of way because if the right of way is blocked and there is an emergency this  
195 would be a problem. The right of way is also for the house at Lot 36 and is the only way in and out of  
196 these two properties. North Shore Rd is a very small and winding access for emergency vehicles; two  
197 cars can pass each other in the summer if they are careful; however, in the winter, only one car can  
198 pass. He is concerned about the noise and the sewer and also his future plans. He worked hard to buy a  
199 retirement home and this is in a rural residential area on a pond. It already gets loud in the evening with  
200 the Slavin's dog barking. This is not what he paid for and not what he was hoping to retire to.

201 Ann VanTine, 61 North Shore Rd, said that she is concerned about the increased traffic on North Shore  
202 Rd. The road is a one car wide road that goes around curves and up and down hills and you cannot see  
203 when someone is coming at you and there is no place to get off the road if you meet a car. The daycare  
204 will increase the traffic for everyone on the road. She is also concerned about the parking and about the  
205 noise. She believes that the Slavins are excellent daycare providers but she questions if this is the right  
206 place for a daycare. There will be noise from vehicles arriving and leaving; there will also be noise from  
207 the tires and car doors and people talking and then the normal sounds of children playing, which is great  
208 when people come for a few hours to visit but this will be 6:30 am to 5:00 pm.

209 Sue Fernald, 10 Paradise Rd, said that she is a grandparent who has custody of three of the children who  
210 attend Slavin's Haven. The children love being with Ms. Slavin and her mother and have been going to  
211 them for approximately a year. In this past year, she has only met another parent for drop off  
212 approximately five times and her husband, who does pick up, runs into the same situation. There are  
213 not many daycares in Sunapee and there are not many afterschool options either. Ms. Fernald  
214 continued to explain her reasons for supporting the proposal.

215 Bill Sinatra, 11 North Shore Rd, said that they are quite a distance from this home but they walk this  
216 road a lot and there are two vans that come down the road in the morning very fast. They have five  
217 grandchildren who visit them at their vacation home and they have to make sure do not go into the  
218 roadway. He put a big red sign that says "watch for children, they may be yours" and the two vans still  
219 speed.

220 Russell Olson, 17 North Shore Rd, said that traffic concerns seem to be an ongoing issue and he thinks  
221 that the Board needs to try and protect the people in the neighborhood when they take something like  
222 this into consideration.

223 Domenic Tripoli, 21 North Shore Rd, said that he agrees with everyone who is against having the daycare  
224 center at this proposed location. It is not about the daycare center; it is about the residency of their  
225 properties.

226 Patricia Halpin, 39 North Rd, said that both of her sons went to Slavin's Haven for a total of about four  
227 years and they moved them to Slavin's because it was superior to the care that they were getting at  
228 another daycare. Ms. Halpin continued to explain her reasons for supporting Ms. Slavin.

229 Lucy Hampson, 7 Brandywine Drive, said that she wanted to speak about the character of Ms. Slavin and  
230 her mother and while they were at St. Joachims they were respectful of the rules of the church and any  
231 issues that came up they did everything they could to make it work.

232 Diane Sinatra, 11 North Shore Rd, said that she does not think anyone is questioning the fact that the  
233 Slavins are great daycare providers; they are questioning the location. The road is narrow and winding  
234 and you cannot have two cars going in opposite directions on the road. The property is also right on the  
235 water and, even with a fence, the children can get out. They do not believe that it is the right location  
236 for a daycare.

237 Susan Day, 17 North Shore Rd, said that a few years ago they lost a child in the pond and do not want to  
238 lose another child. She thinks that the Slavins drive too fast and have been asked to slow down and do  
239 not. She also had her dog hit and no one stopped. She does not think that this is the right spot to have  
240 a daycare.

241 Chairman Schneider said that the Board has received numerous letters from the clients of the Slavin's  
242 Haven who have written in favor of the application because they have been pleased with the services  
243 provided. The Board received letters in opposition of the proposal from Mr. Mazgelis; Leah O'Rourke, 4  
244 North Shore Rd; and Robert Dressel, 53 North Shore Rd.

245 Ms. Slavin said that beginning in 1999 they were at St. Joachims and the playground was not attached to  
246 the building and there were roads on either side. They had to walk around the building with 25 children  
247 and four staff around the building and through the parking lot to go to the playground. In 2011, they  
248 moved to their current location and they abut the river. To get to their playground they must go across  
249 the river on the bridge and across the grassy area to their fenced in playground. They have always taken  
250 precautions when dealing with the roads and water and Ms. Slavin explained these precautions to the

251 Board. Ms. Slavin continued that the children will be inside the building except for when they are  
252 dropped off and picked up and for outside playtime and the playground will be directly attached to the  
253 building.

254 Ms. Slavin said that the alarm that was discussed had an issue and it was fixed five different times and  
255 there was nothing wrong with the sewer pump; the alarm system has since been fixed.

256 Mr. Lyons asked and one of the abutters said that the speeding vans belong to the Slavin's. Ms. Slavin  
257 said that they only own one car and have only owned one car for the past three or four years; they did  
258 own a white van as well but it was totaled when it was parked in the Riverway parking lot.

259 Chairman Schneider said that the Board is not accepting any further comments regarding the case.

260 Mr. Platt asked if it feasible to have all the access going from the point of Perkins Pond Rd that is closest  
261 to the Slavins so instead of coming out of their property and taking a right, they would only be able to  
262 take a left. Ms. Slavin said that she thinks that she can tell all the parents to go to the second entrance  
263 of North Shore Rd from Perkins Pond Rd. Ms. Fernald said that she would not have a problem with it  
264 and she has three out of the seven children.

265 Chairman Schneider asked and there were no additional questions or comments from the Board so he  
266 closed the meeting to public comments.

267 Chairman Schneider said that the application is for a Special Exception and the following criteria must be  
268 met: (1) that the selected site is an appropriate location for the proposed use; (2) that adequate and  
269 safe highway access is provided to the proposed site and that there is adequate off-street parking  
270 provided for the proposed use; (3) that adequate method of sewage disposal are available at the  
271 proposed site; (4) that the proposal will not be detrimental, hazardous, or injurious to the  
272 neighborhood; and (5) that the proposed use is consistent with the spirit of the Ordinance and the  
273 intent of the Master Plan. Chairman Schneider continued that an approval for a Special Exception goes  
274 with the property, not just the owners; therefore, if the Slavins sell the property, the Special Exception  
275 use would still apply to the property.

276 Mr. Larrow asked about the Peer Review and if any of the Department Heads had any comments about  
277 traffic, location, safety, parking, etc. Ms. Gage said that the Police Chief and Highway Director were  
278 both concerned about parking and wanted to ensure that it is off the road; other than that they had no  
279 concerns.

280 Chairman Schneider asked if the Board thinks that the location is appropriate for the proposed use.

281 Mr. Larrow said that looking at the criteria it is a little sketchy to say this is a great location based on  
282 traffic, the narrow road, etc. He thinks that the proposal that Mr. Platt made regarding using the road  
283 seems to rectify some of these issues.

284 Mr. Neuwirt requested and Chairman Schneider agreed to open the meeting back up to public input.

285 Mr. Neuwirt asked the audience if there is a stipulation that traffic only comes off Perkins Pond Rd in the

286 entrance closest to the property if it appeases anyone. The abutters said that it would not. One of the  
287 abutters said that there are retired people in the area. Mr. Larrow said that the Board is talking about  
288 the traffic and safety aspect only. Chairman Schneider said that Mr. Larrow is talking about criterion #2  
289 and he would like to stick to #1. Mr. Neuwirt asked and no one in the audience from the neighborhood  
290 said that they felt that this was something that would appease them. Chairman Schneider closed the  
291 meeting to public comments.

292 Chairman Schneider asked if the Board feels as though the proposal meets the first criterion that the  
293 selected site is an appropriate location for the proposed use. Mr. Platt said that he is most concerned  
294 about the parking and traffic.

295 Chairman Schneider thinks that the daycare is something that should be left up to the State Inspectors.

296 Mr. Lyons said that the houses are quite densely packed in and even though it is mostly a seasonal  
297 community, more people are purchasing seasonal properties to live year-round, especially for  
298 retirement. He is concerned about the noise because the houses are close and this would be five days  
299 per week, 12 hours per day. Chairman Schneider said that Mr. Lyons concerns would be better  
300 addressed during the discussion for criterion #4.

301 Chairman Schneider said that the Board can discuss criterion #2 and asked Mr. Platt how his proposal  
302 would be enforced.

303 Mr. Neuwirt said that he has a job site on Burma Rd and counted the cars today and there were eight.  
304 He has another job site on Fernwood Point, which is a very narrow road, and there were six. These  
305 construction projects can go for eight or more months. It is hard to gauge the activity at a business  
306 compared to having construction projects with numerous cars going back and forth. It is a struggle to  
307 rationalize this business in this environment when there could be equal arguments for or against it. Mr.  
308 Platt agreed with Mr. Neuwirt.

309 Mr. Platt said that it does not sound like there are many trips in the morning or afternoon. Ms. Slavin  
310 said that it is two trips in the morning. Chairman Schneider said that the meeting is closed to public  
311 comments. Mr. Platt said that they are not talking about a lot of traffic, relatively speaking. Mr. Neuwirt  
312 said that on that road there are four houses undergoing construction and probably 20 cars per day on  
313 the road and the road is only wide enough for a single car in some places. Mr. Platt said that, relative to  
314 construction jobs, there will not be many more cars. Mr. Platt said that for the enforcement the  
315 neighbors could go to Ms. Gage with complaint and Ms. Gage would need to inform Ms. Slavin that she  
316 is at risk of losing her Zoning approval.

317 Mr. Neuwirt said that it is difficult to hear the neighbors having a problem with the proposal as they are  
318 the ones that carry the most amount of weight, in his opinion. The neighbors are not opposed to the  
319 business but are opposed to the logistical use of Ms. Slavin's property in relation to their use of their  
320 properties and in many ways they have valid points.

321 Chairman Schneider said that regarding criterion #3 there is an adequate method of sewage disposal are  
322 available at the proposed site there is Town sewer on site.

323 Chairman Schneider said that criterion #4 is that the proposal will not be detrimental, hazardous, or  
324 injurious to the neighborhood and there are a lot of people at the meeting who think that it will be.  
325 There are a number of glowing reports on the Slavin's operations at other locations and people who  
326 would like them to stay in business. However, anything that is approved will stay with the building, even  
327 in the Slavin's sell it. Mr. Platt said that someone could buy the house and not want a daycare.  
328 Chairman Schneider agreed but said that new owners could have one if they wanted to. Mr. Lyons said  
329 that new owners would also not need to have a Site Plan Review if they were doing a daycare.  
330 Chairman Schneider said that other people may not be as conscientious as the Slavins and the Board  
331 would be imposing something where the neighbors have a valid concern. It is up to the Board to decide  
332 if the neighbors' concerns are valid but he thinks that they are.

333 Mr. Lyons said that criterion #4 looks at if the proposal is detrimental or hazardous to the neighborhood.  
334 He thinks that the detriment is the noise, which he already spoke about. Additionally, if there are a  
335 number of retirees then number of medical conditions on the road is only going to get worse as people  
336 who are older have more diseases and need ambulances. He was on the road and he would be hard  
337 pressed to get an ambulance down the road. He also had trouble parking and regarding the Police Chief  
338 saying not to park on the road, any parking on the road would block it. Mr. Lyons continued that he has  
339 some concerns about hazards being placed on the neighbors with this business with the increase in  
340 traffic.

341 Chairman Schneider said that criterion #5 is that the proposed use is consistent with the spirit of the  
342 Ordinance and the intent of the Master Plan. Mr. Platt said that he thinks that the Board is going to help  
343 small businesses in the community and that is consistent with the Master Plan. Chairman Schneider said  
344 that people in service perform a service to the community but it is a question as to whether or not it is  
345 appropriate to have a daycare at this location and if other people would be as conscientious. Mr. Platt  
346 said that they would still need to operate under the same Site Plan.

347 Chairman Schneider asked and there were no additional comments from the Board regarding the case.

348 Mr. Platt made a motion to approve the Special Exception, per Article IV, Section 4.15, to permit a home  
349 daycare in the Rural Residential District; 57 North Shore Rd; Agnes H and Jennifer Slavin; Parcel ID: 0115-  
350 0038-0000; Case #19-24; with the conditions that there be no parking on the street and all access to the  
351 property for daycare and residential uses will be +/- 200 feet to the northerly entrance of Perkins Pond  
352 Rd. and to comply with all State regulations and Site Plan Review. The motion passed with three in favor  
353 and two opposed (Chairman Schneider and Mr. Lyons).

354 Chairman Schneider said that he voted against the proposal because he does feel as though the  
355 proposal will be detrimental, hazardous, or injurious to the neighborhood.

356 Mr. Lyons said that he does not think that the proposal is an appropriate site as it does not have safe  
357 access and that the proposal is detrimental and hazardous to the neighborhood.

358 **REQUEST FOR REHEARING FOR ZBA CASE #19-21**

359 Chairman Schneider explained that the Board heard this case in November and received a letter from  
360 the applicant's attorney requesting a rehearing. Chairman Schneider read part of the letter including  
361 the reasons for the request for the rehearing (see file).

362 Chairman Schneider said that he does not think that the Board should consider a rehearing. The  
363 applicant's attorney was not present at the meeting and he thinks that the Board had a good discussion  
364 regarding all six of the requests. He thinks that the Board had to think about each Variance request  
365 individually as well as the cumulative effect of each Variance.

366 Chairman Schneider said that Vice Chair Simpson has rejoined the Board and Mr. Larrow will not be a  
367 voting member to consider the rehearing.

368 Chairman Schneider said that he thinks that the Board did have a good discussion and there was a  
369 reasonable outcome. Some people may have been on the majority side and some may have been on  
370 the minority side for some of the Variances so he thinks that there was a complete, reasonable, and  
371 lengthy discussion regarding this case. He and Ms. Gage spoke about the fact that he did not pole the  
372 Board members for their reasons that they voted to deny the Variances. The attorney said that the  
373 Board did not properly apply the hardship criteria, however, he must have felt as though the Board did  
374 properly apply it for the Variances that were approved.

375 Chairman Schneider said that the applicant's attorney requested a rehearing on the three specific  
376 Variance requests that were denied by the Board and he does not think that the Board can or should  
377 only hold a rehearing for the denied Variances; if the Board is going to hold a rehearing it should be as  
378 though the original hearing never happened. Ms. Gage said that she can speak to the Town's attorney  
379 because the specific request for rehearing is for the denials. Mr. Larrow asked and Ms. Gage said that  
380 the Town's attorney has not reviewed this request. Vice Chair Simpson said that he thinks that the  
381 request is only for what was denied. Chairman Schneider said that his point is that the entire case had  
382 six Variances. Vice Chair Simpson said that three of the Variances failed and he does not think that the  
383 Board can expand on the request as each application is its own case. Mr. Platt said that the Board  
384 cannot revoke the Variances that were approved. Chairman Schneider said that he thinks that a request  
385 for a rehearing means that the Board would hear the whole case again. Vice Chair Simpson said that  
386 this is why he has recommended that each Variance application have independent applications. Vice  
387 Chair Simpson asked if there were six separate Variance applications and six separate fees paid as there  
388 were not separate docket numbers. Ms. Gage said that she believes that there were but she did consult  
389 with someone at NHMA about listing everything under one case and was told it is not uncommon if it is  
390 one project. Vice Chair Simpson asked if it is one request or six requests. Chairman Schneider said that  
391 it is one project that required six Variances. Ms. Gage said that she is suggesting that if the Board agrees  
392 to grant the rehearing that they may want to get advice from the Town's attorney regarding this matter.

393 Mr. Platt said that the applicants have submitted new information, which he is not sure is appropriate.

394 Vice Chair Simpson said that the attorney may be correct that all of the criteria was not addressed  
395 specifically. He just saw the Board not vote on each of the criteria for the Special Exception one at a  
396 time and he thinks that the Board should start to do this. There was further discussion regarding this  
397 issue.

398 Mr. Larrow said that he does not think that someone saying that the Board did not follow the rules the  
399 way that they think they should have is a good reason for a rehearing. Chairman Schneider said that a  
400 rehearing can be requested for technical reasons. Mr. Lyons asked how the applicants can have it both  
401 ways because if the Board did a bad job then it affects what was approved as well as what was denied.  
402 Mr. Larrow said that he does not see the point of this. Chairman Schneider said that the applicant's  
403 attorney said that the Board did not address the criteria and said that they did not correctly apply the  
404 hardship. Mr. Larrow said that the attorney cannot have it both ways. Mr. Lyons said that the minutes  
405 make it clear that consideration was given to all the criteria; while it was not formally put down, there  
406 were six Variances for one building. Chairman Schneider said that he does not know if a proposal that  
407 requires six Variances meets the Spirit of the Ordinance. Mr. Larrow said that a rehearing means that  
408 there is new evidence that can change the Board's mind. Mr. Lyons said that was not said; the reason  
409 for the rehearing request was that the Board erred.

410 Chairman Schneider said that there is a possibility that the applicants take this further and the Board  
411 needs to consider that. Mr. Platt asked if the Board is under a time constraint for the Board to decide.  
412 Vice Chair Simpson read the law regarding this matter to the Board and said that the Board can suspend  
413 their decision in order to get more information from the Town's attorney. Mr. Neuwirt asked and Vice  
414 Chair Simpson explained that the advice the Board can get from the Town's attorney is if the Board can  
415 hear only the three Variances that were denied or if they need to hear the whole case. The Board does  
416 not need to do this if they want to vote to deny the reconsideration for rehearing. Mr. Neuwirt said that  
417 he does not know why the Board is having a discussion as to whether or not they have to have a hearing  
418 regarding the three Variances that were approved. Chairman Schneider said that a rehearing means the  
419 Board has to hear the entire case. Mr. Neuwirt asked if the Board would vote on Variances that have  
420 already been approved. Chairman Schneider said that they would because it would be a rehearing. Mr.  
421 Neuwirt asked if this means that the Board would be able to revoke the Variances that have been  
422 approved. Vice Chair Simpson said that this is something that the Town's attorney needs to advise on.  
423 Chairman Schneider said that his opinion is that if the Board rehears the case it would be for the whole  
424 case. Mr. Neuwirt said that his opinion is that having a rehearing for the three Variances that have been  
425 approved is being petty.

426 Chairman Schneider said that several people said that they were concerned with some of the individual  
427 Variances as well as the cumulative effect of all of the Variances and he thinks that the Board needs to  
428 think about all of the individual decisions together. Mr. Platt said that he thinks that the cumulative  
429 effect would still be considered as the applicant already has three Variances approved and now wants  
430 three more and that pushes the issue of reasonable beyond what is appropriate. Mr. Lyons said that he  
431 cannot get around the inconsistency, either the Board did a bad job or they did not. If they did a bad  
432 job, then the Board should review the requests for Variances that were passed. Mr. Platt said that he is  
433 not sure that the Board has the authority to do that. Mr. Lyons said that the request is to review the

434 Variances that were denied on the basis that the Board did a bad job and they either did a bad job or  
435 they did not but he thinks that the Town's attorney needs to be asked. Mr. Platt agreed that if the  
436 Board plans on approving the request then the Town's attorney should be consulted. Mr. Larrow said  
437 that the Board needs to determine if they are convinced that they need to hold a rehearing.

438 Mr. Neuwirt said that he does not think that the approved Variances are the issue and the deliberative  
439 process that the Board used to reach their decisions is not something that they can get hung up over.  
440 The Board needs to determine if the attorney's argument regarding the three Variances that were  
441 denied has merit, irrespective of the three Variances that passed and the process that the Board went  
442 through to pass those. The Board is taking this personally and they need to look at if the attorney has an  
443 argument that the three Variances that were denied were flawed. Vice Chair Simpson said that he was  
444 not at the meeting but read the minutes of the meeting. Mr. Larrow said that he was also not there but  
445 the attorney is saying that the Chair did not do something, however, this does not mean that the  
446 decision was wrong. Chairman Schneider said that he thinks that the Board reached a reasonable  
447 decision. Vice Chair Simpson said that the whole process is to provide the applicants with due process  
448 and if they can establish that their rights were deprived, they can appeal based upon that. Chairman  
449 Schneider asked Vice Chair Simpson if the applicants should get a rehearing. Mr. Neuwirt asked if Vice  
450 Chair Simpson feels as though the attorney has provided enough technical violations for the Board to  
451 agree. Vice Chair Simpson said that having read the minutes he does not feel as though he can vote for  
452 a rehearing. He does agree with Ms. Gage's comment regarding that the denials for these cases were  
453 not clear and the five criteria should be discussed and a decision should be clear with the reasons that  
454 something is denied. Vice Chair Simpson continued to discuss his thoughts regarding this matter  
455 including the need for a cheat sheet.

456 Ms. Gage said that one of the problems is that the minute taker is trying to pull the reasons for denial  
457 from the minutes and she has said that it has been a challenge.

458 There was further discussion regarding the five Variance criteria and the different perspectives of the  
459 Board members.

460 Vice Chair Simpson made a motion to deny the request for a rehearing. Mr. Lyons seconded the motion.  
461 Chairman Schneider said that he prefers that the Board considers everything before this case is possibly  
462 taken further as he thinks that the attorney has a point about the process; not about the discussion  
463 process but about the reasons for denial. Mr. Platt said that a new hearing would provide an  
464 opportunity to dot the I's and cross the t's. Mr. Lyons said that he would like to touch base with the  
465 Town's attorney about the scope of the rehearing. Vice Chair Simpson said that he thinks that the  
466 decision would have to be suspended in order to talk with the Town's attorney. Mr. Lyons said that he  
467 does not want to have a rehearing without checking with the Town's attorney. There was further  
468 discussion regarding this matter and hardship. The motion passed with three in favor and two opposed  
469 (Chairman Schneider and Mr. Neuwirt).

470 **RULES OF PROCEDURE**

471 The Board briefly discussed the proposed changes to the Rules of Procedure and agreed to discuss them  
472 at the next meeting.

473 **MISCELLANEOUS**

474 Ms. Gage asked and the Board confirmed that they would like her to order them copies of the updated  
475 State Handbook.

476 Ms. Gage said that in the 2018 Handbook there is reference to three votes being needed for any vote  
477 and they recommend that if a motion fails that a new motion be created to vote the other way. She has  
478 asked a few different people and everyone has a different opinion. There was further discussion  
479 regarding this matter.

480 Ms. Gage explained some proposed legislative changes to the Board.

481 Chairman Schneider requested that the members of the Board who voted to deny the rehearing state  
482 their reasons. Mr. Lyons said that he voted to deny the rehearing because he felt as though looking at  
483 the transcript at its entirety, the Board appropriately addressed all five requirements for a Variance.  
484 Vice Chairman Simpson and Mr. Platt agreed with Mr. Lyons.

485 Mr. Neuwirt said that one thing that he has noticed is that when Board members are talking about the  
486 cases during closed sessions they look at the applicants, who then want to respond, and suggested that  
487 all comments be directed at the Chairman.

488 Mr. Platt made a motion to adjourn the meeting at 9:14 pm. Vice Chair Simpson seconded the motion.  
489 The motion passed unanimously.

490 Respectfully submitted,

491 Melissa Pollari