

1 **TOWN OF SUNAPEE**

2 **ZONING BOARD**

3 **JULY 6, 2023**

4 **Chairman Claus called the meeting to order at 6:34 PM.**

5 **MEMBERS PRESENT IN THE MEETING ROOM:** David Munn, David Andrews, Jeff Claus - Chairman, Jamie
6 Silverstein, Michael Jewczyn, Pierre Lessard, Jim Lyons.

7 **MEMBERS PRESENT VIA ZOOM:** None.

8 **ALSO PRESENT IN THE MEETING ROOM:** Michael Marquise - Town Planner, Allyson Traeger - Land Use
9 and Assessing Coordinator, Cordell Johnston - legal counsel.

10 **PRESENT VIA ZOOM:** None.

11 **CONTINUED CASES**

12 **CASE # SE 23-02 PARCEL ID: 0118-0051-0000 SEEKING APPROVAL OF A SPECIAL EXCEPTION FROM**
13 **ARTICLE III, SECTION 3.50(L) FOR THE RELOCATION OF AN EXISTING DECK WITHIN THE 50-FOOT**
14 **WATERFRONT BUFFER. DANIEL CAVE, 90 BURMA ROAD.**

15 The representatives of the applicant gave a brief intro of the case for which last year, the Board received
16 two variances and a special exception to allow the construction of a new single-family dwelling on the
17 property. The client now proposes to relocate the deck to provide more privacy to themselves and their
18 neighbor, based on the land of the new home and as shown on the updated plans. The current deck is
19 entirely within the 50-foot lakefront setback, but the proposed deck will only be partially within it and
20 will be pulled entirely outside the side setback. The applicant has requested a special exception from the
21 zoning ordinance to allow this change. In June the criteria and the plan were discussed, but at the last
22 meeting the Board didn't feel that there was enough information related to two specific criteria. The
23 proposed structure must be equal to or less horizontal square footage than the existing structure. A
24 revised erosion control and drainage plan which shows the location of the new deck was presented for
25 which they also provided drawings. As part of the changes, a stone landscape feature with two stone
26 steps to grade has been added at the bottom of the deck. This was done in addition to other
27 modifications such as redesigning the stairway and reducing the elevation of the deck to reduce some
28 horizontal square footage. The representative mentioned that they have submitted additional
29 information and believe they have satisfied the criteria and asked the Board to grant a special exception.

30 **Mr. Claus made a motion to approve Case # SE 23-02 parcel ID: 0118-0051-0000 seeking approval of a**
31 **special exception from Article III, Section 3.50(l) for the relocation of an existing deck within the 50-**
32 **foot waterfront buffer with the reviewed changes.**

33 **Seconded by Ms. Silverstein.**

34 **The motion passed unanimously.**

35

CASE # VA 23-04 PARCEL ID: 0136-0038-0000 SEEKING APPROVAL OF A VARIANCE FROM ARTICLE III, SECTION 3.40(c) FOR THE REPLACEMENT OF AN EXISTING NONCONFORMING DECK WITH A NEW DECK, WITH A SMALL MODIFICATION TO THE FOOTPRINT, ELIZABETH & STEPHEN FOLEY, 84 BIRCH POINT RD.

Lisa Foley, the applicant, stated that they completed the renovation of their 70-plus-year-old home a few years earlier, deliberately choosing not to tear it down and instead focusing their efforts on preserving its charm and character as well as the natural beauty of its place on the existing shoreline of Lake Sunapee. They presently have a non-conforming deck that needs to be rebuilt due to safety concerns, and they came forward to request approval to rebuild it the right way and the honest way. The request proposes reducing a non-conforming catwalk by 4 inches for a total net square foot reduction of 14.5 square feet and moving a non-conforming staircase back away from the water by 10 feet 3 inches while keeping the overall square footage the exact same.

Chairman Claus asked whether they satisfy the 5 criteria since it is the obligation prior to approval of the variance, from Article III, Section 3.4.0(c).

A discussion between the members of the Board and the applicant regarding the criteria and what needs to be fulfilled. It was emphasized by the applicant that these criteria are very confusing, and efforts should be made to be more understandable by the citizens.

Sensing that this case would not have a proper ending in terms of approval, the applicant was given the option to withdraw from the process. After it was explained that the procedure of withdrawal does allow the applicant to revisit the Board with this case, the applicant decided to continue with the case.

Chairman Claus made a motion to deny Case # VA 23-04 parcel ID: 0136-0038-0000 seeking approval of a variance from Article IV, Section 6.12 for the replacement of an existing nonconforming deck with a new deck, with a small modification to the footprint.

Seconded by Ms. Silverstein.

The motion passed unanimously.

NEW CASES:

CASE # VA 23-06 PARCEL ID: 0112-0014-0000 SEEKING APPROVAL OF A VARIANCE FROM ARTICLE III, SECTION 3.10 TO PERMIT THE CONSTRUCTION OF AN ADDITIONAL DWELLING UNIT OVER NEW GARAGE FOR A TOTAL OF 2 DWELLING UNITS ON AN APPROXIMATELY 0.98-ACRE LOT, WHERE THE ZONING ORDINANCE ALLOWS A MAXIMUM OF 1 DWELLING UNIT PER 1.5 ACRES IN THE RR DISTRICT, BRUCE W. FERGUSON, 56 WOODLAND RD.

Before the introduction of the case, Chairman Claus announced that Mr. Lyons had recused himself from the case. He appointed Mr. Andrews as an acting member for the case.

At the beginning, Chairman Claus wanted to make sure that everything was aligned with the requested info from the Board and the submitted proposal.

For this case, the representative for the applicant Bruce Ferguson explained that the original plan was for a dwelling unit, but it has since been revised because there is no kitchen or cooking facilities. The proposal to put two dwelling units is not allowed, and a suggestion was made to add a bedroom to the

garage instead. During the variance application process, the Board initially said that a variance was not needed, but Mr. Hazelton later decided that it was still required. The proposal was initially considered a second dwelling on the property, which is not allowed under the ordinance. However, they changed the plan and now it no longer meets the definition of a dwelling unit, so they do not need a variance and are conforming to the ordinance. The variance request was made because the administrative person guided them incorrectly, but the plans that required the variance were changed afterward.

Chairman Claus discussed with the Board whether a motion is needed if the Board has decided that, based on the plans and the zoning ordinance, there is no variance required, and then the case could be considered moot.

Ms. Silverstein made a motion for Case # VA 23-06 Parcel ID: 0112-0014-0000 Seeking approval of a Variance from Article III, Section 3.10 to permit the construction of an accessory dwelling unit over a new garage for a total of 2 dwelling units on the 0.98-acre lot, where the Zoning Ordinance allows a maximum of 1 dwelling unit per 1.5 acres in the rural residential district, on behalf of Bruce Ferguson family irrevocable press, that the Board finds that they do not need a variance based on the final plan submitted with the application dated 4/12/2023.

Seconded by Chairman Claus.

The motion passed unanimously.

CASE # VA 23-07 PARCEL ID: 0121-0042-00000 SEEKING APPROVAL OF VARIANCES FROM (A) ARTICLE III, SECTION 3.10 TO PERMIT RECONSTRUCTION OF A RESIDENCE WITHIN THE SIDE AND REAR SETBACKS; (B) ARTICLE III, SECTION 3.10 TO PERMIT ~28.25 SQ. FT. OF THE PROJECTED ROOF AREA WITHIN THE REDUCED SETBACK TO EXCEED A HEIGHT OF 25 FEET; AND (C) SECTION 3.40(C) TO PERMIT THE RECONSTRUCTION OF THE RESIDENCE WITHIN THE 50-FOOT WATERFRONT SETBACK.

Chairman Claus made an introduction to the case, which is seeking approval of three variances from Article III, Section 3.10 to permit reconstruction of a residence within the side and rear setbacks; Section 3.10 to permit approximately 28.25 square feet of the projected roof area within the reduced setback to exceed a height of 25 feet; Section 3.40 to permit the reconstruction of the residence within the 50-foot waterfront setback.

The applicant's representatives, Architect Jeremy Bonin and Attorney Jeffrey Christensen, started with their case, stating that the project shares similarities in size and scope with previous cases presented to the Board. Notably, due to slight changes in the ordinance since past projects, the case is being reviewed under a different framework. The existing building's most non-conforming aspect lies within the side setback to the abutter. The proposal is to replace this non-conforming structure with a new one that reduces its non-conformity. Additionally, the project will enhance vegetation by re-vegetating a portion of the lot, increasing conformity by approximately 580 sq. ft. The impervious area will remain within 1% of its current level, around 38-39% of the lot. The new construction will serve as the primary residence for the property's two residents, not for summer use or rentals.

The proposed building's location is still relatively close to the property line but positioned farther away from the water. Variance is sought from three sections of the ordinance. The design aims to balance shoreline setbacks, property shape, and side setbacks. The three variances needed are from Section 3.10 for building within the side setback, Section 3.10 for the height of the proposed building, and Section

3.40(c) to build within the 50-foot setback of the waterbody. Building height is limited to 25 feet due to the lot's non-conformity, in contrast to the standard 40-foot limit. The property's use will remain single-family, and the total area within the side setbacks will diminish. The design has been a balancing act of trying to compromise between the shoreline setback and the wedge shape of the property and the side setbacks.

The representatives stated that the written application covers all five elements of the variance, and the proposal is a reasonable use that will not change the essential character of the neighborhood. It was emphasized that the property will not be converted into multiple residences and that the environmental concerns will be addressed through the shoreland process with NH DES, ensuring that there will be no safety risks or impact to emergency vehicle access. The distance from other buildings with the western neighbor is also sufficient to ensure there are no health and safety issues. The representative highlighted that the overall non-conformity decreases with respect to the square footage within the side setback and waterbody setback.

The Board reviewed the height within the reduced side setback to clarify the maximum height of the areas requiring the variance. The representatives answered that the maximum height of the building would be 33 feet, but that is not in the setback area. The height of the building within the side setback would be 27 to 28 feet, or 2-3 feet above the maximum allowed. The representatives also explained that the Board can grant a special exception to increase the height of the existing house by up to 10 feet if the existing house is 24 feet or less; so if the current house were 24 feet tall, the Board could grant a special exception to increase it to 34 feet, but since the current height is only 17 feet, a variance is needed to exceed the 25-foot height limit. They stated that once the new house is built, it shouldn't matter to the neighbors how tall the old house was; so if replacing a 24-foot-tall building with a 34-foot tall building would be reasonable for purposes of a special exception, replacing a 17-foot tall building with a 34-foot-tall building should be reasonable for the variance. They further explained that the slope and grade of the lot pose challenges to reducing this height any further.

Mr. Christensen explained that the applicant does not need to prove that a variance is necessary to enable the property to be used; rather, if the proposed use is reasonable and does not create certain harms, the variance should be granted.

Chairman Claus asked about special conditions that distinguish the property from other properties in the area, and said there are several properties of similar or smaller size. Mr. Christensen said there were several conditions and said uniqueness does not mean it's the only one in the district; there may be other similar properties, as long as it's not common throughout the district. He mentioned the size and the wedge shape of the lot and that it is next to a larger lot and with a building that is significantly set back; there is plenty of space between the two buildings, and that is part of what creates the special conditions. There may be half a dozen small, wedge-shaped lots in the area, but that condition is not shared by all the lots in the district. He said that having a large lot next door is a condition that is not shared by any of the lots to the east, and that is one of the conditions that make this property unique.

Ms. Silverstein she had trouble accepting that there are special conditions just because there is a larger lot next door.

Mr. Bonin said the new building would be outside the footprint of the old building, but in a less non-conforming manner, and the board has approved similar variances.

Chairman Claus said that addresses some of the variance criteria, but that the board was having trouble seeing what was unique about this property. Mr. Christensen said that special conditions don't always have to be detrimental conditions; for example, if a lot is unusually large, that can be a special condition. Ms. Silverstein said she had trouble accepting that the larger lot next door is a special condition of this property. Mr. Bonin said the size of the property is unique within the Rural Residential district if you average the size of all the properties within the district. He said the courts have defined "area" as the entire zoning district, and this lot is smaller than the average size of other properties in the district.

There was further discussion about the special conditions of the property.

Mr. Christensen continued that the proposal is a reasonable use of the property without imposing harm to any surrounding properties, and the zoning ordinance prevents reasonable use of the property. The Board expressed concern that this lot was not unique in comparison to multiple lots in the area and does not present special conditions prohibiting it from being used. Mr. Christensen said the property does not have to be unique, just unusual, and the conditions described are preventing the house from being built. Mr. Christensen stated that the proposal reduces the nonconformity within the setbacks and 15-foot side setbacks with few modifications, resulting in an improvement in non-conformity compared to the existing home. The project will reduce the non-conformity of the property in the side setback by approximately 55 square feet and in the shoreland setback by 50 to 75 square feet.

The Board questioned the post-construction impervious area was 31.5%, and the maximum percentage for rural residential properties on the shoreline is 25%, which indicates that a variance would be required for any percentage above 25%.

An abutter, Kathryn Nichol, owner of the larger lot to the west of the property, voiced concerns regarding the proposal. She highlighted that the reduction of nonconformity of 55 square feet did not seem to justify the variance request, referencing surrounding properties that had not required variances for similar projects. Ms. Nichols felt that the proposal ignored the spirit of the ordinance and that the threat this proposal would have to the health of the lake would directly affect all lakefront property owners of the town.

An abutter, Brad Nichol, raised his concern that the application references a reduction in non-conforming square footage. He pointed out that although there is a 55-square-foot reduction in the square footage, the increase in building height, from 17 feet to 27-28 feet, would increase the cubic footage within the reduced side setback, "and that's putting a lot of area right against our property line." He added, "We view that increased cubic footage in the setback as doing harm to our property." He continued that their property has historic significance, and if they ever wanted to rebuild, they would want to do it in a way that makes use of the larger lot size. He said the larger lot size doesn't mean that the applicants "have extra use of our land to build their property."

Chairman Claus closed the public hearing.

Chairman Claus said he could not find that the requirements for a hardship were met. Ms. Silverstein said it does not matter how reasonable the use may be if there are no special conditions; "if the land does not have any special conditions, we can't even get to the hardship discussion." Mr. Claus agreed.

Chairman Claus also said the variance was not in the spirit of the ordinance. The cumulative effect if others were to do the same thing would violate the spirit of the ordinance. Mr. Anderson acknowledged

195 that the Board has approved something similar next door; but they have to consider the impact on
196 neighbors and the community. Mr. Lyons expressed concern about the diminution in value of
197 surrounding properties. Chairman Claus said the abutters had raised that concern as well, that it is not
198 just the square footage, but the volume of the building, and this would increase the volume within the
199 setback.

200 Mr. Jewczyn said no one had indicated that this is something that has to be done; it's an option that
201 they want to do. Hardship has not been proven.

202 **Ms. Silverstein made a motion to deny Case # VA 23-07 Parcel ID: 0121-0042-0000 Seeking approval of**
203 **Variances from (a) Article III, Section 3.10 to permit reconstruction of a residence within the side and**
204 **rear setbacks; (b) Article III, Section 3.10 to permit ~28.25 sq. ft. of the projected roof area within the**
205 **reduced side setback to exceed a height of 25 feet; and (c) Section 3.40(c) to permit the reconstruction**
206 **of the residence within the 50-foot waterfront setback.**

207 **Ms. Silverstein voted for the motion, explaining that the applicant has not established special**
208 **conditions of the property to distinguish it from the other properties, and that is where the test ends.**

209 **Chairman Claus voted in favor of the motion to deny, stating that the applicant did not establish**
210 **hardship, the variance does not meet the spirit of the ordinance, and it would diminish the value of**
211 **surrounding properties because of the proximity in the side setback. Mr. Munn voted for the motion,**
212 **stating that he agreed with Chairman Claus. Mr. Lyons voted for the motion, stating that there is no**
213 **hardship, that going from a house that is 17 feet high to one that is 27 feet high on the property line**
214 **would affect the neighbors when they go to sell, and that it goes against the spirit of the ordinance.**
215 **Mr. Jewczyn voted for the motion, stating that there is no hardship, the proposed use is not**
216 **reasonable, and it goes against the spirit of the ordinance.**

217 **The motion passed.**

218 MISCELLANEOUS: Review Minutes from Previous Meeting(s).

219 The Minutes of previous meetings were discussed and reviewed by the Board members.

220 Mr. Jewczyn reviewed the February 2, 2023, meeting minutes and proposed the following amendments:
221 line 47, the word cannot to be replaced with would not; line 159, the word prosecution to be replaced
222 with constitution; line 298, the word indictment to be replaced with embankment, line 349, the address
223 is Burkehaven Hill.

224 Mr. Lessard reviewed the March 2, 2023, meeting minutes and proposed the following amendments:
225 line 222, the words in the fear to be replaced with interferes; line 303, Brad to be replaced with Brett.

226 Chairman Claus reviewed the April 6, 2023, meeting minutes and proposed no amendments.

227 Ms. Silverstein reviewed the May 4, 2023, meeting minutes and proposed the following amendments:
228 line 39, it should be 0.16 instead of 0,16; line 121, the word sent to be replaced with sat; line 140, the
229 word don't to be replaced with cannot.

230 It was also discussed about the ZBA procedures to be reviewed and work to find a way to improve
231 them, along with prior proper definitions of terms in order not to burden the meetings with
232 explanations that are time-consuming.

233 OTHER BUSINESS:

234 **Ms. Silverstein made a motion to adjourn the meeting at 9:39 PM.**

235 **Mr. Claus seconded the motion.**

236 **The motion passed unanimously.**

237 Respectfully submitted by

238 Rajmonda Selimi