

1 **TOWN OF SUNAPEE**

2 **ZONING BOARD**

3 **September 7, 2023**

4 **Chairman Claus called the meeting to order at 6:31 PM.**

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

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.

10 **PRESENT VIA ZOOM:** None.

11 **CASE # SE 23-03 PARCEL ID: 0112-0026-0000 SEEKING APPROVAL OF A SPECIAL EXCEPTION FROM**
12 **ARTICLE IV, SECTION 4.90 TO PERMIT THE CONSTRUCTION OF AN ACCESSORY DWELLING UNIT OVER A**
13 **NEW GARAGE**

14 The Applicant's representatives began by providing a concise overview of the proposal, which involved
15 incorporating an Accessory Dwelling Unit. Showing the details of the dwelling unit they also presented
16 the additions they wanted to make with the proposal where it was noted that there were some
17 elevations of the structure. The darker area at the top of the existing structure was identified as the
18 proposed location for the garage, which would serve as a natural turnaround, and it was explained that
19 the existing house is at the bottom and the proposed addition is on top of it.

20 The Board mentioned that this is a case of special exception so there were eight criteria for granting a
21 special exception for this type of use, emphasizing that this was contingent on the applicant fulfilling all
22 the specified criteria.

23 The Applicant went through the criteria starting with the first criterion and highlighted that only one
24 Accessory Dwelling Unit (ADU) was allowed per single-family dwelling unit, which he confirmed is
25 fulfilled with the proposal. He also confirmed that the main unit or the ADU would be owner-occupied,
26 meeting the second criterion. The third criterion stated that the ADU could not exceed a thousand
27 square feet, and the Applicant clarified that it would be below this limit of 976 sf, attached with heated
28 space to the existing single-family dwelling.

29 Discussion then turned to setback dimensions for the ADU, as a fourth criterion, with the requirement
30 being that it follows the same guidelines as a single-family unit – meeting the Rural Residential Zoning
31 requirements for existing lots below minimum lot size. The Applicant confirmed that all dimensional
32 requirements for both the existing structure and the ADU were met. It was mentioned that the lot in
33 question was below the minimum lot size. Additionally, the ADU was specified to have no more than
34 two bedrooms, and the applicant confirmed that it would be a one-bedroom ADU. The sixth criterion
35 involved separate design and utility to accommodate the required number of bedrooms as per zoning
36 regulations. As per the seventh criterion, the Applicant mentioned that the current single-family home
37 and the proposed unit are going to be on the town sewer. The last criterion is tied to proper off-street
38 parking space which was also confirmed and presented in the plan as per Section 3.40(e).

39 There was a discussion regarding the measurement of the ADU's square footage. The heated connector
40 between the existing home and the stairs leading upstairs was discussed, with some disagreement on
41 whether it should be included in the calculation. It was ultimately agreed that it should not be counted
42 towards the ADU's square footage. This led to the conclusion that the ADU was less than 750 square feet
43 in total. There was also a discussion about the garage and its potential use by both spaces, with the
44 consensus that it should not be included in the ADU's square footage calculation.

45 Regarding the parking space, the Applicant confirmed that they would be providing two spaces for the
46 ADU. This prompted a clarification of the parking requirements for the property, with the understanding
47 that, as a two-unit property, four parking spaces would be needed.

48 The discussion continued with concerns raised by Mr. Jewczyn about the construction and the possible
49 intention to use the garage in the future as living space, for which it was clarified that the existing house
50 was already present, and the construction of the garage addition had previously been approved by the
51 town. The discussion focused on the layout, particularly how one would access the ADU from the house.
52 The location of the ADU was confirmed to be upstairs.

53 It was also asked whether the existing house is currently connected to the sewer, which the Applicant
54 confirmed. On the question of whether the property is currently owner-occupied, it was stated that the
55 owner plans to move there soon. It was stressed by the Board that the term "owner-occupied" typically
56 signifies that the owner resides in the property throughout the year. The current owner plans to list
57 their residence for sale in February, indicating their intention to permanently relocate to this new
58 location. Mr. Marquise confirms that the ordinance defines owner-occupied as staying for 120 days in a
59 year. However, this is deemed irrelevant for the special exception. Mr. Silverstein clarified that it must
60 be a single-family dwelling.

61 The owners typically spend their summers here and visit on weekends, adhering to the residency
62 requirement. This residence, initially a vacation home, is intended to become their permanent dwelling
63 once they sell their current home and complete the project for the new one. Consequently, they will
64 meet the 120-day residency requirement. It was noted that the property in question is intended for the
65 family's use, not as a rental. This potential rental situation is already a significant issue in the area
66 surrounding the lake as raised concern by Mr. Lyons, so he emphasizes the importance of ensuring that
67 the property is indeed owner-occupied. The Board also mentioned upcoming amendments that aim to
68 address such matters.

69 Mr. Murphy asked, expressing curiosity about a scenario that might unfold five years from now: what
70 happens if the owners unexpectedly relocate out of state - it was clarified that the Accessory Dwelling
71 Unit (ADU) remains attached to the property.

72 It was further mentioned that a third-party service provided by the town could address this concern.
73 They explain that the service would flag the property as having an ADU and monitor platforms like VRBO
74 and Airbnb. This way, if the owners attempt to rent out the property, the town would be alerted. The
75 enforcement process would then be set in motion, involving the use of a software service that the town
76 invests in. Following this, the property would no longer be available for short-term rentals.

77 The Board emphasized the need to approve based on the current information presented, as any
78 potential changes or intentions would need to be addressed with the Planning Board.

79 **Ms. Silverstein made a motion to approve Case # SE 23-03 Parcel ID: 0112-0026-0000 seeking approval**
80 **of a special exception from Article IV, Section 4.90 to permit the construction of an accessory dwelling**
81 **unit over a new garage.**

82 **Seconded by Mr. Munn.**

83 **All voted in favor.**

84 **CASE #VA 23-08 PARCEL ID: 0144-0004-00000 REQUESTING A VARIANCE FROM ARTICLE III, SECTION**
85 **3.10 TO ALLOW CONSTRUCTION OF AN ATTACHED GARAGE WITHIN THE 25 FT SIDE SETBACK**

86 The Applicant introduced the project and proceeded to discuss the five criteria for the variance.
87 Relocated during the pandemic, the Applicant outlined the addition they plan to make to their existing
88 house, which includes a two-car garage, a workshop, and a screened porch.

89 While examining the drawings, Chairman Claus pointed out specific details regarding the slope and
90 measurements. The Applicant noted that the proposed screen porch will be elevated on stilts. The
91 concern raised by the Board is that the proposed construction may encroach upon a non-buildable area
92 due to the steep slope.

93 The conversation touched on the presence of multiple plan sheets and architectural drawings, as well as
94 a 3D perspective view. The Board identified a specific sheet in their packet and highlighted an area on a
95 drawing. The discussion shifted to an engineering study, which was deemed essential for building in a
96 steep slope area.

97 The discussion shifts to building in a steep slope area, a condition that allows construction if it has been
98 evaluated by an engineer with a detailed plan for water runoff management. The Applicant affirms that
99 this process is being undertaken. The expectation is that the relevant information will be provided to the
100 Board after being reviewed by the appropriate professionals.

101 Another concern arises regarding the variance dimension, with two different figures mentioned. After
102 clarification, it is established that the variance is for 7 feet 11 inches. It was raised a discrepancy in the
103 dimensions provided for a variance, seeking clarification on whether it was 7.8 feet or 7 feet 11 inches.
104 They emphasized the need for precise information when granting a variance. They also noted an
105 interesting detail about the neighbors' rights regarding tree clearing, suggesting that it could impact the
106 proposed construction.

107 A unique aspect of the deed is noted, stating that the neighbors hold the right to a clear-cut for view,
108 adding an interesting dimension to the discussion. The Board highlighted that neighbors have the right
109 to clear-cut for review purposes. They emphasize that this right extends until the year 2041, raising
110 questions about its relevance to the current discussion.

111 The Board expressed concern that if the neighbors exercise this right, it could potentially impact the
112 visibility of the proposed construction. They note that the sight plane reference in the deed is
113 significant, but without knowing the height of the house with this reference, it's difficult to assess the
114 situation accurately.

115 The Board underscores the importance of considering the deed's restrictions when granting the
116 variance, acknowledging that they cannot alter the terms of the deed.

117 The Board acknowledged the complexity of the situation, with different blocks, potential changes in
118 ownership, and the possibility of future complications arising from the deed's terms.

119 The Applicant noted that the new structure won't exceed the height of the existing one. The Board
120 expressed uncertainty about the sight plan relative to the structure's height and suggested that a study
121 would be necessary.

122 The discussion shifts to the orientation of the neighboring home, with questions raised about its
123 accuracy. It is explained that typically people consider the facing of the building, but in this case, it's a
124 circular area of around 300 feet. They emphasize that if the abutting neighbor has no issue, it's part of
125 the public record.

126 The Board requests the presentation to focus on the five criteria for granting the variance. They
127 emphasize the importance of going through each criterion for the record.

128 The Applicant provides supporting facts for granting the variance, emphasizing the private nature of the
129 properties without public access, so they won't be contrary to the public interest. They argue that if the
130 variance were granted, it would align with the spirit of the ordinance, considering the ample separation
131 between properties. They stress that the proposed garage would not significantly impact the affected
132 neighbor, especially given the wooded area separating the properties of over 300 ft.

133 The Applicant continued to address the suitability of the site for construction, stating that other
134 locations would present more challenges. They contend that granting the variance would not diminish
135 the values of surrounding properties, emphasizing the limited visibility of the proposed garage. They
136 also highlight the private and spacious nature of abutting lots. The proposed project will add an
137 attached garage to a private home on a 2-acre lot.

138 The discussion moves to the setback provision, where the Applicant argues that the intrusion of 7 feet
139 11 inches would not violate the spirit of the 25-foot setback rule due to the significant distance between
140 the current homes. The Board expressed a desire to review additional information about the hardship
141 aspect.

142 The Board requests the general description to be read for the record, specifically focusing on
143 unnecessary hardship.

144 Given the lot's topographical features and the existing home's placement, the suggested site for the
145 attached garage is the most practical option. This decision is supported by several factors. Firstly, a
146 significant portion of the remaining lot exhibits a slope exceeding the 25% requirement outlined in
147 section 3.4 paragraph L, necessitating the pursuit of a variance. A visual representation of this slope is
148 provided in the submitted diagram. Secondly, the alternative location with a compliant slope would
149 demand a notably larger setback intrusion. Lastly, the proposed site ensures the most convenient and
150 secure access to the house, a critical consideration for the homeowner's wife, with multiple sclerosis
151 and experiences difficulties with balance.

152 The Applicant was asked whether any consideration had been given to designing a smaller garage. The
153 Board appreciated the presence of a two-car garage alongside a utility space that also served for boat
154 storage. They pointed out that it was the inclusion of the boat storage area that extended the length of

155 the garage towards the boat space. They encouraged the garage's corner to be in alignment with the
156 setback line.

157 Addressing concerns, the Board also mentioned that a three-car garage could have been accommodated
158 with a 10-foot-wide breezeway, either falling within the side setback or avoiding it altogether.

159 The conversation then shifted towards deliberating on potential hardships. The question was raised
160 about the possibility of stripping land interests, particularly when the abutter was a family member.

161 Further discussion revolved around the steep slope and the impact on the proposed structure. It was
162 noted that calculations indicated part of the structure, not just the garage, would extend into the 25%
163 zone, potentially posing a challenge.

164 The Board expressed a need for more information on the matter. They emphasized the importance of
165 resolving these concerns before deciding to move forward.

166 The members expressed skepticism about using hardship as a justification, particularly when property
167 owners were able to adapt to the conditions.

168 The discussion concluded with confirmation that the entire area had steep slopes. The steep topography
169 was observed in the surrounding sites on Mabs Way and Rolling Rock, as well as in the adjacent road.

170 It was noted that virtually everything in the area exhibited similar steep slopes, with the highest point
171 being at the peak of a hill. The conversation ended with acknowledgment of the challenges presented by
172 the terrain.

173 Further discussion revolved around definitions relevant to roads and private roads. Concerns were
174 raised about the architectural plans, particularly concerning the steep slope and potential impact on the
175 proposed structure.

176 Chairman Claus expressed concerns about potential erosion and environmental impact if the structure
177 were to be built on a 25% slope. It was noted that the entire area sloped downward towards a lake.

178 Mr. Jewczyn then raised a concern regarding the future, noting that while the current situation might
179 involve family ownership, this might not always be the case. He emphasized that decisions made should
180 be based on the land itself, rather than personal relationships.

181 Regarding the design and roof structure, Ms. Silverstein observed steps between the existing house and
182 the new garage, seeking confirmation of this detail. The applicant clarified that there were indeed steps
183 leading up to a breezeway.

184 The discussion then shifted to the hardship criteria. Ms. Silverstein raised concerns about the boat
185 storage area pushing into the side setback, noting that the steep slope wasn't part of the variance
186 discussion. She emphasized the need to evaluate the specific variance related to encroachment into the
187 side setback.

188 The concept of a steep slope was brought up, with Chairman Claus suggesting it should be considered
189 when establishing the hardship and special conditions of the property. They acknowledged that steep
190 slopes were a common feature in the area. However, they also grappled with the idea of building a

191 significant portion of a structure within the steep slope, questioning whether this constituted a true
192 hardship.

193 The discussion circled back to the proposed two-car garage. It was debated whether this was a
194 reasonable use of the land, given the presence of the boat storage area affecting the side setback. The
195 presence of a steep slope was considered but ultimately deemed a separate issue.

196 Mr. Jewczyn expressed concern about the adequacy of engineering information, highlighting the need
197 for comprehensive topographic details. Ultimately, the Board suggested making a condition for
198 additional information to be provided and evaluated by the town.

199 The Board collectively agreed that the possibility of a steep slope did not impact their decision regarding
200 the side setback matter. They emphasized that this was a distinct issue.

201 Chairman Claus underscored the need to establish a special condition of the land, focusing on the
202 existing house's position and the steep slope. He questioned whether a two-car garage was a reasonable
203 use of the property, expressing doubt about meeting the criteria outlined in clause A.

204 After a brief discussion among the Board members, it was noted that even if clause B was considered, it
205 would only come into play if clause A was satisfied. The criteria for unnecessary hardship hinged on
206 establishing special conditions of the property that set it apart from neighboring properties.

207 In conclusion, the discussion centered on the importance of meeting the criteria outlined in clause A and
208 the need for comprehensive topographic information. The presence of a steep slope and the size of the
209 proposed garage were key considerations in evaluating the variance request.

210 The Board discussed various aspects of the applicant's request. They debated whether the steep slope
211 of the property and its unique position among neighboring homes could be considered a special
212 condition warranting a variance. Some members expressed concerns about the lack of specific
213 information regarding the special conditions of the property.

214 Ms. Silverstein expressed her belief that the specific hardship required for this variance has not been
215 met. She maintained that designating an area for boat storage does not constitute a hardship that
216 justifies encroaching into the side setback.

217 The Board felt that the discussion was becoming too focused on the steep slope of the property, which
218 they believed was not the primary issue under consideration that evening. As a result, they leaned
219 towards declining the request related to the setback.

220 Chairman Claus noted that if a trained professional had submitted this proposal, they might be more
221 inclined to support it. However, upon reviewing the answers provided, the Board suggested that
222 gathering additional information would be beneficial for the applicant.

223 **Ms. Silverstein made a motion to continue Case #VA 23-08 Parcel ID: 0144-0004-00000 requesting a**
224 **variance from Article III, Section 3.10 to allow construction of an attached garage within the 25 ft side**
225 **setback on the next meeting.**

226 **Mr. Claus seconded the motion.**

227 **The motion passed unanimously.**

228 The Board reiterates the definition of "unnecessary hardship," emphasizing the requirement for the
229 property's special conditions to be notably different from those of neighboring properties. They
230 acknowledge that this is a challenging criterion to meet.

231 The Board mentioned that the applicant could request a 90-day extension for the next meeting if
232 needed. They also noted that the Applicant must present a strong case for the variance, as they may
233 only have one opportunity to do so.

234 In the end, the Board acknowledged that this variance request presents a challenging case due to the
235 specific criteria that need to be met. They encouraged the Applicant to take the time they needed to
236 gather the necessary information.

237 **MISCELLANEOUS:**

238 **Review Minutes from Previous Meeting(s)**

239 Chairman Claus reviewed the July 6th Revised Minutes of Meeting and noted that they are well-
240 captured now, considering that the Board had discussed a complex case at that meeting.

241 **Chairman Claus made a motion to approve the revised Minutes of Meeting of July 6th.**

242 **Mr. Munn seconded it.**

243 **The motion passed unanimously.**

244 The Board continued with the review of the minutes for the meeting on August 17th. The Board took
245 time at the meeting to review it since it was a short one, and all members agreed to approve the
246 minutes of the meeting on August 17th.

247 **Chairman Claus made a motion to approve the revised Minutes of Meeting of August 17th.**

248 **Ms. Silverstein seconded the motion.**

249 **The motion passed unanimously.**

250 **OTHER BUSINESS:**

251 During the meeting, various concerns were raised regarding the submission of plans to the Zoning
252 Board. There was a discussion about how to handle situations where applicants submit different plans
253 than what was initially approved by the Zoning Board. The conversation touched on the distinction
254 between use variances and other types of variances.

255 There was also a debate about whether certain conditions should be included in the approval process,
256 especially when it comes to specifying the details of a particular use. The Board members grappled with
257 the idea of foreseeing potential abuses of approved uses and discussed the need for a mechanism to
258 review any substantial changes.

259 The discussion also delved into the complexities of reviewing plans, potential alterations, and the
260 importance of ensuring that any changes align with the originally approved conditions. The Board
261 considered the implications of changes in the intensity of use and how it might affect the initial
262 approval.

263 Overall, there was a consensus that clarity in conditions and thorough review processes were crucial to
264 prevent any unintended consequences of approvals. The meeting concluded with a reminder to review
265 the Minutes of the previous meeting and plan for an upcoming joint meeting.

266 Since the minutes for the meeting on August 3rd were devoted to the presentation of Ms. Traeger, the
267 Board agreed to approve the minutes for the meeting on August 3rd.

268 **Chairman Claus made a motion to approve the Minutes of Meeting of August 3rd.**

269 **Ms. Silverstein seconded it.**

270 **The motion passed unanimously.**

271 **Ms. Silverstein made a motion to adjourn the meeting at 8:23 PM.**

272 **Chairman Claus seconded the motion.**

273 **The motion passed unanimously.**

274 Respectfully submitted by

275 Rajmonda Selimi

276

277

278 Jeff Claus, Chairman

279

280 Michael Jewczyn

281

282 David Andrews

283

284 Chris Murphy

285

Jamie Silverstein

Jim Lyons

David Munn

Pierre Lessard