

1 **TOWN OF SUNAPEE**

2 **ZONING BOARD**

3 **AUGUST 25, 2020**

4 Chairman Simpson called the meeting to order at 6:02 pm and read the Governor's Emergency Order
5 #12 that authorizes the Zoning Board to meet electronically: "Due to the State of Emergency declared by
6 the Governor as a result of the COVID-19 pandemic and in accordance with the Governor's Emergency
7 Order #12 pursuant to Executive Order 2020-04, this Board is authorized to meet electronically. The
8 public has access to contemporaneously listen and participate during this meeting through video
9 conferencing at <https://zoom.us/j/93522003658>, Meeting ID 935 2200 3658, Passcode 705609, or by
10 telephone at 929-205-6099."

11 Mr. Lyons made a motion to appoint Bob Henry as a voting member of the meeting. Mr. Schneider
12 seconded the motion. A roll call vote was taken: Mr. Lyons voted yes, Mr. Schneider voted yes, Vice
13 Chair Claus voted yes, and Chairman Simpson voted yes. The motion passed unanimously.

14 A roll call of members present was taken.

15 **MEMBERS PRESENT BY VIDEO:** Aaron Simpson, Chair; Jeffrey Claus, Vice Chair; Daniel Schneider; Jim
16 Lyons; Bob Henry, Alternate

17 **PRESENT IN THE MEETING ROOM:** Nicole Gage, Zoning Administrator

18 **ALSO PRESENT BY VIDEO:** Philip Hastings; Bradley Weiss; Cathleen Shea; Peter Blakeman; Gregory
19 Weiss; Pamela Weiss; Harry Snow, Paul Snow, Karen Shea, David Beardsley

20 **CONTINUED CASE # ZBA20-04: PARCEL ID: 0125-0011-0000: A VARIANCE IS REQUESTED FROM ZONING**
21 **ORDINANCE, ARTICLE III, SECTION 3.10 AND 3.20 TO PERMIT CONSTRUCTION OF A NEW SINGLE**
22 **FAMILY RESIDENCE WITH THE FOLLOWING: 1) WEST SIDE SETBACK OF 8.7 FT WHERE 15 FT IS**
23 **REQUIRED; 2) EAST SIDE SETBACK OF 4.1 FT WHERE 15 FT IS REQUIRED; 3) LOT COVERAGE OF 45.1%**
24 **WHERE 40% IS REQUIRED; 4) BUILDING HEIGHT OF 33.5 FT WHERE A MAXIMUM OF 25 FT OF HEIGHT**
25 **IS PERMITTED; AND 5) MAXIMUM SURFACE COVERAGE WITHIN THE SHORELINE OVERLAY DISTRICT**
26 **OF 42.9% WHERE 25% IS ALLOWED; 38 JOBS CREEK RD; CATHLEEN A SHEA & BRADLEY M WEISS**

27 Cathleen Shea and Bradley Weiss, the owners of the property, as well as Harry Snow, Peter Blakeman
28 and Attorney Philip Hastings presented the merits of the case.

29 Ms. Shea said that they appreciate the opportunity to meet with the Board and to present their case.
30 Ms. Shea explained how she and her husband, Brad Weiss, have been part of the Sunapee community
31 for most of their lives. Ms. Shea said that their families do own on the Lake but they wanted to
32 purchase a house of their own and the property at 38 Jobs Creek Rd checked a lot of boxes. The
33 property is part of White Shutters and was built in the 1930s as a housekeeping cabin. Since it was built,
34 the only improvements that have been made to the cabin is a large deck and a patio. The cabin does

not have any insulation and has a very limited kitchen and bathroom and a small footprint. It is unlikely that the cabin meets any of the current code requirements and they believe that it has outlived its useful life.

Ms. Shea said that they would like to replace the cabin with its 377 sq ft of living space. They have worked with Harry Snow and Paul Snow to design a home that will add value to the White Shutters Community. They have talked to their neighbors and have received letters of support from all of their abutters. They believe that this will improve the property value in White Shutters as well as help with appropriate drainage and erosion control that does not exist at this time. They hope that the Board finds their request reasonable; they have stayed as close as possible to the current footprint of the existing non-conforming building. The lot is very small and any changes do seem large in a percentage basis but they did their best to maintain the footprint while creating a livable space. They are not experts in Zoning so they have hired Attorney Phillip Hastings and Harry Snow, Paul Snow and Peter Blakeman to help talk through what they are proposing.

The Board took a brief break due to technical issues.

Mr. Snow said that he has been building houses in the area since 1977. They have done many lake projects as well as renovations, roofs, etc. They were brought in to assess this project last fall and met with the applicants on site to talk to them about their needs and concerns. White Shutters is a Planned Unit Development (PUD) so there are very small setbacks of 4 ft in their covenants. Chairman Simpson asked and Mr. Snow said that he believes that White Shutters is a PUD in terms of use and how it was set up; it probably pre-dates the concept of a PUD but it is like a modern PUD with its own setbacks and rules.

Mr. Snow said that they tried to create a plan that was within the confines of the existing footprint of the house. The existing property does have a decent size footprint when you consider the decks and open areas as well as the regular footprint. Part of their assessment was hiring a professional engineer, Peter Blakeman, who has done many projects related to the Shoreland and projects with Zoning issues. They worked as a team to try and stay within the confines that they feel are permissible. They designed something that is meant to keep in mind lakefront properties and help tie in some of the old with new including different textures, and such. Mr. Snow continued to explain the plan for the design for the house.

Mr. Snow said that they were able to utilize all three levels to try and keep mostly with the footprint of the house. The lot does slope so it puts them almost automatically into a full walkout basement situation and they are able to use some of the basement as living space. If the lot was flat, the basement would still be there but the grade would be higher and the height requirements would not be an issue. The front of the house is only 25 ft 6 inches from ground level; however, the walkout adds height.

Mr. Claus asked and Mr. Snow said that the proposed first floor is about 927 sq ft of living space, the second floor is about 661 sq ft of living space, and the basement is 586 sq ft for a total 2,174 sq ft counting the basement or 1,588 sq ft not counting the basement. Chairman Simpson asked and Mr.

73 Snow said that he does not have the existing square footage in front of him but he believes that the
74 original house is about 400 square feet. There are very large decks going all around the house and the
75 total square footage that is taken up by the footprint, including the decks and such, it is approximately
76 1,174 sq ft.

77 Mr. Snow said that they hired Peter Blakeman to assess the project and get the Shoreland Permit.

78 Mr. Blakeman said that they had Clayton Platt complete a boundary survey as well as a topographic
79 survey. Mr. Blakeman was tasked with preparing a grading and drainage plan. The lot is a relatively
80 small 0.10-acre lot and is sloping though not consistently throughout the lot. Currently, there are no
81 drainage or erosion controls, on the lower side of the existing side there is lawn and whatever comes
82 from the lot drains down to the property owners below. For Shoreland properties, they usually look at
83 how to manage the storm water from the increased impervious area on the lot. Each Shoreland has
84 specific criteria depending on the impervious area and in this case it was over 30%, which requires them
85 to infiltrate the increased volume of rainwater that is calculated on a 10-year storm, which is
86 approximately 4 inches of water in 24 hours. Mr. Blakeman explained the drainage plan to the Board.

87 Mr. Blakeman said that the lot slopes quite a bit and the house is 4.1 ft from the setback on one side and
88 8.7 on the other. They dealt with the grade with a series of retaining walls and steps; the retaining walls
89 within the setbacks will be less than 42 inches in height; the portion of the wall in front of the deck and
90 porch in the front will not. In the front, there are two dry wells to infiltrate the water so it is not
91 increased going towards the road. The parking has enough room for two cars and they have done that
92 by expanding the existing parking area by 12 ft. The rest of the space is greenspace and lawn.

93 Mr. Blakeman said that during construction they will have erosion control measures put in place, that
94 will essentially circle the entire lot. The notes also require the contractor to keep an eye on the weather
95 so if there is a storm in the forecast then they need to have temporary control measures in place for
96 when they are away from the site.

97 Mr. Blakeman said that the plans have been submitted to NH Department of Environmental Services
98 (DES) for Shoreland Permitting.

99 Chairman Simpson asked about the total grade change between the top of the lot and the bottom and if
100 there is an elevation change of more than 20 ft. Mr. Blakeman said that the lot does not fall into the
101 steep slopes category. Chairman Simpson said that he is asking about Section 3.40 (L) of the Zoning
102 Ordinance which states "There shall be no construction on slopes which exceed 25%, and have an
103 elevation change of more than 20 ft. Driveways, utilities, and stairways would be exempt from this
104 requirement provided a drainage and erosion control plan is prepared by a licensed professional
105 engineer." Mr. Blakeman said that there is nowhere on the property where there is a 25% slope over
106 more than a 20 ft vertical change. Chairman Simpson asked and Mr. Blakeman confirmed that there is
107 an average 25% slope on the property. Chairman Simpson asked and Mr. Blakeman said that there is no
108 area that is 25% that is 20 ft in vertical change, it is broken up through the entire lot.

Chairman Simpson asked and Mr. Blakeman said that he believes that the submitted erosion control plan meets the Town's erosion control requirements. Chairman Simpson asked if Mr. Blakeman looked at Section 3.40 (N) of the Zoning Ordinance that says "An erosion control plan per the specifications in Section 4.33(B)(8)(a)(I) must be submitted to the Zoning Administrator prior to any new construction exceeding 1000 square feet of land disturbance occurs on slopes greater than 15%." Mr. Blakeman said that the submitted plan would qualify for this. There was further discussion regarding this matter.

Attorney Hastings said that he wants to put the Variance criteria in a certain context because there are certain features about this lot that he would like to emphasize the they have taken into account in the design process and that have particular relevance to the Variance requirements from a legal standpoint. The first important consideration is the house itself; if you look through the pictures submitted it becomes clear that the cabin is functionally obsolescent and it does not meet the needs of a family in the 21st century; the property has outlived its usefulness in its current condition. The second significant factor is the size of the lot itself; the lot is 0.10 acres in size and is quite small and considerably non-conforming to the Zoning Ordinance. The lot size is not unusual for the neighborhood and White Shutters was designed as a community of smaller lots, which does not work in the 2020's. The third factor is the slope of the lot; the height Variance that is being requested is solely driven because of the slope of the lot. The slope is a unique feature because it slopes down to the lake and it drives the design as it requires a walkout basement. The Sunapee Zoning Ordinance defines height as going from the lowest most point to the highest most point and the standard is actually 40 ft in height except for in certain setbacks where it is 25 ft in height. They are within the height requirement overall, it is just the height of the building that is within the setback is over the 25 ft height requirement by approximately 8 ft.

Chairman Simpson said that it is his intention to vote on each of the Variance requests separately and requested that Attorney Hastings to address them all independently at some point. Attorney Hastings said that he will talk specifically about each of the requests, he just wanted to give the Board a general context. For example, the lot coverage and the setbacks kind of go together. There was further discussion regarding this matter.

Attorney Hastings said that another issue is the environmental factor as any rebuild needs to meet today's standards. They have tried to make a design that ends up improving the environmental situation of the house. Currently, there are essentially no storm water drainage controls on the site and if the Variances are not granted and the improvements are not allowed it will perpetuate a condition that is not consistent with today's scientific standards. Another consideration is that they wanted to limit the extent of the non-conformity. The house is currently non-conforming to the setbacks, specifically the existing westerly side setback, which is currently 8.7 ft. The design does not make it any more non-conforming on that side; the building just extends back further along the setback line but does not go closer. The easterly setback's non-conformity is being decreased as the existing non-conformity is 3 ft to the property line from the closest point and it is being increased to 4.1 ft. In terms of the front setback, he thinks that it was suggested to move the house closer to the front property line in order to increase the setbacks along the sides, however, they did not want to extend the non-conformity into the front setback so they did not do that. Chairman Simpson asked and Attorney

149 Hastings confirmed that he is talking about the setback from the road when he is talking about the front
150 setback. Attorney Hastings continued that they wanted to be sensitive to the character of the
151 neighborhood and did not want to propose something that does not fit.

152 Attorney Hastings said that the Variances requested meet all the standards set forth in the State
153 Statutes and Sunapee's Regulations. He will go over all the specific requirements, however, more details
154 were submitted with the application and he will be happy to elaborate if requested.

155 Attorney Hastings said that the first standard that the Board has to decide is whether the Variances will
156 be contrary to the public interest. It is in the public interest to have modern buildings that comply with
157 today's requirements in terms of environmental compliance, building efficiency, and safety. The current
158 building does not do that and the proposal allows for a functionally obsolescent building to be replaced
159 with a modern, efficient, and code compliant structure. Therefore, they feel as though each of these
160 Variances would not be contrary to the public interest.

161 Attorney Hastings said that the second requirement is that the Spirit of the Ordinance will be observed.
162 The Zoning Ordinance is meant to promote the health, safety, and general welfare of the community,
163 protect the environment, and preserve the vitality of the Town. Though Zoning Ordinances do not like
164 to encourage non-conformities or Variances, they do need to have some flexibility and the Zoning Board
165 of Adjustment who is tasked with providing the flexibility for specific and unique circumstances. They
166 believe that replacing a functionally obsolete building with a modern structure as proposed will be
167 consistent with the Spirit of the Ordinance.

168 Attorney Hastings said that granting the Variance will do substantial justice because under the law
169 "substantial justice" is met when the harm to the owner due to strict enforcement of the owner
170 outweighs any benefit to the public. Not granting the Variances in this case will do substantial harm to
171 the owners because they will not be able to reasonably replace a building that is out of date and
172 unusable. Conversely, there is no benefit to the public by not allowing the improvements as proposed.

173 Attorney Hastings said that the fourth requirement is that the values of surrounding properties will not
174 be diminished. Replacing the structure with a modern structure will improve the immediate
175 neighborhood and by doing that it will increase the property values overall in the neighborhood. It is
176 quite telling that the applicants' neighbors have almost uniformly supported this project; all the letters
177 submitted to the Board are in support of the project because it will be attractive and add to the
178 neighborhood. This is the best indicator that the proposal will not diminish the property values in the
179 area.

180 Attorney Hastings said that regarding hardship, there are numerous special conditions associated with
181 this property that qualify it for a hardship. The property is unusually small and it is already non-
182 conforming. Regarding the height Variance, the property slopes towards the lake so it makes it
183 impossible to comply with the height limitations in the Ordinance. Additionally, the slopes create storm
184 water control problems that will be remedied as part of the project. There is also no fair and reasonable
185 relationship between the purpose of the Ordinance and the specific provisions at issue here. Regarding
186 the setbacks, they are proposing Variances that will bring the property into a less conforming condition.

187 Regarding the height, because of the slope and the design of the project, the height of the building from
188 Jobs Creek Rd will not appear out of character even though the proposed height is a total of 33.5 ft, it
189 will appear as though it is a 25 ft structure from the road front.

190 Attorney Hastings said that a strict interpretation of the Zoning Ordinance would preclude any realistic
191 rehabilitation of the property that would be a benefit to the public in terms of aesthetics, property
192 values, and protection of the environment.

193 Attorney Hastings said that the last hardship requirement is whether the proposed Variances are
194 reasonable and it is important to note that the standard is no longer if there is another reasonable use;
195 it is sufficient that the proposed Variances being requested are reasonable themselves. The fact that
196 the applicant could build something smaller or in a slightly different configuration does not render the
197 specific thing that they are asking for as unreasonable. The Board needs to decide if this specific
198 proposal, in these specific circumstances, are reasonable. Under the law, the courts have repeatedly
199 said that the touchstone for reasonableness is whether the proposal would alter the essential character
200 of the neighborhood and they feel as though it fits the character of the neighborhood and will not
201 appear out of place. The setbacks themselves are more conforming than the other structures in the
202 neighborhood as per the information submitted to the Board. The lot coverage is also consistent with
203 the neighborhood and the height is consistent with normal residential structures. They are not
204 proposing anything unreasonable; the total living space is approximately 2,100 sq ft, which is not a large
205 house. Finally, it is reasonable for the applicant to replace an outdated structure with a modern design
206 that is sensitive to the environment and complies with current codes.

207 Attorney Hastings said that they believe that the five Variances should be granted and they would
208 appreciate the Board's support.

209 Chairman Simpson said that the application says that it is in the public interest to allow the highest and
210 best use of real estate and asked if that is the criteria for hardship. Attorney Hastings said that it is not
211 the hardship criteria, it goes to the substantial justice standard and the requirement that a proposal will
212 not be contrary to the public interest. Chairman Simpson asked if Attorney Hastings believes that the
213 standard that the Board should be applying is that the highest and best use of real estate is the public's
214 interest. Attorney Hastings said that it is in the public's interest to take a functionally obsolescent
215 building and replace it with something is reasonable and conforms except for these limited
216 requirements of the Zoning Ordinance. Chairman Simpson said that he thinks that Attorney Hastings is
217 over-reaching as to what is in the public's interest, also he does not know if that is actually the law.
218 Attorney Hastings said that one of the purposes of Sunapee's Zoning Ordinance is to support the health,
219 safety, and welfare of the community and one way that the Board can do that is to support the
220 replacement of functionally obsolescent buildings and improve the environment, aesthetics, and values
221 of these properties. Chairman Simpson said that this property is in the Rural Residential District, which
222 is meant to be rural in character even though it is in a high-density area. Attorney Hastings confirmed
223 that the property is in the Rural Residential District but the law of Variances requires the Board to take
224 into account the specific context in which the property is located. The courts have recognized that
225 Zoning Ordinances are fairly blunt instruments when it comes to Zoning; Towns adopt broad districts

226 and there are times that neighborhoods do not fit those districts and he believes that the White
227 Shutters community meets that definition as all of the properties are non-conforming.

228 Mr. Schneider asked and Attorney Hastings confirmed that the height and scale of the proposed building
229 is consistent with the neighborhood. Mr. Schneider asked if there are currently properties in White
230 Shutters that are as high or higher and if there are any that are as large or larger. Attorney Hastings said
231 that if Mr. Schneider looks at Sheet A-0.1, it shows all the houses in White Shutters; there is a mix of
232 heights and not all of the houses are built on the same slope. Mr. Schneider said that none of the
233 houses are over 33 ft in height. There was further discussion regarding this matter.

234 Mr. Schneider asked what happens to the White Shutters neighborhood if these Variances are
235 approved. Attorney Hastings said that the neighborhood ends up with houses that are modern and can
236 control storm water runoff better than they do now. There is also an increase in property values. Mr.
237 Schneider said that they also end up with houses that are very close together. Attorney Hastings said
238 that the houses would not meet the strict requirements of the Ordinance but they would be able to
239 come before the Board and then be able to be put into a useful condition in a responsible way. Mr.
240 Schneider said that he wonders what would happen if one of them caught on fire. Attorney Hastings
241 said that they have no evidence to suggest that any of these properties in their current condition or in
242 their proposed condition would be a fire hazard; the applicant's building will be built to code. Mr.
243 Schneider said that it would not be built according to the Zoning Ordinance, which is designed to
244 prevent houses from being built too close together. Attorney Hastings said that they are decreasing the
245 non-conforming condition that already exists.

246 Mr. Henry said that it was mentioned that White Shutters had been intentionally designed, which is not
247 true. His grandfather built all the cottages and he grew up on the property. It was meant to be weekly
248 rented cottages only used in the summer and the cottage being discussed is Cottage #5. The person
249 who purchased the property from his grandfather built two additional cottages and then subdivided it
250 all; it was never meant to be an intentionally designed development. Attorney Hastings said that he did
251 not mean to imply that the lots were intentionally designed, however, he does think that this supports
252 their argument for the Variance requests as the lot lines are somewhat random. There was not a lot of
253 thought into where the lot lines were located. He also believes that the covenants that were put in
254 place had a 4 ft setback, which was probably what was guiding the lot lines. Mr. Henry said that the
255 subdivision also predates Zoning, otherwise it probably would not have been approved.

256 Chairman Simpson asked if there is currently an environmental issue happening because of this
257 property. Attorney Hastings said that he would not characterize it as an environmental problem except
258 to note that the building was designed and located there without a lot of thought to the runoff that
259 occurs as water runs down the slope. To meet the modern requirements, Mr. Blakeman has
260 incorporated several design elements that would eliminate stormwater runoff. There was further
261 discussion regarding this matter.

262 Mr. Lyons said that the property has many rhododendrons and trees, which he believes will be removed.
263 He thinks that those plants are probably a way to control storm water runoff and are absorbing

264 nutrients before they go to the lake. White Shutters starts at Jobs Creek and goes down in a series of
265 steps before it flattens out, which allows water to sit there and percolate in. He is not sold on the
266 notion that building a much larger structure, even with all the bells and whistles to control storm water
267 runoff, will be beneficial to Lake Sunapee. Mr. Blakeman said that he disagrees as he does not see any
268 spots on this property where water sits and infiltrates currently. There was current discussion regarding
269 this issue.

270 Mr. Schneider said that page 11 of the Zoning Ordinance allows the maximum structure height to be 40
271 ft measured from the lowest ground point to the highest building point. There is also another
272 requirement that says "if a structure is allowed a reduced side or rear setback due to inadequate lot
273 size, the portion of the structure in the area of reduced setback shall have a maximum height of 25 ft";
274 however, it does not say maximum structure height. The Zoning Board tried to get the Planning Board
275 to agree to add a definition of "height" to the Zoning Ordinance last year and they did not. He thinks
276 that there is an error in the written material that the maximum height within the setback would need to
277 be measured from the lowest point to the highest point as he does not think that there is a way to do
278 that. Mr. Schneider asked if the maximum height of the building is higher than 25 ft anywhere in the
279 setback measuring straight to the ground. Attorney Hastings said that he believes that the maximum
280 height is 33.5 ft in the setback.

281 Mr. Schneider said that he understands that the building will not be any closer to the road than it is
282 now. However, the building will be higher than what it currently is so the building envelope is increasing
283 and the area of non-conformity is increasing so it seems as though they also need a Variance for the
284 road setback. Ms. Gage said that there are five Variance requests. Mr. Schneider said that there is not a
285 request for a Variance for the road setback. The other case that the Board heard in White Shutters did
286 have a Variance request for the road setback even though he does not believe that they were building
287 closer to the road. Ms. Gage said that she does not know why there is not a Variance request if the new
288 structure is in the front setback; she agrees with Mr. Schneider that if the structure is imposing in the
289 front setback it needs a Variance. Attorney Hastings said that they are not increasing that non-
290 conformity in any way. Mr. Schneider said that they are increasing the envelope due to height.
291 Attorney Hastings said that they are not increasing the envelope, the building is just higher in the
292 setback. Mr. Schneider said that the envelope includes height in the Zoning definition. Attorney
293 Hastings asked and Chairman Simpson said that the definition of "envelope" is on page 53 of the Zoning
294 Ordinance and Mr. Schneider read the definition. Attorney Hastings asked how it relates to setbacks.
295 Ms. Gage said that the Ordinance says that a structure can be replaced in the same envelope with just a
296 permit, however, anything else that does not meet the Zoning Ordinance requires a Variance or Special
297 Exception. Mr. Schneider said that he is referring to Article VI, Section 6.12 on page 42 of the Zoning
298 Ordinance that says "A Pre-Existing, Non-Conforming Structure existing at the time of the passage of
299 this Ordinance (March 18, 1987) may be replaced in the same or smaller envelope by a new structure
300 having the same purpose and use provided that the non-conformity to this Ordinance is not increased
301 thereby. The reconstruction of any other non-conforming structure requires a variance or special
302 exception of the Zoning Board of Adjustment. The replacement of a non-conforming structure with a
303 structure that increases the non-conformity to this Ordinance, either vertically or horizontally, shall only

304 be permitted by Variance or, if permitted hereby, by Special Exception.” Attorney Hastings said that this
305 is the first that he has heard of this and they consulted with Ms. Gage at length before applying for the
306 Variance requests. He would like to reserve his right to review this information to determine if a
307 Variance is needed and they will request one, however, up until this point they did not believe they
308 needed a Variance for front setback. Mr. Schneider said that they may only need a Special Exception.
309 Attorney Hastings said that if the Variances are approved, they will review the plans with Ms. Gage to
310 determine if any additional relief is required.

311 Ms. Shea asked and Chairman Simpson said that the Board is going to enter into the deliberative session
312 of their meeting, which means that only the Board discusses the case.

313 Mr. Claus said that he does not have the paper drawing but he is looking at the map and there are a lot
314 of places on this property that the slope is actually 50% or more. Mr. Claus said that there is already a
315 house on the lot and asked if they need to get a Variance to build a new structure with the slopes.
316 Chairman Simpson said that they may require a Variance for the slope as well. Mr. Schneider said that
317 the term “slope” is not defined in the Zoning Ordinance so the measurement of that and how it is
318 calculated is not specific. Mr. Claus asked if there is more than one way to calculate slope. Mr.
319 Schneider said that he would think it could be calculated differently based on what area is being
320 calculated. Mr. Claus said that is what he is asking about as the spot he calculated is over 25% but there
321 are clearly areas on the property that are 50% slope or greater. There was further discussion regarding
322 this matter.

323 The Board agreed to come out of deliberate session in order to allow Mr. Blakeman to speak.

324 Mr. Blakeman said that if you look at the contours of the property, across the front of the house there is
325 a thicker line labeled 1140 and between there and the road is not 25% except for maybe one small spot.
326 Also, from there to the bottom corner is not 20 ft. When he said that the slope was 25% he was talking
327 about a straight average which does not account for the peaks and valleys. The majority of the property
328 is within the 1140 and the bottom corner of 1124, which is 16 ft. He looked at this several times and
329 could not determine how it did not comply with the slope requirements.

330 Mr. Schneider made a motion to return to deliberative session. Vice Chair Claus seconded the motion.
331 A roll call vote was taken: Vice Chair Claus voted yes, Mr. Henry voted yes, Mr. Lyons voted yes, Mr.
332 Schneider voted yes, and Chairman Simpson voted yes. The motion passed unanimously.

333 Chairman Simpson asked Mr. Claus if he received enough clarity on the slope issue. Mr. Claus said that
334 there is no definition as to how slope is defined and if the drop of 20 ft is over a certain distance or not.
335 Chairman Simpson asked if it is a drop of 20 ft over where the house is being constructed. There was
336 further discussion regarding this matter.

337 Mr. Schneider said that there are a number of Variances and each one needs to be voted separately,
338 however, the Board also has to take into consideration the totality of the consequences if all of the
339 requested Variances are approved. He thinks that the best description of this project is that it is like a
340 size 10 foot trying to fit into a size 6 shoe.

341 The Board discussed the first Variance request which is: the west side setback of 8.7 ft where 15 ft is
342 required. Vice Chair Claus said that they have not made it more non-conforming; they are expanding
343 the building in the front along the same setback.

344 Chairman Simpson requested that the Board go through the criteria for the Variance for the first
345 Variance request.

346 Vice Chair Claus said that he sees the Zoning Ordinance as being something that relates to public
347 interest and he sees both sides of the fence with this case.

348 Mr. Lyons said that there has been some discussion regarding the view of this structure from Jobs Creek;
349 almost nothing has been said about its appearance from the Lake. He thinks that there is a huge
350 difference as to what you see now as to what you would see if there was a façade of wood across what
351 is now a small green and white house with a large deck. He thinks that this is contrary to public interest
352 and feels as though the public's interest is best served by maintaining the integrity and shoreline of Lake
353 Sunapee. Mr. Lyons continued to discuss his thoughts regarding this matter and that he also does not
354 feel as though it fits the Spirit of the Ordinance.

355 Chairman Simpson asked and Mr. Lyons said that he thinks that the proposal will alter the essential
356 character of the locality. Mr. Lyons said that what you currently see in the White Shutters Community is
357 a series of small cabins on small lots that is picturesque. Mr. Lyons continued that they are going to be
358 replacing a deck with a wall and altering the look from the lake and he does not think that is in the
359 public's interest.

360 Mr. Henry said that he thinks that the new building will be essentially in the same footprint as this
361 building and he does not see that is an intrusion. Mr. Schneider said that it is longer going down
362 towards the lake. Mr. Schneider asked and Mr. Claus thinks that it is approximately a 9 ft expansion and
363 just shy of 11 ft from the property line.

364 Mr. Schneider said that he does not think that this proposal is inconsistent with the Spirit of the
365 Ordinance. Vice Chair Claus agreed with Mr. Schneider.

366 Mr. Lyons said that he does not see a hardship as the lots in White Shutters tend to be around the same
367 size; there is nothing unique about this property.

368 Vice Chair Claus said that he struggles to apply a hardship with setbacks because to him he is looking at
369 why the extra square footage is needed in that space. It is easy to look at one of the Variances and see
370 hardship but looking at all of them together is more difficult. The property is small and the Zoning
371 Ordinance tries to take that into account by allowing reduced setbacks and then there is the size of the
372 envelope. It is difficult for him to see a hardship looking at the neighbor's property and the way that is
373 set up. This property could have a structure that does not encroach on the side setback and then could
374 expand slightly towards the road and get the square foot requirement with a deck off the front of the
375 house. It is difficult for him to look at the hardship of one Variance as opposed to looking at the
376 proposal as a whole.

377 Mr. Henry said that he believes that if the Board were to grant a Variance for anything he thinks that this
378 one would be approved because they are already at that boundary and are not increasing the distance;
379 strictly looking at the side setback he does not have an issue. Mr. Schneider and Vice Chair Claus
380 agreed.

381 **Mr. Schneider made a motion to approve the Variance request for ZBA20-04: Parcel ID: 0125-0011-**
382 **0000 to permit a Variance regarding Zoning Ordinance Article III, Section 3.10 to permit a west side**
383 **setback of 8.7 ft where 15 ft is required, as per the plans submitted and subject to the conditions of an**
384 **approved Shoreland Permit. Mr. Henry seconded the motion. A roll call vote was taken: Vice Chair**
385 **Claus voted yes, Mr. Henry voted yes, Mr. Lyons voted yes, Mr. Schneider voted yes, Chairman**
386 **Simpson voted yes. The motion passed unanimously.**

387 Chairman Simpson asked the Board to discuss the second Variance request which is for an east side
388 setback of 4.1 ft where 15 ft is required.

389 Mr. Henry said that he has a little bit of an issue with this one as he does not consider the deck that is on
390 the ground as a structure. Chairman Simpson said that it is by definition. Mr. Henry said that he
391 understands but believes that this is different than the other side that has elevation. He does not see a
392 building footprint replacing a deck footprint as necessarily the same.

393 Vice Chair Claus agreed with Mr. Henry and said that a pool is a structure and yet it has a different
394 presence to it than a home. The Zoning Ordinance separates a structure and a primary structure and he
395 thinks that the applicants are thinking that they can replace a deck with a primary structure and he does
396 not see that being equal.

397 Mr. Schneider said that 4 ft is not much and he wonders what will happen if the Board approves this
398 Variance and the neighbors want to expand to 4 ft from their property line. He does not think that not
399 being able to build 4.1 ft from the property line creates a hardship. He also does not think that this is
400 consistent with the Spirit of the Ordinance and to approve things so close to the property creates a
401 precedence that is not in the public interest. He does not think that it is in the public interest to have
402 White Shutters look like there are only houses and no land.

403 Vice Chair Claus said that he agrees with Mr. Schneider. The Zoning Ordinance tries to account for the
404 lots that are less than the minimum but taking a 15 ft setback and dropping it to 4 ft is over a 70%
405 reduction.

406 Mr. Schneider said that in terms of hardship there is nothing unusual about this lot, it is just small. He
407 thinks that there is a fair and substantial relationship between the purpose of the Ordinance and this
408 particular piece of property.

409 Chairman Simpson said that he thinks that there is nothing that distinguishes this property from other
410 properties in the area, they are all small lots. He does not see the hardship to have the structure so
411 close to the property line as a necessity, especially as there were other options to expand the living
412 space. Even though the Board does not know about any fire hazards, these houses are close together.

413 **Mr. Schneider made a motion to deny the request for a Variance for ZBA20-04: Parcel ID: 0125-0011-**
414 **0000, for a Variance from the Zoning Ordinance, Article III, Section 3.10 to request a east side setback**
415 **of 4.1 ft where 15 ft is required due to the fact that the Variance is contrary to the public interest, that**
416 **the Spirit of the Ordinance is not observed and that the hardship criteria is not met because this**
417 **property is similar to other properties in the area and a fair and substantial relationship does exist**
418 **between the Ordinance and the application to the property. Mr. Henry seconded the motion. A roll**
419 **call vote was taken: Vice Chair Claus voted yes, Mr. Henry voted yes, Mr. Lyons voted yes, Mr.**
420 **Schneider voted yes, and Chairman Simpson voted yes. The motion for denial passed unanimously.**

421 Chairman Simpson asked the Board to discuss the third Variance request which is to allow a lot coverage
422 of 45.1% where 40% is required.

423 Mr. Schneider said that there is a summary of dimensional requirements submitted with the application
424 and it looks as though the current lot coverage is 34.5%. There is also a note that the total existing lot
425 coverage is 1,515 sq ft and the proposed reconstruction will result in approximately 1,980 sq ft of lot
426 coverage.

427 Mr. Schneider said that in this case it is not a significant amount more than the Ordinance allows. Vice
428 Chair Claus said that he looks at things in a scale as to what is being requested and to him this is in an
429 acceptable margin. Mr. Henry agreed with Vice Chair Claus.

430 Chairman Simpson said that in light of the Board's vote to deny the 4.1 ft setback request, this Variance
431 could push the lot coverage somewhere else on the property and he is not sure he is comfortable voting
432 for that in ignorance in how this property could be redeveloped. Vice Chair Claus asked and Chairman
433 Simpson clarified his thoughts regarding this issue for the Board.

434 Mr. Schneider said that the new plan will either conform with Zoning or it will not and if it does not then
435 they will have to return to the Board.

436 Vice Chair Claus said that regardless of where the increase happens this is a 12% – 13% increase in lot
437 coverage. He thinks that the storm water management outweighs the increase in the lot coverage. Mr.
438 Schneider said that he thinks they have done a good job to cover environmental management.

439 Mr. Henry said that he thinks that the 5% over the maximum is about 200 sq ft, which is a 10 ft x 20 ft
440 area.

441 Mr. Lyons said that he does not see how any increase in impervious surface, particularly on a lot this
442 small can be construed to be within the Spirit of the Ordinance or in the public interest. He thinks that
443 Chairman Simpson's point about essentially writing a blank check as they no longer have a plan is also
444 valid.

445 **Mr. Schneider made a motion to approve for ZBA20-04: Parcel ID: 0125-0011-0000, a Variance for**
446 **Article III, Section 3.10 to permit construction of a new single-family residence with lot coverage of**
447 **45.1% where 40% is required. Mr. Henry seconded the motion. A roll call vote was taken: Vice Chair**

448 **Claus voted yes, Mr. Henry voted yes, Mr. Lyons voted no, Mr. Schneider voted yes, Chairman**
449 **Simpson voted no. The motion passed.**

450 Mr. Schneider asked if the no votes can explain their reasoning. Mr. Lyons said that he would like to and
451 Chairman Simpson said that the motion passed so he does not know why it is relevant.

452 Chairman Simpson asked the Board to discuss the fourth Variance which is the building height of 33.5 ft
453 where a maximum of 25 ft of height is permitted.

454 Mr. Schneider said that 33.5 ft is a very tall building. Chairman Simpson said that the house will be three
455 full stories. Mr. Schneider said that his house is two full stories with a peaked roof and it is about 24 ft.

456 Vice Chair Claus asked and Mr. Schneider said that the Zoning allows for a maximum structure height of
457 40 ft, from the lowest point to the highest point. Mr. Schneider said that they are talking about the
458 height in the reduced setbacks. The Variance request should say "building height within the reduced
459 setback" and he thinks that whoever makes the motion should say that. He was worried that the
460 Ordinance was being misunderstood but was told that the height of the building within the reduced
461 setback is 33.5 ft.

462 There was a discussion about the definition of maximum structure height and that the height of the
463 structure is 33.5 ft within the setback and about the origin of the Ordinance.

464 Vice Chair Claus said that he does not see an issue with the public interest or with substantial justice. He
465 thinks that whether it will affect property values is hard to define as it could go either way. Regarding
466 the Spirit of the Ordinance, he does look at the Ordinance and it says that in a reduced setback you
467 cannot have a really tall building that close to the property line. The proposal is a 34% increase and that
468 is above his comfort zone and he thinks it does not meet the Spirit of the Ordinance.

469 Mr. Lyons said that he does not see the hardship of needing to go to 33.5 ft instead of 25 ft; he does not
470 think that it is critical to have a 33.5 ft structure. Mr. Simpson said that there is a difference between
471 wants and needs, which the criteria do not reflect.

472 Vice Chair Claus said that going from 33.5 ft to 25 ft essentially takes off a full story; however, looking at
473 the footprint, they could build a house to get the third story within the envelope and not have to reach
474 that height within the setbacks.

475 Mr. Lyons said that this is a structure that will be visible for a mile across Lake Sunapee; it is right on the
476 hillside.

477 Mr. Henry asked and it was confirmed that no other houses would be this high along the section of Jobs
478 Creek Rd that this property is located. Vice Chair Claus said that the house to the west is 22 ft and the
479 house to the east is 28 ft and this house would be 33.5 ft; 15 out of the 16 homes conform to the height
480 restrictions. There was further discussion regarding this matter.

481 Mr. Schneider said that he thinks that granting this Variance would be contrary to the public interest
482 and the Spirit of the Ordinance and hardship because 25 ft is a reasonable height requirement to have
483 within a setback.

484 Chairman Simpson said that looking at the topographical map, it does appear as though the two
485 abutting lots on either side are within the same slope area. It seems that the proposed height is a fairly
486 severe deviation over what is permitted in this area. Given the slope and the other buildings there, he
487 does not think that it is a hardship that is unique to this property. He also does not see that this is in the
488 public's interest and it would essentially alter the characteristics of the locality.

489 **Mr. Schneider made a motion to deny the Variance request for ZBA20-04: Parcel ID: 0125-0011-0000:**
490 **a Variance request from Zoning Ordinance, Article III, Section 3.1 to permit construction of a new**
491 **single family residence with a building height within the reduced setback area of 33.5 ft where a**
492 **maximum of 25 ft is permitted due to the fact that the Variance would be contrary to the public**
493 **interest, that it is contrary to the Spirit of the Ordinance, and that hardship to have so large a**
494 **magnitude compared to the Ordinance is not demonstrated. Mr. Lyons seconded the motion. A roll**
495 **call vote was taken: Vice Chair Claus voted yes, Mr. Henry voted yes, Mr. Lyons voted yes, Mr.**
496 **Schneider voted yes, and Chairman Simpson voted yes. The motion to deny the Variance passed**
497 **unanimously.**

498 Chairman Simpson asked the Board to discuss the fifth Variance which is to allow a maximum surface
499 coverage within the Shoreline Overlay District of 42.9% where 25% is allowed.

500 Vice Chair Claus said that he thinks that a 5% increase and the storm water management measures that
501 have been presented outweighs the small increase. Chairman Simpson asked and Mr. Claus said that he
502 thought 40% was the lot coverage allowed. Mr. Schneider said that the maximum lot coverage in the
503 Shoreland Overlay is 25%. According to the information submitted, the current coverage is 28.6%, so it
504 is quite an increase. Ms. Gage said that the 25% maximum lot coverage is impermeable surface, 40% is
505 permeable and impermeable combined. There was further discussion regarding this matter.

506 Vice Chair Claus said that the request is a significant increase. Mr. Schneider said that he thinks that the
507 increase is not consistent with the Spirit of the Ordinance.

508 Mr. Lyons said that he thinks that the Board has made enough alterations by denying Variances and
509 thinks that the Board must realize that they do not know what a new plan might look like. If the Board
510 votes on this, they could give the applicants a blank check. He thinks that the proposal is contrary to the
511 Spirit of the Ordinance and is not in the public's interest to build over more of a small lot. He thinks that
512 the Variance should be denied on those two grounds.

513 Chairman Simpson said that he does not have enough information at this point given the two Variances
514 that were denied to know what he would be voting for. He recognizes that the project either complies
515 or it does not but he notes that this is almost a 50% increase over the current lot coverage. He is not
516 sure that he sees a hardship given that the Board does not know what the building will be at this point.

517 Mr. Henry said that the Board needs to approve something based on plans so they know what they are
518 approving; without knowing what the plan is, he does not know how they can approve it. Chairman
519 Simpson said that was done for the third Variance request. Mr. Henry said that was a much smaller
520 percentage.

521 Vice Chair Claus said that the request is almost 75% more than the maximum allowance. Chairman
522 Simpson asked if Vice Chair Claus has any comments regarding the criteria for the Variance. Vice Chair
523 Claus said that some of the lots have really high lot coverages. There is already a burden in this area and
524 to increase that goes against the public interest.

525 Chairman Simpson said that he does not know if the lot coverage being discussed is all impermeable.

526 Vice Chair Claus said that looking at the property as a whole, he believes that something could be
527 designed in such a way to get the square footage desired and be a lot closer to the maximum allowed lot
528 coverage. Vice Chair Claus and it was confirmed that this is a smaller lot and there is no reduction in the
529 allowance because it is smaller. Ms. Gage said that the maximum lot coverage requirement is based on
530 a 1.5-acre lot and there is no change in the percentage allowed for smaller lots.

531 Mr. Henry said that there is a big grassy area in front of this house and asked if all the houses in the area
532 are considered when looking at the Shoreline. Ms. Gage said that it is per lot. Chairman Simpson asked
533 if Mr. Henry is proposing the Board look at that as he does not know what exists out there. Mr.
534 Schneider said that the Board would have to look at it as a cluster development. There was further
535 discussion regarding this matter.

536 Vice Chair Claus said that this is a smaller lot and there is nothing in the Ordinance that adjusts for
537 smaller lots; a modest home built on this lot will still exceed the maximum lot coverage. He does not
538 like what the increase is compared to what is allotted, however, he thinks anything built on the lot will
539 be more than 25%. There was further discussion regarding this matter.

540 Mr. Henry said that it is difficult to vote on this Variance when they do not know the plan. Mr. Lyons
541 said that he would feel better about making a judgement if there was a plan. Chairman Simpson asked
542 the Board if they would like to request more information before considering this Variance. Mr. Lyons
543 said that the Board has given applicants the opportunity to withdraw applications for this situation. The
544 Board members all agreed with Mr. Lyons to allow the applicants to withdraw the application if they
545 wanted to do so.

546 Mr. Schneider made a motion to go out of deliberative session in order to allow the applicant to
547 determine if they would like to withdraw the application for Variance #5. Mr. Lyons seconded the
548 motion. A roll call vote was taken: Vice Chair Claus voted yes, Mr. Henry voted yes, Mr. Lyons voted
549 yes, Mr. Schneider voted yes, and Chairman Simpson voted yes. The motion passed unanimously.

550 Attorney Hastings said that he appreciates the sentiment that the Board is expressing. Obviously,
551 denying a couple of the Variances makes it so that they will need to come up with a new plan. He thinks
552 that they would like to request to have the application tabled in order to discuss their options and

potentially withdraw it later or come back before the Board with a modified plan. Mr. Schneider asked and Attorney Hastings said that if they withdraw the application entirely, they will have to submit a new application. If they decide to appeal the decision then they will be giving up this Variance request. Mr. Schneider said that it is his understanding that if the Board tables the application it would have to be for a future date. Attorney Hastings said that he thinks that the Board can table it and then it would just need to be re-noticed before the hearing. Chairman Simpson said that he thinks that the case would have to be continued to another date and then if there is a request to continue the case again the Board can do that. There was further discussion regarding this matter and the applicants agreed that they would like to continue the case until the October Zoning meeting.

Mr. Schneider made a motion to go into deliberative session. Mr. Henry seconded the motion. A roll call vote was taken: Vice Chair Claus voted yes, Mr. Henry voted yes, Mr. Lyons voted yes, Mr. Schneider voted yes, and Chairman Simpson voted yes. The motion passed unanimously.

Mr. Schneider made a motion to accept the request from the applicant to defer consideration for ZBA20-04: Parcel ID: 0125-0011-0000: a Variance request from Section 3.20 for maximum surface coverage within the Shoreline Overlay District of 42.9% where 25% is allowed to the hearing on the regularly scheduled date of October 1st. Mr. Lyons seconded the motion. A roll call vote was taken: Vice Chair Claus voted yes, Mr. Henry voted yes, Mr. Lyons voted yes, Mr. Schneider voted yes, and Chairman Simpson voted yes. The motion passed unanimously.

MINUTES

Changes to the minutes from May 7, 2020: Change Line 20 to read "...a problem, they can call our staff person at (603) 763-2212, ext. 23..." Change Line 32 to read "...if anyone else would like to be the Chair..." Change Line 57 to read "Mr. Henry said that he read the Planning Board minutes..." Change Line 59 to read "Mr. Claus asked if the fence will be built..." Change Line 60 to read "...the fence will be stepped down..." Change Line 110 to read "Remove the sentence that starts with..."

Mr. Schneider made a motion to approve the minutes as amended. Mr. Lyons seconded the motion. A roll call vote was taken: Vice Chair Claus voted yes, Mr. Henry voted yes, Mr. Lyons voted yes, Mr. Schneider voted yes, and Chairman Simpson voted yes. The motion passed unanimously.

Changes to the minutes from July 16, 2020: Change Line 76 to read "...the proposed height will be no..."

Mr. Lyons made a motion to approve the minutes as amended. Mr. Schneider seconded the motion. A roll call vote was taken: Vice Chair Claus voted yes, Mr. Henry voted yes, Mr. Lyons voted yes, Mr. Schneider voted yes, and Chairman Simpson voted yes. The motion passed unanimously.

Changes to the minutes from August 6, 2020: Remove Clayton Platt from "Members Present by Video" and add him to "Also Present by Video". Change Line 17 to read "Mr. Platt had previously notified the Board that he was recusing himself from the case. Mr. Schneider made a motion to appoint Bob Henry..." Change Line 48 to read "...comment from the Board regarding the motion first." Add after

588 Line 123 "A motion was made by Mr. Schneider to adjourn the meeting. Mr. Lyons seconded the
589 motion. The motion passed unanimously."

590 Mr. Lyons made a motion to approve the minutes as amended. Mr. Henry seconded the motion. A roll
591 call vote was taken: Vice Chair Claus voted yes, Mr. Henry voted yes, Mr. Lyons voted yes, Mr.
592 Schneider voted yes, and Chairman Simpson voted yes. The motion passed unanimously.

593 **OTHER BUSINESS**

594 Ms. Gage said that she thinks that all applicants who apply for Zoning applications should have to also
595 complete Certificates of Zoning Compliance applications as they cover more than the Zoning
596 applications. Chairman Simpson asked if this is something that can be made as an amendment to the
597 Variance and Special Exception applications. Mr. Schneider asked if this is something that must be
598 added to the Board's Rules and Procedures. Chairman Simpson said that is something that must be
599 noticed and a public hearing must be held. There was further discussion regarding this matter.

600 Ms. Gage asked the Board if they were interested in moving the starting time of the meetings from 7:00
601 pm to 6:00 pm as the meetings have been running so late. The Board all agreed to this change unless
602 Mr. Platt objects.

603 Ms. Gage said that the minutes that are legally binding are the ones that are available on the website in
604 five business days and asked if there is anyone on the Board who is interested in reviewing them and
605 making smaller modifications before they are published. There was further discussion regarding this
606 matter and who may have time to do this.

607 There was a brief discussion regarding how the meeting was ran and how the Board was able to discuss
608 the different Variance requests separately and vote separately.

609 Chairman Simpson adjourned the meeting at 9:34 pm.

610 Respectfully submitted,

611 Melissa Pollari