

1 **TOWN OF SUNAPEE**

2 **ZONING BOARD**

3 **SEPTEMBER 3, 2020**

4 Vice Chair Claus called the meeting to order at 7:09 pm and read the Governor's Emergency Order #12
5 that authorizes the Zoning Board to meet electronically: "Due to the State of Emergency declared by the
6 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 in this meeting through video
9 conferencing at <https://zoom.us/j/94350109363>, Meeting ID 943 5010 9363 (passcode 705609) or by
10 telephone by calling (929) 205 6099."

11 A roll call of members present was taken.

12 **MEMBERS PRESENT BY VIDEO:** Jeffrey Claus, Vice Chair; Bob Henry; Alternate; Jim Lyons; Clayton Platt;
13 Daniel Schneider

14 Mr. Lyons made a motion to appoint Bob Henry as a voting member of the meeting. Mr. Schneider
15 seconded the motion. A roll call vote was taken: Mr. Lyons voted yes, Mr. Platt voted yes, Mr. Schneider
16 voted yes, and Vice Chair Claus voted yes. The motion passed unanimously.

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

18 **ALSO PRESENT BY VIDEO:** Bruce & Ann Lukasik, George Neuwirt, Marcus Allen

19 **CASE # ZBA20-05: PARCEL ID: 0134-0018-0000: A SPECIAL EXCEPTION IS REQUESTED, PER ARTICLE III,**
20 **SECTION 3.50(B), TO ALLOW A LESSER FRONT SETBACK FOR A 16 FT X 26 FT GARAGE WITH UPPER AND**
21 **LOWER ACCESS; 247 LAKE AVE; BRUCE E & ANN M LUKASIK; GEORGE M NEUWIRT CONSTRUCTION**

22 Ms. Gage said that the application is complete and abutters have been notified. Mr. Schneider said that
23 he does not think that the application is complete because it does not say what setback is being
24 requested. Ms. Gage said that the applicants can go over that in the discussion and it can be included in
25 the motion.

26 Ms. Gage said that she does have the packet available if the Board would like to do a shared screen. The
27 last pages of the packet include her memo to the Board regarding the case as well as questions that she
28 sent to the applicant and the response that she received. She received letters from abutters with the
29 submission of the application, however, she also received an email before the meeting from Marcus
30 Allen that she can email the Board or screen share with them. The Board requested that Ms. Gage email
31 them the letter and then they can read it. Mr. Neuwirt requested that Ms. Gage email the letter to
32 himself and the Lukasiks as well.

33 Vice Chair Claus asked and Ms. Gage said that she has not received any comments from the Department
34 Heads regarding the case.

George Neuwirt presented the merits of the case on behalf of the applicants.

Mr. Neuwirt said that the Lukasiks are planning on retiring to their house here and one of the issues with the house is the ingress and egress. They designed the project to be able to lessen the burden of the Lukasiks having to park at the top of the lot, in their neighbor's parking lot, and then walk down the driveway. The intent of this project is to provide better access from the road down to the property. They considered the grades and the Lukasik's needs, such as storage space, and they designed a building that is simple and tasteful and lends itself to the surrounding environment. The purpose of the building is to drive into it and then there is an internal staircase; there is also storage underneath the parking area as there is adequate space to have a suspended pad. It is traditional in NH to have a garage for vehicles.

Mr. Neuwirt said that the Shoreland Plan shows that the Lukasik's property has essentially been used as a parking area and access to the neighbor's properties. In an effort to try to reclaim what is theirs and to utilize it in their best interest, the Lukasiks have negotiated with their neighbors, as a separate project where the retaining wall will be moved 10 ft to 12 ft so the neighbors can access their lots.

Mr. Neuwirt went over the Special Exception criteria and said that the first criterion is that the ZBA may allow a lesser front setback provided that the lot for which the lesser front setback is requested is a pre-existing lot and nonconforming due to lot size and it is 0.16 acres. The second criterion is that the majority of lots on the same side of the road and within 500 ft of both sides of the subject lot have structures of equal or greater type which do not meet front setback requirements (the hierarchy of structures from greater to less is house>garage>shed). He submitted a copy of a tax map which shows that he measured 521 ft in one direction and 507 ft in the other and 7 structures out of 12 are non-conforming. Mr. Neuwirt explained these non-conformities to the Board and showed pictures to the Board.

Mr. Neuwirt said that the third criterion is that the proposed structure for which the Special Exception is being sought shall be no closer to the centerline of road right-of-way than any other structure of equal or greater type used in the comparison in Paragraph (2). The proposed project will be 35 ft from the centerline of the road so it is not any closer than other structures being used in the comparison. Mr. Schneider asked and Mr. Henry said that the 35 ft is shown on the map. Mr. Schneider asked and Mr. Neuwirt said that they are requesting a 15 ft relief from the front setback; the building will be built 35 ft from the centerline of the road. Mr. Schneider said that this should be in the application and should have been sent to abutters. Mr. Neuwirt continued that this structure will be a garage, which is of equal value to all of the other structures along the road except for the house on Lot 23.

Mr. Neuwirt said that the fourth criterion is that the proposed structure shall be no closer than 10 ft to the right-of-way line of the road. The proposed structure will be 35 ft to the centerline of the road, which creates a structure to that is approximately 15 ft from the edge of the road to the front of the structure.

Mr. Neuwirt said that the fifth criterion is that the portion of the proposed structure encroaching on the front setback shall be no higher than 25 ft. Mr. Neuwirt said that he saw Ms. Gage's note regarding the

73 maximum structure height and building height and asked if the measurement is from the eave to
74 directly below. Ms. Gage confirmed that she believes that the measurement is to the ground directly
75 below. Mr. Neuwirt said that the total height of the building is 27 ft 3 inches but to the eave of the
76 building it is only about 16 ft from the grade elevation to the eave. The grades step up to transition the
77 distance between the upper and lower grade and the middle point of the building is somewhere around
78 15 ft to 16 ft. Mr. Schneider asked and Mr. Neuwirt confirmed that the total height of the building is 27
79 ft 3 inches from the lowest grade to the peak. There was further discussion regarding this matter.

80 Mr. Henry asked if there will be a driveway that goes to the bottom garage door and if a car can be
81 stored there. Mr. Neuwirt said that there is not enough room to maneuver a car down there based on
82 the grade transitions; the area will just be used for storage. There was further discussion regarding this
83 issue.

84 Mr. Henry asked and Mr. Neuwirt said that they are moving the retaining wall because, currently, most
85 of the driveway is on the Lukasik's property. The whole piece to the left-hand side is not being handled
86 by Mr. Neuwirt; they are only addressing the garage. However, the Lukasiks have talked to their
87 neighbors and they are moving the driveway to the left so their ingress and egress is on their own
88 property.

89 Mr. Henry said that there is another retaining wall down below that is being shown to be moved 20 ft.
90 Mr. Neuwirt said that the existing stone wall is not straight and has sloped back so most of this stone
91 wall rebuilding is to recapture the original footprint of the stone wall. Vice Chair Claus asked and Mr.
92 Neuwirt said that the moving of the stone wall will create a gravel area. Mr. Neuwirt said that the stone
93 wall has moved between 8 ft to 10 ft and they are trying to make it vertical again. Mr. Lyons asked how
94 many years the stone wall has moved as it looks as though the parking lot has been there forever. Mr.
95 Neuwirt said that he does not know the history as to how the grades have changed. Mr. Lyons asked
96 and Mr. Neuwirt said that the retaining wall is very sloped; while the plan says that there will be no
97 increase in the impervious surface, he does believe that some will be increased down below because the
98 stone wall needs to be made vertical. He has spoken with the Lukasiks and they can either apply for an
99 amendment to the Shoreland Permit that highlights that movement of the stonewall and a calculation of
100 the additional impervious area; or, they can turn part of the driveway above to offset the slight
101 impervious addition. The objective is to have a net zero gain so there is no increase in impervious
102 surface. There was further discussion regarding this matter.

103 Vice Chair Claus asked and Ms. Gage said that the 25 ft structure height within the setback has
104 historically been measured to the ground level directly beneath while the maximum structure height is
105 measured as the lowest grade to the highest peak. Mr. Lyons asked and Mr. Neuwirt said that the
106 maximum height of the structure is 27 ft 3 inches. There was further discussion as to how height is
107 measured.

108 Mr. Schneider said that he has a question regarding the side setback as the map shows the road
109 frontage as 35 ft and the width of the garage is 16 ft. The property is in the Residential District so the
110 requirement would be a 10 ft setback on each side. Adding the measurements together he gets 36 ft

111 and he cannot see any plans that show the side setbacks. Mr. Platt said that the side setbacks are
112 shown on the site plan.

113 Mr. Lyons asked Mr. Platt about the survey as he thinks that there is a 4 ft wide right of way on the
114 property and he thinks that might have a bearing on the setback. Mr. Platt said that it looks like the
115 right of way is on the other side of the property line. Mr. Lyons said that he questions how valid the
116 survey is as it is old and asked if this is the same area that there was a log slide. Mr. Platt said that it
117 seems to him that the lines shown on the site plan are the same as the lines shown on the survey. Mr.
118 Schneider asked and Mr. Platt said that he thinks that the survey is representative of the property lines;
119 he does not presume that there were any lot line adjustments or annexations. Mr. Lyons said that there
120 have been some concerns about property lines on Lake Ave. Mr. Neuwirt said that there have been
121 several discoveries along Lake Ave; he was involved in one where there was an unclaimed log sluice that
122 belonged to the Stockers. Mr. Platt said that he is concerned that the conversation is getting off the
123 point. The Board has been presented with a survey and if they are going to require everyone to have a
124 surveyor sign a site plan that includes new construction that decision should be made before the Board
125 has a meeting. There is a difference between having a survey and having a surveyor sign that there
126 structure is 10 ft from the property line. The Board has never required this in the past and he thinks that
127 it would be unfair for the Board to say that they need every detail about this. Mr. Lyons said that he
128 thinks that it needs to be done on a case by case basis and this is a narrow property and there is a
129 history of dubious lines in this general area. Mr. Platt said that the plan says that there is a 4 ft right of
130 way that is adjacent to this property. Mr. Lyons said that someone has interest in that right of way.
131 Marcus Allen said that he is the person who owns the access and that it is not a right of way, it is a
132 deeded lot and he has the same concerns about the 10 ft setback because it is so tight on both sides.

133 Mr. Neuwirt said that he thinks that he has met the merits of the Special Exception criteria. Vice Chair
134 Claus said that he questions the last criterion which is that the proposed structure encroaching on the
135 front setback shall be no higher than 25 ft. He would like to know where the structure is being
136 measured from in the setback because the applicants already stated that the building height is 27 ft 3
137 inches at the roof peak. Mr. Schneider said that the highest point is in the back of the building towards
138 the lake and in the front it is 18 ft to the eave. Vice Chair Claus asked and Mr. Schneider said that
139 cupolas are excluded from height measurements. There was further discussion regarding the height
140 definitions.

141 Mr. Neuwirt asked and Ms. Gage said that the letters that Mr. Neuwirt submitted with the packet in
142 support of the proposal is part of the packet and she has emailed Mr. Allen's email to the Board.

143 Mr. Lukasik said that they purchased the property in 1980 and most of that time the house was a season
144 cottage and they redid it about 10 years ago. The driveway is extremely difficult to get down and the
145 person who plows the driveway gets stuck. He has had knee surgery and it is very hard for him to get
146 down. The garage will make it much easier on them as they will be able to drive in, go down the stairs,
147 and then go into their home. They plan on moving to the house next June and becoming full time
148 residents of Sunapee so the garage will help them to live more comfortably.

Vice Chair Claus said that the proposed topography does not make sense to him as they will be increasing the slope of the driveway on something that is already steep. Mr. Clapp asked if this is relevant to the Special Exception request as the stairs are designed below the structure. Vice Chair Claus said that they are disturbing an area that is over 1000 sq ft in a slope area that is greater than 15%. He is also trying to understand the grades because that will tell him the height of the retaining wall that has been moved over; the proposed grades make it so the wall is not needed. Mr. Neuwirt said that he knows that he is responsible to build retaining walls no higher than 42 inches so it is his responsibility to make sure it fits the requirements of the Zoning Ordinance. Vice Chair Claus asked if Mr. Neuwirt wants the Board to approve a plan that may not work and if the Board should just take Mr. Neuwirt's word for it. It is one thing to say that he is not going to build a retaining wall over 42 inches on such a steep slope but if the proposed grades are correct then a lot more grading needs to happen in order to make it work because the measurement between the 82 and 88 contours creates over a 50% slope. He believes that this site needs a Storm Water Management Plan. Mr. Neuwirt said that if that is the case, the Board can make a Storm Water Management Plan a stipulation of an approval. Vice Chair Claus asked if the Board can make that a stipulation or if the Board has to approve a revised plan. Mr. Neuwirt said that his understanding of the proceedings is that he is not even required to present an approved Shoreland Permit, it can be something that is a condition of approval and required before a building permit is obtained. Vice Chair Claus said that this is a Town requirement with the measurements that he stated. Ms. Gage said that the Certificate of Zoning Compliance (CZC) will refer to the fact that a retaining wall cannot be over 42 inches in height unless it meets setbacks and also any construction on a slope greater than 15 % does need an erosion control plan submitted to the Zoning Office. Mr. Henry asked and Ms. Gage confirmed that the Board can vote on the Special Exception without worrying about it. Mr. Lyons asked how the Board can vote on a plan as they do not know what they are voting on. Mr. Henry said that he is looking at a plan that shows a garage within the setbacks and he does not have an issue with it. Mr. Platt said that he does not have an issue with it either as there are specific requirements that need to be met for a Special Exception and this plan was prepared to demonstrate that those requirements are met. Mr. Schneider said that it meets the requirements of the Special Exception and that it is up to Ms. Gage to determine if the plan that is submitted for a CZC meets all the requirements of the Zoning Ordinance. There may be other requirements that are not met, however, that is not what the Board is discussing.

Vice Chair Claus asked and no one on the Board had anymore questions for Mr. Neuwirt.

Marcus Allen, 248 Lake Ave, said that he owns the deeded 4 ft strip that abuts this property. He sent an email to Ms. Gage with some points. His first question is that he does not understand the need for the Special Exception because the application says that it optimizes grades for access. To him, the intent of a Special Exception is a project cannot meet an issue and in this instance the issue is a 50 ft setback and he does not know why they cannot meet the setback as they only have to move the garage back a little further and there is plenty of room on the property to do that. Mr. Allen continued that he also does not like that the survey is not a recorded survey, just some pictures without stamps. The building will also touch both 10 ft setbacks and this is very tight and he does not know if it will fit or not and it is hard without a survey. He does not know if the property line fades away enough to fit the garage. He also

questioned the 25 ft height requirement as looking at the side of the building the slope drops at least 5 ft and if you measure the lowest point of the ground to the top of the roof it is more than 25 ft. He also questions the retaining wall being built in the 10 ft setback from his 4 ft strip as he is not sure if it can be built in the setback. Also, to scale, the driveway is approximately 40 ft to 50 ft long by 10 ft wide so it is a considerable impervious area.

Mr. Allen continued that regarding Zoning Ordinance Article III, Section 3.50(b)(2) he counted more than 12 lots within 500 ft on each side; he counted at least 13 to 14 lots. Also, the structure on Lot 15 looks to be on stilts so he thinks that it is a shed, not a garage so he does not think that building counts. He does not think that the requirement is met.

Mr. Allen said that he also does not think that the proposal meets Zoning Ordinance Article III, Section 3.40, particularly (l) and (n), however, it is hard to tell because the surveys do not seem correct. His concerns regarding the erosion control is that currently when it rains the water goes between the Lukasik's property and the Resnick's property, which is where his lot is. There has been some wash out when they have had a lot of rain and it is a sensitive site for erosion control and storm water. He saw on the plan a note about a drywell and structures for drainage but he could not really see anything on the plan so he is not sure how they will be trying to control erosion and storm water.

Mr. Allen said that the site plans show the adjacent property as a 4 ft right of way which is not correct as his property is a deeded lot. It seems like there are also other inaccuracies that do not seem to match between the documents. He thinks that there should be a survey.

Vice Chair Claus said that he shares Mr. Allen's concerns about the impervious surface of the lot knowing that there will be gravel and the wall be shifting as the site is already +/- 50% impervious surface and will increase more.

Vice Chair Claus said that there are other errors are the plans such as the stone wall that is shown to be up by the mailbox. He questions the accuracy of what they are looking at, especially the building touches two setback lines.

Ms. Gage asked if the Board would want to request "as built" drawings verifying the height, that setbacks are met, and showing the retaining walls. The Board could also request the Town's engineer to review the storm water systems at the cost of the applicant. Mr. Lyons said that there is no storm water plan. Mr. Platt said that he believes that there will be a Storm Water Management Plan. Ms. Gage confirmed that there is a requirement for an erosion control plan prior to disturbing 1000 sq ft of land on slopes greater than 15%. If it were a significant disturbance then the Town's engineer would have to review the plan. Mr. Lyons said that Vice Chair Claus thinks that this is more like 50%, not 15%. Ms. Gage said that Section 3.40(n) does require a licensed professional engineer to prepare the erosion control plan. Section 3.40(l) also requires a drainage and erosion control plan to be prepared by a licensed professional engineer for driveways, utilities, and stairways on slopes which exceed 25% and have an elevation change of more than 20 ft. Mr. Neuwirt said that they do not have an elevation change of 20 ft and that there is also an erosion control plan on the top of the proposed plan. Mr. Platt said that there is a possibility of making the gravel area in front of the garage grass and not gravel. Mr.

227 Neuwirt said that the Board can create a condition that the impervious surface does not increase so it
228 will be his responsibility. It would then be Ms. Gage's responsibility in the administering of the CZC to
229 ensure that whatever impervious surface is added that they create pervious surface so there is no
230 increase. Vice Chair Claus said that even if there is no increase, the total impervious and pervious
231 surface is already over 50% and he asked if a Variance is required to exceed that requirement. Mr.
232 Henry asked and Mr. Neuwirt confirmed that the impervious surface is already increasing. Vice Chair
233 Claus said that Mr. Neuwirt will be increasing area that is either impervious or pervious surface and the
234 combined for the lot is already over 50% and they will be exceeding that. Mr. Henry said that is not how
235 he is reading the proposal; right now, it is already a big driveway and other than the additional
236 impervious area down below, where the garage is going, he does not think anything is being added.
237 Vice Chair Claus said that it is approximately 295 sq ft in the bottom area that is being discussed, which
238 is an increase, and whether it is pervious or not it will exceed the 50% allowed. Mr. Henry asked what is
239 wrong with pervious surface. Vice Chair Claus said that the Ordinance only allows for a combined 50%
240 pervious and impervious lot coverage. Mr. Neuwirt said that, in the end, it will be exactly what it is now.
241 Mr. Platt said that he thinks that the approval can be conditioned on Mr. Neuwirt demonstrating that
242 the impervious and pervious surfaces do not increase. Vice Chair Claus asked and Mr. Platt said that the
243 Board does not know if pervious surface will be added. Mr. Neuwirt said that the wording on the plan
244 says that they will not increase the impervious surface. Vice Chair Claus said that they will be increasing
245 the pervious surface. Mr. Henry asked how pervious surface can be added to a site. Vice Chair Claus
246 said that Mr. Neuwirt will be substituting a pervious surface, not grass, for an impervious surface. There
247 was further discussion regarding this matter and putting a condition on an approval.

248 Mr. Platt said that he is leaning towards having a condition that a professional engineer do a drainage
249 and erosion control plan and Mr. Neuwirt said that would not be a problem.

250 Paula Pietras, 245 Lake Ave, said that she is an abutter. Her parents purchased the property 40 years
251 ago and they subdivided the lots and she got a lot and the Lukasiks got a lot. She owns 35.5 ft along the
252 road and she thinks that there was some misinformation about what was told to the Board. They have
253 spoken with Ted Gallup about the driveway; however, they have not started negotiations about
254 changing their right of way. She is also concerned about her water and sewer because when they built
255 on the property, they built a common trench for the water and sewer. The Lukasiks have since moved
256 their water and sewer lines and hers is still buried in the original trench that hugs the property line. If
257 this proposal is approved, she would like a Certificate of Insurance that if anything were to happen that
258 it is noted where their water and sewer lines are located. Ms. Pietras continued that her other concern
259 is regarding the use of their upper driveway for excavation material or equipment because as soon as
260 you come down the driveway and turn it becomes her property. She is also concerned about damage to
261 her property so she is requesting a Certificate of Insurance to protect it.

262 Carla Everson, 243 Lake Ave, said that she would also like a Certificate of Insurance from Mr. Neuwirt
263 because she owns part of the driveway at the top of the road as well as part below and she wants to
264 make sure that there is no damage done or if it is then it is covered by Mr. Neuwirt's insurance.

265 Mr. Platt said that he appreciates Ms. Pietras' and Ms. Everson's comments, however, he is not sure it is
266 in the purview of the Zoning Board. It is the responsibility of the owners not to create any damage to
267 anyone else's property. Vice Chair Claus recommended that the abutters document the existing
268 conditions prior to construction by photographing the area.

269 Mr. Neuwirt said that he has a very good reputation in Sunapee about not infringing on anyone's rights.
270 If abutters have concerns or issues, getting them out before construction is great. He has a good
271 reputation for returning things back to as good, if not better, than where he started. For any project like
272 this that requires participation of peoples it is always nice if, prior to construction, there is an
273 understanding that everyone is on the same page so he is happy to address any issues the abutters may
274 have.

275 Vice Chair Claus asked if there is an access easement for the driveway and Mr. Lukasik said that there is
276 not.

277 Mr. Allen said that he still feels as though the Special Exception criteria have not been met, particularly
278 3.50(b)(2) as he does not think that the lot count is correct. He also does not think that the height
279 requirement has been met.

280 Bradley Weiss, 207 Lake Ave, said that there are several garages close to the road in that area. He
281 supports another one down there as he does not think that it would be contrary to the area; however,
282 he agrees with what Mr. Allen has said so he thinks that those concerns should be addressed.

283 Mr. Henry made a motion to go into Deliberative Session. Mr. Platt seconded the motion. The motion
284 passed unanimously.

285 Mr. Henry said that he thinks that Mr. Neuwirt has hit the five bullets very well. There are many other
286 buildings up and down Lake Ave that are built right on the road so this will not be sticking out. He thinks
287 that the setback is reasonable to everyone else in the neighborhood. His only concern is the impervious
288 surface but if that can be addressed as a condition then he does not have a problem with the Special
289 Exception request.

290 Mr. Platt said that he agrees with Mr. Henry and even if there is another lot that would still meet the
291 criteria as there would be 7 structures on 13 lots. He does not think that the Board differentiates
292 between a structure on stilts and a structure on a concrete foundation. Regarding the question about
293 the tightness of lot, the Board has required certification by a licensed land surveyor that the structure
294 meets the 10 ft side setbacks. Regarding the impervious surface, it might be good to require a drainage
295 and erosion control plan to be drawn by a professional engineer.

296 Vice Chair Claus said that there are numerous buildings on Lake Ave that are all really close to the road.
297 However, if the Board looks at the merits of the 5 criteria, he counts 16 lots with homes on them and
298 there is a total of 6 structures that are closer than what is being proposed. Mr. Platt asked and Vice
299 Chair Claus said that he is counting both sides of the road. Mr. Platt said only the one side of the road is
300 counted. Mr. Lyons said that they have had lots just disappear in Sunapee due to faulty surveys. Mr.

301 Henry said that it does not matter how many structures there are; he lives on Lake Ave and four of his
302 neighbors have structures within 6 ft of the road. Vice Chair Claus said that the requirement says, "the
303 majority of the lots". Mr. Henry said that he does not think that is an issue with this application as it
304 should be that if two people around you have garages on the road then you should be allowed to do
305 that; it should not matter what is down the road. Mr. Platt said that is one of the rules for a Special
306 Exception and it must be met in order to satisfy the criteria. Vice Chair Claus said that he counts 14 lots
307 with homes on them and 6 structures within the setback that they are proposing. Mr. Platt said that he
308 counts 12 lots, 13 if you count the 4 ft piece of land which is not a lot that can be built on. He thinks that
309 this criterion is met as there are 7 structures on the 13 lots that are within the setback.

310 Vice Chair Claus said that his concern is that it is a sensitive lot concerning storm water and that there
311 needs to be a condition regarding the pervious and impervious surface. This change will require them to
312 reapply with the State and that should be a condition as well.

313 Mr. Schneider said that the structure needs to meet all the requirements of the Zoning Ordinance,
314 specifically Section 3.40. This would include the slopes and an erosion control plan on any construction
315 exceeding 1000 sq ft on slopes greater than 15% and he believes that this lot has slopes greater than
316 15%. He thinks that the approval can just say that construction must meet the requirements of the
317 Zoning Ordinance and the Zoning Administrator would need to ensure that it does.

318 Mr. Lyons said that he is still not sure exactly what he is voting on as he is not happy with the plans that
319 have been presented. He is concerned that the structure may be closer than 10 ft to the right of way.
320 He is also concerned that the height issue has not been adequately dealt with either. He would prefer
321 to see better plans that clearly illuminate what the Board is voting on.

322 Vice Chair Claus said that the Board could make it a condition that they present a plan showing the
323 percentage of impervious and pervious surface and getting a licensed survey or a more accurate survey
324 done before construction. Mr. Platt said that he thinks that they need to have it certified that they meet
325 the 10 ft setbacks after the foundation has been put in before the concrete has been poured. Mr. Lyons
326 said that he thinks that should be done before the Board approves the plan. Vice Chair Claus asked and
327 Mr. Platt said that a surveyor can certify that the proposed foundation location will meet the setbacks
328 before the concrete is poured. Mr. Lyons said that this is a sensitive area and the lots are very tight and
329 it seems like if the Board approves a set of plans that are not professionally stamped is foolish. Mr.
330 Schneider said that he would prefer to table this until the Board has a new survey that shows the
331 location of the driveway, the height of the garage at the 50 ft setback and shows an erosion control
332 plan. Mr. Lyons agreed with Mr. Schneider. Mr. Platt said that he disagrees with Mr. Schneider as the
333 Board tends to keep continuing cases. There is a survey and a plan that seems to agree with the survey
334 and the Board keeps pushing these cases. They should decide as a Board if they want licensed land
335 surveys for all the applications or they do not. The Board cannot deny a Zoning request based on
336 applicants not having a Shoreland Permit or an erosion control plan, it is against the law. Hiring a
337 professional engineer can cost \$2,000 to \$4,000 and there is no reason to pay that much if they cannot
338 build the garage, and a Shoreline Plan can be just as expensive. Vice Chair Claus asked and Mr. Platt said
339 that the Board usually conditions approvals so that applicants obtain and comply with a Shoreland

Permit. The purpose of that was so that the Zoning Administrator could have some sort of legal way to enforce those conditions. Mr. Henry said that he thinks the Board should listen to Mr. Platt as he is a licensed surveyor and if he is comfortable then he agrees with him. Vice Chair Claus said that he does have some reservations and the impervious and pervious surface already exceeds 50% and it clearly shows an increase. He would like to see more information; however, those issues are not part of the Special Exception requirements and would fall under the Zoning Administrator's review. Mr. Schneider said that he agrees with Mr. Lyons that it would be better but he is OK with a condition that the Zoning Administrator will review the application to ensure that all provisions of the Zoning Ordinance are met. Vice Chair Claus asked about the Shoreland Permit and if the Board should make that a condition as well. Mr. Platt said that he thinks that the surface areas need to be shown on the plan.

Mr. Schneider made a motion to approve ZBA20-05: Parcel ID: 0134-0018-0000: a Special Exception per Article III, Section 3.50(b), to allow a lesser front setback of 35 ft where 50 ft is required by the Ordinance for a 16 ft x 26 ft garage with upper and lower access; on the conditions that the Zoning Administrator reviews the plan for compliance with other aspects of the Zoning Ordinance other than the requirements of this Special Exception and that the provisions of the approved Shoreland Permit be complied with. Vice Chair Claus seconded the motion. Mr. Platt said that he thinks that there should be a condition that there is certification that the building location meets side setbacks. Mr. Henry asked and Mr. Platt said that they would have a surveyor come after the foundation is poured and either do a sketch or write a letter to the Zoning Administrator. Mr. Schneider said that he thinks that after the foundation is poured is a little too late. Mr. Platt said that he thinks that a surveyor should ensure the location before it is poured and after. Vice Chair Claus said that this would ensure that the Zoning Administrator would get the information that the foundation is poured correctly. Mr. Henry asked how Mr. Neuwirt would know where the boundary line is located. Mr. Platt said that Mr. Neuwirt would have to hire a surveyor before the foundation is poured and have them certify it after it is poured. Mr. Platt made a motion to amend the motion that the location of the foundation be certified by a licensed land surveyor as meeting the side setback requirements as shown on said plan and required in the Zoning Ordinance. Vice Chair Claus seconded the amendment. A roll call vote was taken on the amendment: Mr. Henry voted yes, Mr. Lyons voted yes, Mr. Platt voted yes, Mr. Schneider voted yes, Vice Chair Schneider voted yes. The motion to amend the motion was approved unanimously. A roll call vote was taken on the amended motion: Mr. Henry voted yes, Mr. Lyons voted no, Mr. Platt voted yes, Mr. Schneider voted yes, Vice Chair Claus voted yes. The motion passed with four in favor and one opposed.

MINUTES

Changes to the minutes from August 25, 2020: The minutes were continued to the next meeting.

OTHER BUSINESS

Ms. Gage said that she has heard that the Governor is going to continue to allow Boards to meet digitally until a vaccine is available. The Zoning Board is one of the few Boards who is meeting 100% online and she thinks that it is working pretty well. The Board agreed that they think that the digital

378 meetings are going well except they have not utilized the screen share option often. There was further
379 discussion regarding this matter.

380 Mr. Schneider made a motion to adjourn the meeting at 9:08 pm. Vice Chair Claus seconded the
381 motion. The motion passed unanimously.

382 Respectfully submitted,

383 Melissa Pollari