

1 **TOWN OF SUNAPEE**

2 **ZONING BOARD**

3 **JUNE 17, 2021**

4 Chairman Simpson called the meeting to order at 6:01 pm

5 A roll call of members present was taken.

6 **MEMBERS PRESENT IN THE MEETING ROOM:** Aaron Simpson, Chair; Jeffrey Claus, Vice Chair; Jim Lyons;
7 Jamie Silverstein; Melissa Pollari

8 **MEMBERS PRESENT BY VIDEO:** David Munn; Carol Wallace, Alternate; Michael Marquise, Planning &
9 Zoning Director

10 **ALSO PRESENT IN THE MEETING ROOM:** Barry Schuster

11 **ALSO PRESENT BY VIDEO:** Norman Skantze; Brad Weiss; Cathy Shea; John & Janice Bernardi; Betsy &
12 Duane Delfosse

13 **MEMBER APPOINTMENT**

14 Chairman Simpson said that Clayton Platt has resigned from the Board. The Board requested that a
15 letter thanking Mr. Platt be sent to him.

16 Chairman Simpson said that he has asked Jamie Silverstein to become appointed to be a full member as
17 she has been an Alternate Member longer than Ms. Wallace.

18 Mr. Lyons made a motion to appoint Ms. Silverstein as a full member of the Board. Vice Chair Claus
19 seconded the motion. The motion passed unanimously.

20 **CASE ZBA: 21-08; PARCEL ID: 0125-0011-0000 SEEKING A VARIANCE FROM ARTICLE III, SECTION 3.10**
21 **TO PERMIT A 6 FT EAST SIDE SETBACK WHERE 15 FT IS PERMITTED FOR A PRE-EXISTING NON-**
22 **CONFORMING LOT (THE EXISTING EAST SETBACK IS 3FT). CATHLEEN SHEA & BRADLEY WEISS; 38 JOBS**
23 **CREEK RD; RURAL RESIDENTIAL**

24 Attorney Barry Schuster presented the case for the applicants.

25 Attorney Schuster said that everything that they previously submitted is in the record. If there is
26 anything not included, he can ensure that the Board receives them. He also asked to have the
27 opportunity to respond to the Board's deliberative discussion before the Board votes if there are some
28 issues discussed during the deliberations that either were not addressed or that he could clarify. He
29 understands that it is at the Board's discretion but it can help avoid an error if he forgot to say
30 something during the discussion.

31 Attorney Schuster said that the request is for a variance to permit the construction of a portion of the
32 house within the side yard setback. The current deck of the house is about 4 ft from the east sideline.
33 Approximately half of the house is proposed to be within the 15 ft setback. There is a submission in the
34 packet which shows the elevations of the house and in the lower right-hand corner it shows where the
35 kitchen, utility room, and bathroom are located. This part juts out on the right side and what would be
36 within 6 ft of the boundary line. Mr. Lyons asked and Attorney Schuster confirmed that area is presently
37 a deck. Attorney Schuster said that the deck goes an extra 2 ft and in order to have permission to
38 construct that portion of the house within the side yard setback, a variance is required.

39 Attorney Schuster said that there are five criteria that are applicable for a variance. The proposal is not
40 contrary to the public interest; it preserves the spirit of the Ordinance; substantial justice is done; and
41 property values are not diminished; and the fifth category is hardship. The written materials that were
42 submitted cover the requirements, specifically regarding the public interest, , spirit of the Ordinance,
43 substantial justice and property values.

44 Attorney Schuster said that they have also submitted a number of letters from the neighbors which
45 provide evidence as to if there is an impact on property values. He gave a an overview of the submitted
46 letters for the Board to highlight which of the five criteria they each support.

47 Attorney Schuster said that there was also a letter from the landscape architect, Mara Robinson, who
48 said that the landscape that is proposed will provide a significant improvement to the current conditions
49 on the property. The enhanced landscaping includes native vegetation, reduces surface water flow,
50 encourages water absorption and protects all of the downhill properties and Lake Sunapee and without
51 this proposed landscaping there remains a greater risk of downhill run off of surface water. She is
52 confident that the landscaping is consistent with the intent of the Ordinance and will benefit the Town.

53 Attorney Schuster said that if the request fails, there no plan to do anything with the property at this
54 point, so it stays in its current condition. However, if it is approved the plan would provide a great deal
55 of native plant species and green cover, which would provide downhill protection.

56 Attorney Schuster said that he thinks the comments that the neighbors have submitted speak to
57 property values, the spirit of the Ordinance and public interest; they are effectively saying the only
58 change in character will be to remove a dilapidated building and improve it with a new building with far
59 greater and better landscaping so the health, safety and welfare will not be threatened. There will be
60 no injury or public but rather the public rights, including to the lake and downhill, will be substantially
61 improved.

62 Attorney Schuster said that at a prior hearing there was a discussion about what safety might be
63 inhibited a new building that is only 6 ft from the property line; however, the neighboring building is
64 much farther back. Mr. Lyons asked and Attorney Schuster said that Norman Skantze can speak about
65 that and that it is on the plan.

66 Attorney Schuster said that the Cluster Development section of the Ordinance does not even have side
67 setbacks, except if the house is on the outside perimeter so being close is not an immediate cause of
68 danger in itself.

69 Attorney Schuster introduced Norman Skantze to the Board and explained that the applicants have
70 asked Mr. Skantze to speak to the Board because they said that there were fire safety concerns. Mr.
71 Skantze's resume and report is part of the Board's packet of submitted materials.

72 Mr. Skantze said that he was hired to look at the project from the standpoint of whether or not it met
73 the existing State Fire Code, which is the 2015 Residential Building Code, and to look the current fire
74 safety situation with this structure and what the changes would bring. He went to the property on April
75 21st and inspected mostly the exterior of the property. He looked at the distances to the exposure
76 buildings and for general safety impact in a lot of different categories of the construction of the new or
77 improved dwelling on this site while realizing that the exact footprint was going to change leaving
78 distances to the exposures of 22 ft, 18 ft, and 15 ft. Chairman Simpson asked what exposures means
79 and Mr. Skantze said that he is talking about the contiguous properties next to the subject property. If
80 there were a fire in one of the buildings, the building adjacent would be referred to as an exposure
81 building that could potentially catch on fire. Chairman Simpson asked and Mr. Skantze said that the
82 engineer's plan shows 18.8 ft, 22 ft, and 15.8 ft exposures from where the new building will be
83 constructed.

84 Mr. Skantze said that his first observation was the roads and the ways that provide the access to the
85 White Shutters village. He felt that the positioning of the subject property is very close to the main road
86 and gives good access for Fire and EMS access in relation to where the Fire Department would be able to
87 access them. His next observation had to do with the municipal water supply and there is a municipal
88 water supply and pressurized fire hydrants within 65 ft and 200 ft in either direction of the property.
89 From the main road, he found that the access into the village from the internal roads were very good as
90 far as gaining access not only to the subject property, but to the other properties that are in that
91 development. He thinks that is a very positive aspect for protecting these properties as it all
92 contributes to the fire protection of the building.

93 Mr. Skantze said that the Insurance Service Organization (ISO) is a nonprofit organization that provides a
94 public protection classification (PPC) for every community in the country and this classification is
95 important because it plays into insurance premiums. All insurance companies use the ISO PPC to
96 determine rates; the best possible fire situation is a 1 and then it goes to a 10 which is no fire
97 department at all. The Town has an ISO PPC of 5 and he thinks that has to do with it having an excellent
98 Fire Department and a great Water Department.

99 Mr. Skantze said that he continued his inspection and observed the current structure that sits vacant
100 and is a dilapidated building. He thinks that in its present state is not a safe structure to the other
101 properties that are in there. He thinks that the improvement of the would significantly improve the
102 protection of that not only that structure but the two abutting properties. Mr. Skantze explained how

103 new and modern building materials will be beneficial to fire safety such as new windows, the paneling,
104 the interior finishes, etc., and how he researched and determined his findings.

105 Mr. Skantze said that his recommendation is that he believes that the improvement of the building will
106 actually improve the fire safety to the structure and to the village that's in there and continued to
107 explain his reasons to support his recommendation.

108 Chairman Simpson asked if there is a copy of the plan that Mr. Skantze is referencing in order to see the
109 distances between the structures. Attorney Schuster said that Mr. Skantze's recommendation letter
110 includes these distances. Attorney Schuster asked and Mr. Skantze said that he got the information on
111 the distances from the engineer as well as from a physical inspection.

112 Chairman Simpson asked how the building materials in the other buildings are different. Mr. Skantze
113 said that he was referring to the existing dwelling that is camp style; it is not insulated to modern
114 standards and does not have an interior finish of gypsum. Chairman Simpson said that he is aware of
115 this building as it is in front of the Board but he is not aware of what the other buildings are made of and
116 he thought that Mr. Skantze said that his opinions were based upon the fact that the buildings in the
117 area were built differently. Mr. Skantze said that he was referring to the comparison of the existing
118 dwelling and how the modern construction might change that. He has not been in any other structures;
119 he talked about typical camp construction but he meant it generally speaking.

120 Chairman Simpson said that Mr. Skantze listed some information he gleaned from manufacturers of
121 modern construction and asked if he knew that was going to be used on the construction. Mr. Skantze
122 said that it is his understanding that there will be double pane insulated windows and further explained
123 the study he read about those types of windows.

124 Chairman Simpson said that Mr. Skantze made a reference to PPC and that Class 1 is the best a fire
125 department can get while Class 10 is the worst and that Sunapee's is a Class 5. Mr. Skantze said that is
126 correct per the information he found online though the rating could have changed in the past five years.
127 Chairman Simpson said that Mr. Skantze referenced that there are 46 other communities at that level,
128 however, to him that is somewhat mediocre as it right in the middle. Mr. Skantze said that he disagrees
129 because to improve ratings for ISO, the fire department needs to have career firefighters or add career
130 firefighters or improve the Town's water system, they also count and give points for hose, number of
131 engines and pumps, whether the town has an aerial, whether the town is doing structural firefighter
132 training on a regular basis, etc. There is a large assessment that is done by the Fire Department and the
133 ISO. He does not think Sunapee has a lot of career firefighters and he thinks that is the one difference
134 that they would need to be able to improve their score. He thinks that a Class 5 for a New Hampshire
135 on-call fire department is pretty good as there are some career fire departments that only have a 4.

136 Ms. Silverstein said that she appreciates the education but she feels that they are off topic. She agrees
137 that the new construction would be an improvement from a fire safety standpoint. Chairman Simpson
138 said that in the Board's prior discussions, there were some concerns as to how close these buildings are
139 and that it may impact fire safety. The Board has a report that says that the town has an impressive
140 rating but a 5 on a scale of 1 to 10 is not impressive.

Chairman Simpson asked Mr. Skantze if he has personally assessed the Sunapee Fire Department. Mr. Skantze said that he has not but explained how the score is determined. It is a rational conclusion to him that if a rural New Hampshire fire department is a Class 5 that is pretty good for a town that does not have career firefighters. Attorney Schuster asked and Mr. Skantze said that he has not spoken with the Sunapee Fire Department. Attorney Schuster said that he tried calling five times and did not hear back. Mr. Skantze said that he has looked at some things online that the Fire Department does such as their trainings but did not talk to the Fire Chief or any members of the Department. The score was enough for him and there is a fire department on the road and two pressurized hydrants within a couple 100 ft of the dwelling and they can drive a fire engine right up next to the dwelling and access it from the main street. The Department can also drive into the development on the White Shutters Road and have a secondary access not only to the structure but to the abutting units in there. He thinks that it has to be looked at collectively and this village exists and that building exists and the applicants are talking about making improvements, which in his opinion will improve the overall safety not only of the building, but the abutting buildings.

Attorney Schuster said that the reason the applicants engaged Mr. Skantze was in response to a question about fire safety and he explained the building code requirements and the conditions on the site and the conditions within the town. This new structure would be a significant improvement, and it would comply with the 2015 Residential Buildings Code, which requires only a 5 ft setback. In terms of fire safety, a 6 ft setback fully complies with the building code itself so it would not threaten health, safety or welfare, nor would it injure public rights or adversely change the character of the neighborhood.

Attorney Schuster said that regarding the question of hardship, hardship has always been an issue that has raised concerns with boards and there was a discussion about how one analyzes the concept of hardship. There was also a discussion that all of the other houses in White Shutters neighborhood have small lots so where would the hardship be if it is just like all the others, but that is not the measure of hardship. The Zoning Board of Adjustment Handbook, a handbook for local officials put out by the State of New Hampshire Office of Strategic Planning, has a discussion of what is literal enforcement of the provisions of the Ordinance that would result in unnecessary hardships. The Handbook acknowledges hardships has caused more problems for boards than anything else. By its basic purpose, Zoning Ordinances impose a hardship on all properties by setting lot size dimensions and other allowable uses. The restrictions on one parcel are balanced by similar restrictions on other parcels in the same Zone and that was the part the Board did not have at the last meeting or the prior meeting. They are not comparing White Shutters lots with other White Shutters lots, they are comparing the Shea / Weiss lot with other lots in the Residential Zone, which has a 1.5-acre minimum lot size. They are comparing a 1/10 of an acre lot with a 1.5-acre lot. This is a unique circumstance in that Zone.

Attorney Schuster said that one of the other issues that came up in determining hardship was that there are a lot of ways to build on the property and it is not necessary to have the setback. However, the question really is, is it reasonable or not and the reasonableness of the use depends on the circumstances of the lot and the conditions of the lot. The Court said in a case out of Manchester to establish unnecessary hardship an applicant for a variance must show that the Zoning restriction

interferes with their use. With prior law, applicants had to show there was no reasonable use at all, or no use at all, however, the Court says applicants no longer must show that the Zoning Ordinance deprives them of any reasonable use of the land so they do not have to say that without the variance they cannot do anything. Rather, the applicants must show that the use for which they seek a variance is reasonable considering the property's unique setting in its environment, or in its Zone. The question is if it is reasonable with this unique property with a 1/10 of an acre lot to have a setback that goes into the same setback that affects 1.5 acre lots, especially where there is this cottage community that has been in existence for 100 years. The special condition here is the size of the lot and the slope.

Attorney Schuster said that the applicants may not be able to do anything without some relief. If they had to go straight up they would have no room to turn around and it would not be reasonable to build within that limitation. Even if they could, they do not have to prove that the variance is necessary. But just using common sense, is it reasonable to give somebody a few extra feet to build on a lot that is 1/10 of an acre where the rules are being applied are the same that apply to lots that are 1.5 acres. With a 1.5-acre lot, there is no reason for someone to build within 6 ft of the boundary line. As the Handbook says, the Board is comparing the restrictions on this parcel with the same restrictions on other parcels in the same Zone. This is unique parcel and they are asking for something reasonable, it does not have to be necessary, it just has to make sense. This is a small section of half of the house closer to the boundary line than the 15 ft, which is the rule that applies to lots with 1.5 acres. It really is reasonable to give the applicants a break and it is not something that is going to set a precedent because most lots are not 1/10 of an acre. The White Shutters Community is rather unique, but this is in the Zone that extends all around town.

Mr. Lyons asked and Attorney Schuster said that he does not know how many properties are unique like this one. Attorney Schuster said that they are only talking about one and every lot is different and every circumstance is different. The Board has discretion in every case to make a judgment. In this case, the reasonable way is to construct the house is to have a portion of it closer to the boundary line than 15 ft and that is what this variance request was for. It is reasonable to have that extension, it does not have to be necessary, but it is reasonable. In one of the recent cases that came from this Board, the judge specifically talked about it does not have to be necessary, it is just a question of if it is reasonable. Given that the neighbors have unanimously supported it, and Mr. Skantze has said it is going to be safe, this is a better setup. Also, if this is not permitted, then they stuck with the status quo, which is less safe; it is reasonable to make the improvement.

Chairman Simpson asked Attorney Schuster about the cumulative impact if every house in that area, specifically in White Shutters, asks for the same setbacks. Attorney Schuster said that they would have to show that they have the same size lot, the same shape lot, the same location, they would have to be on the road, and they would have to have buildings distanced the same distance apart. Every house is different there in one way or another and the Board would have to measure that and analyze and assess how it is similar to Shea / Weiss. There are other houses there and many of them have more space around them. There is a false concern about precedent that if the Board grants a variance, then they have to give everybody a variance. Attorney Schuster shared a map of White Shutters and spoke about

220 the different lot sizes in the area and said that some of the houses in White Shutter have been worked
221 on and each are a different shape lot.

222 Attorney Schuster said that just because one applicant comes in with a request, it does not mean that
223 everybody has to get that request because then a Zoning Board is not needed. The Board judges each
224 application on its own and if someone comes in and leaves only 3 ft from the boundary line and 3 ft
225 from the house next door they will have to explain why that would be reasonable in order to get a
226 variance on the circumstances. In this instance, given the engineering, the site improvements with
227 landscaping, the drainage, and the fire safety, the variance for the setback is a reasonable way to give
228 people a useful home on this property.

229 Chairman Simpson asked and Ms. Shea and Mr. Weiss explained the interior of the current cottage. Ms.
230 Silverstein asked and Ms. Shea and Mr. Weiss said that the cottage is one floor and then a dirt basement
231 and there is a sleeping loft. Chairman Simpson asked and Ms. Shea and Mr. Weiss explained the new
232 cottage will have one bedroom and an office, a guest bedroom in the walkout basement, a kitchen, a
233 dining room and living room. Chairman Simpson asked and Mr. Weiss confirmed that the proposed
234 house will be three stories counting the walkout basement. Mr. Weiss said that it will be similar to the
235 Delfosse's property to the west.

236 Mr. Weiss said that because of the slope they wanted to be very careful. Looking at it from the lake,
237 they do not want it to look any higher and the plan is that it will be not higher than the easterly
238 neighbor, it will be slightly higher than the westerly so the houses kind of go up the hill that way. The
239 front door was going to be the same height as Jobs Creek Road, which is higher than the current ground
240 floor of the property, and that would have been 8 ft to 10 ft higher than the current structure. They
241 have tamped it down so the proposed cottage will be very low because they do not want it to look really
242 high so even from the lake so pretty much all of the walkout is going to be obscured by the Bernardi
243 property in front. From the street, the entrance to the house is going to be about 6 ft to 8 ft lower than
244 as it currently sits.

245 Ms. Wallace asked about the permeable and impermeable coverage as it looks to be over 42% and the
246 allowance is 25%. Attorney Schuster said this issue has been previously discussed. Because more than
247 half of the property is outside of the Shoreline Overlay District, it is not applicable. While the
248 percentage is significant, the actual number of square feet is only about 300 sq ft and part of that is
249 mitigated by the increased landscaping that has been proposed. Ms. Wallace said that she did see that
250 it is a 307 sq ft increase, however, she did not see the drainage that they are proposing and how the
251 increased impervious area is going to be mitigated. She would like to know about the mechanical
252 draining and if there are French drains, a drywell, etc. Ms. Shea said that they do have the NH DES
253 Shoreland Permit where all the plans were submitted. Attorney Schuster shared the plan with the Board
254 that shows the drainage structure. Mr. Weiss explained the locations of the drains, the dry wells, the
255 drip edge, catch basins, etc. and said that the drainage structure exceeds the State's requirements.
256 When they received the Shoreland Permit they did not include any of the landscaping so that is an
257 addition to the plan.

Chairman Simpson said that when this came up before they were looking for a variance for the impermeability and he thinks the Board made an improper decision, which is not something he thinks they can reverse at this point. Mr. Lyons said that the Ordinance says that where the Water Resources Overlay District is superimposed over another Zoning District, the more restrictive regulations shall apply. Attorney Schuster asked and Chairman Simpson said that it is the last part of the bottom paragraph on page 9 of the Zoning Ordinance. The Board made a determination based on Section 2.42 and he thinks that was an error due to the language of this paragraph. Attorney Schuster said that he is not sure about that because if you follow Section 2.42 it says the lot should be considered in the District which comprises the majority of the lot and they know the majority is out. Chairman Simpson said that the Board already made the determination and he thinks it was a mistake; however, he would like to know if the applicants would agree to comply with the Section 2.30 Water Resources Overlay District requirements. He believes that this has been addressed at a prior meeting and the applicants said that they would. Mr. Weiss said that he thinks that they will because of the way the plans are designed; they are close to the lake and if they were not the erosion control and landscaping would not be done. They are longtime lake residents and want to protect the lake as much as possible. They know that this complies with the Ordinance mentioned and will be doing it all if the variance is approved. Attorney Schuster said that looking at Section 4.33 under the Shoreline specific provisions, he thinks that many of them are not applicable as they are about docks and commercial water structures. However, it does cover erosion control and cutting and removing natural vegetation but they will be adding all new vegetation. He thinks that the plans demonstrate they are already following Section 4.33. Mr. Weiss said that even though they are not looking at the 42%, because the Shoreline Overlay Zone goes over the property, they still have to observe the rules and will make sure that they do for the whole property because of the Shoreland Permit. They will comply with that Section to make sure they are controlling erosion and maintaining drainage. Chairman Simpson asked if there is anything under the Section 4.33 criteria that is enforceable in this situation. Mr. Marquise said that there is nothing separate from what has already been discussed. Chairman Simpson asked and Mr. Marquise said that he thinks that the rules would apply and that anything in the State Permit would be contained in Section 4.33 and the State's requirement supersede any Town requirements.

Betsy Delfosse and Duane Delfosse, 36 Jobs Creek Rd, said that they are interested in seeing better erosion control, which is part of the plan. They have had to do some improvements to their property to try to deal with that same issue by putting up retaining walls and reducing the grade of the slope. They would really like to see that proceed. They also think that this is a very reasonable proposal and they would like to see the dilapidated structure next to them removed and replaced with something modest and nice looking.

Mr. Weiss said that he and Ms. Shea have thought about this for a long time and feel that their proposal fits in with the character of the lake and White Shutters and when they went to the builders, they were very specific about that. They think it is reasonable and safe and will increase the value of the properties in the community. It exceeds the requirements and recommendations from the State and Environmental agencies because they used a reputable local design and build team, a civil engineer, a landscape architect, and a fire safety expert, who are various experts in design, construction, and land

management. They have plenty of letters of support of their plans from all those with standing on the matter as well as others in the community. They really appreciate the Board's time and effort and they are hoping to get these plans approved. However, it is not worthwhile for them to continue spending a lot of money trying to get something new and reasonable approved that meets their needs. Without getting approval for the variances, they could use the building as it stands, although they feel it is a safety hazard and it is only a summer cottage. The other option is to build a tall or trapezoidal home, following the footprint, and maintaining setbacks and designed far larger and using the property this way seems unreasonable; it would block their westerly neighbors and would likely be an eyesore in the community and negatively impact property values. A house like this will likely be beyond their means so it is likely they will be using the shack that is there now for the foreseeable future. These options do not seem to be in line with the spirit of the Ordinance or the Town. They want to put something reasonable there that is going to be safe and improve property values. They hope the Board sees their proposal is reasonable and better than these options and safe.

Jan Bernardi said that she and her husband John are downhill from the subject property and if anyone were to object, she thinks that it would be them. They are pleased with the design and with the fact that they are improving the property greatly and addressing all the drainage as they are on the downhill it is appreciated. They want to offer their full support.

Chairman Simpson asked and there were no additional comments or questions so he closed the hearing to public comments.

Ms. Silverstein said that she appreciates all of the evidence that was provided. Part of her questions this as that they clearly understood what they were buying and knew the Town's rules and the Zoning Ordinance when they made the purchase. However, she is also asked to consider what is reasonable and the Zoning Board is the relief valve when it comes to applying the Zoning rules to each individual property. She agrees it is a reasonable use for the property. She thinks the mitigating factors are the landscape and the erosion control that will protect the lake and they are going beyond the standards. This has swayed her to really feel that it is a reasonable request. The hardship is the size of the property; there is diminutive value to the surrounding values as it is a housekeeping shack and modern technology will improve it. She thinks that any improvements will promote the fire safety and add an aesthetic value that will promote the surrounding properties. The benefit of the public interest is the visual aspects, as well as the erosion control. She does not know about substantial justice but does feel that the use will be just. The use will not be contrary to the spirit of the Ordinance. They are talking about a very small parcel and when the Association was first formed it had a 4 ft setback and now it is increased to the 15 ft setback and they are asking for a variance on one side. Chairman Simpson said that they have already received approval from the other side of less than 9 ft. Vice Chair Claus said that there has also been a variance from the 50 ft setback.

Vice Chair Claus said that the Board has projects like this come before them where the applicants have taken the time and effort to hire professionals and put a good team together. They have gone above and beyond trying to do what they can with the improvements of this property. When he looks at all five criteria, at least three of those he can easily pass. The spirit of the Ordinance, with such a such an

337 impact on a setback he questions; however, with the language it is hard to defend that it goes against
338 the spirit of the Ordinance. The hardship language that says "owing to special conditions of the
339 property"; he agrees the property is smaller than the 1.5 acres but they seem to be overlooking the fact
340 that there is a reduced side setback, and then they are substantially going more than 50% into that side
341 setback. He does not want to go into a hypothetical different design but the shape of this lot is narrow
342 and long and they chose to design a house that went almost opposite direction of the property and not
343 try to work within the property. He cannot seem to get past the hardship as nothing is driving that that
344 part of the building to push that far side setback.

345 Mr. Lyons said that he agrees that there is no hardship. The Board has learned from the Town's
346 attorney that the actual language in the law is "area", not "Zone" or anything like that and it is up to
347 them to decide the area. The applicants have described this as their small neighborhood or a village or
348 pre-planned village. To him, this is its own enclave; all the lots are similar and there is no uniqueness to
349 any one lot and without that you cannot get around the hardship criteria. He is also concerned about
350 the cumulative impact. This lot is located at the top of a ridge so the private property owners who have
351 expressed support for this project are one thing, however, the public who uses the land are much larger
352 constituency. When you come into the side of the harbor from the lake and you look at what is White
353 Shutters now, you largely see the original cottages. These are low set and down in a hollow and are all
354 one story though he believes one of the structures is three stores. His concern with larger and larger
355 houses is what would ultimately become cumulative impact. He thinks that also speaks to the spirit of
356 the Ordinance, which is to preserve the character of Lake Sunapee. He thinks surrounding the shoreline
357 of Lake Sunapee with large houses that have no side setback to differentiate them very small ones is not
358 in the spirit of the Ordinance. He does not see any benefit in granting this as there are reasonable
359 alternatives.

360 Mr. Munn said that he thinks that the water, drainage, and other issues will be vastly improved by their
361 design. They are kind of squeezing the sides a little more than they need to; however, Attorney Schuster
362 was saying that within the reasonable conceptualization of the property and use of it. Taking the shack
363 down and adding water improvements and building improvements is reasonable. He understands the
364 point that they could redesign but as Mr. Lyon implied, the character is not quantifiable. There is a
365 character there that the applicants are trying to work with the structure and still get a house that works
366 within the concept of something reasonable and modern. He is swayed by the opinions of the attorney
367 in reference to trying to be as reasonable as possible within the structure and the space that they have
368 available.

369 Chairman Simpson said that he appreciates what everybody has said and this is a close case for him. He
370 recognizes there is a small footprint on the existing house, but he does not think it prevents any
371 meaningful renovation or reconstruction of the property that could be more conforming than what the
372 Board has been presented. He agrees with Vice Chair Claus that they want to build a wider house on a
373 longer lot and the applicants could have tried to comply with the dimensional aspects of their structure
374 to try to better meet setbacks. Where the setback that previously existed was a lot of deck, this would
375 be replacing the deck with a multi-story building. The condition of the 4 ft setback requirements was
376 something in the covenants and that is not something that is before the Board. He also still has

concerns for this property for fire safety and emergency vehicles. He thinks the Fire Department is a fine Department but he does not think that a 5 is impressive as there have been structures that have burned to the ground because the Fire Department did not get there in time. He does not know the specifics of each one of those fires but one is in town and one is on the edge of Town and it is a volunteer department and response time is variable. He is not sure that with this proposal substantial justice is being served. He is also concerned about the cumulative impact. If the Board were to believe the fire expert, houses only need to be 5 ft apart in Town because that is what the Code says. He also knows that he is not meant to consider aesthetics, but the applicants did bring it up and with cumulative impact, the Board is going to have other people apply for similar requests and present the same arguments. This is a slippery slope where, eventually, the Ordinance is going to be subsumed by all the variances. He is sure everybody who has a lakefront property wishes to maximize the use of that and he does not think that is in the spirit of the Ordinance. Based on those three criteria, the hardship, substantial justice, and spirit of the Ordinance, he has a hard time approving the side setback that has been requested.

Chairman Simpson opened the hearing to public comments.

Attorney Schuster said that regarding why the house is going this way instead of up and down, the applicants would still need a variance to go closer to the street and their drainage structure is pushing the limits of the development on the lower side. In any one of the four directions, they would have to get a variance. The variance on the west side was really just to move the existing line of the house so it is not like they got a new variance; it was just a little jog. As Chairman Simpson pointed out, they may need to come back before the Board about that because this new plan moves it a few inches. However, moving in any direction they would need a variance. Going wide is the same as going up to the street or down and eliminating the drainage structure so they are boxed in. Also, it is only a one story on that side because there is the kitchen and then the basement area down below so it is not a full two story.

Chairman Simpson closed the hearing to public comments.

Ms. Silverstein said that she thinks the suggestion that the applicants work within the setbacks and go higher is a more of an affront to the public interest because from the road or from the lake it is going to look like a very tall house. What has been proposed shows that the applicants are cognizant of the roof lines with the surrounding properties and therefore seeking a variance to go towards the side setback instead of taller.

Mr. Lyons said that it is a question as to relevant risk.

Vice Chair Claus said that he thinks that they have maxed out the height as it is already a three-story building. He does not want to get into hypothetical alternatives but as a designer this is where he struggles as he can see them though he has tried to refrain from that. However, he deals with clients who are in situations with lots that are going to have these hardships and some of the things he thinks about is the deck out front. He has a client who is not going to be able to have a deck because they are trying to conform in certain areas. Looking at this proposal he does not see anything really pushing this. To the point of no matter which way they go, they are impacting a setback and needing variance; this is

415 something that he has looked at and questioned along the way. He may be judging this unfairly or the
416 way that he approaches this might not be correct; however, when he looks at side setbacks, he always
417 looks at it as a percentage to whatever it is being asking for. Once something starts going past a 50%
418 relief, he starts to struggle that an applicant is not really looking. The front setback is 50 ft and right
419 now they barely in the 50 ft so he thinks there is room to grow there that is not really impacting it as
420 greatly. This is the way he balances these things. Looking at that and seeing such a large percentage
421 going into that site setback when they could get that same square footage in the front and not be,
422 percentage wise, a greater impact to some of those other setbacks. That is how he does the math in his
423 head that is why when he looks at this, he cannot see the hardship and why they are forcing so much
424 into that side setback.

425 Chairman Simpson said that something that Ms. Silverstein said earlier helps his analysis and that is that
426 the applicants bought a lot that was under sized that they knew had some problems for setbacks and
427 things like that. The applicants want to put in a structure that maybe is more suited for another lot,
428 however, that does not prevent them from using this lot. If they choose not to repair the facility they
429 are in or to replace it in the footprint or anything that would not require come to the Board, that is their
430 choice. However, he is not sure that what it currently is today could not be improved.

431 Ms. Shea asked to comment. Chairman Simpson asked the Board if they would like to reopen the
432 hearing and they agreed so he opened the hearing to public comments.

433 Ms. Shea said that she wanted to address two points that Vice Chair Claus made. The side setback that
434 is being requesting is actually greater. She understands that is it is a deck but they decreased the
435 current setback with the new design so it is further from the neighbor. The other thing is that they did
436 do due diligence when they purchased this property. They spoke with the previous Zoning Coordinator
437 and she told them that the deck counted as a footprint. They used that information to make their
438 decision to purchase this property and to work to build a home that took that into account. She wanted
439 to correct that they did do due diligence before they purchased this property.

440 Chairman Simpson said that he is not sure that the Board is saying that they did not do due diligence.
441 He was just saying that they bought a property knowing it had some deficiencies for what they wanted
442 to build.

443 Attorney Schuster said that Ms. Shea said that they were told that the deck counted as a footprint and
444 they are actually coming in from that footprint. Chairman Simpson said that he appreciates that and
445 appreciates that it is better than it was.

446 Chairman Simpson closed the hearing to public comments.

447 Mr. Lyons asked and Chairman Simpson confirmed that the setback in question is a deck. Mr. Lyons said
448 that the deck will be replaced with structure wall, though 2 ft to 3 ft further away. In Georges Mills with
449 Jakes, which was an intense fire, on the white house across from the store the vinyl melted and it was at
450 least 25 yards away. The other fire had the house next door sustain damage. It takes a while for the
451 Fire Department to get to places sometimes.

Ms. Silverstein said that Vice Chair Claus commented about the deck in the front and she thinks that the applicants said that they cannot build forward because of all the drainage. Vice Chair Claus said that they do have a drainage structure in the front of the deck. He was not proposing building there but he does see a gap and it could be closer.

Mr. Lyons made a motion to deny Case ZBA: 21-08; Parcel ID: 0125-0011-0000; seeking a variance from Article III, Section 3.10 to permit a 6 ft east side setback where 15 ft is permitted for a pre-existing non-conforming lot; the existing setback is 3 ft; Cathleen Shea and Bradley Weiss, 38 Jobs Creek Rd, Rural Residential Zone based on: the granting the variance would be contrary to the public interest; concerns about cumulative impacts and waterfront appearance; that there is no hardship in this because the property is not unique; there is no substantial justice; and the use is contrary to the purpose of the Ordinance which is to make the most encourage use of the land, protect the natural resources, and preserve the vitality, atmosphere and varied economic forces in town. Mr. Munn seconded the motion. Chairman Simpson said that the motion is to deny so a yes is a no. He asked and Mr. Lyons said that he does not want to reword the motion as it says what he wants it to say. Vice Chair Claus said that he thinks that it is a clearer way to do this especially with the criteria. His fear is if the Board feels that any of the criteria that Mr. Lyons listed cannot be legally defended. Chairman Simpson said that his concern is not if a decision will hold up on an appeal, he is concerned with making a reasoned judgement based upon interpretation of the Ordinance with the application in front of the Board. He thinks that is the purpose of discussing the Board's concerns before a vote. Mr. Munn dropped the zoom call and there was a discussion about having Ms. Wallace vote instead but he was able to call back in. Mr. Lyons restated the motion for the Board to deny Case ZBA: 21-08; Parcel ID: 0125-0011-0000; seeking a variance from Article III, Section 3.10 to permit a 6 ft east side setback where 15 ft is permitted for a pre-existing non-conforming lot; the existing setback is 3 ft; Cathleen Shea and Bradley Weiss, 38 Jobs Creek Rd, Rural Residential Zone based on: the application is not in public interest; he is concerned about cumulative impact and the water view from the surface of the lake for the public at large; replacing larger structures from what are now fairly small and very well molded into the contours of the terrain; there is no public benefit; there is no hardship as there is nothing unique about the property; substantial justice is not an issue; and this is contrary to the spirit of the Ordinance because of the concern regarding the cumulative impact which will lead to overdevelopment and shorefront congestion. Mr. Munn said that he thought that he already seconded the motion. **A roll call vote was taken: Vice Chair Claus voted yes; Ms. Silverstein voted no; Mr. Munn voted no; Mr. Lyons voted yes; and Chairman Simpson voted yes. The motion passed with three in favor and two opposed.**

CASE ZBA: 21-10; PARCEL ID: 0125-0011-0000: SEEKING A SPECIAL EXCEPTION PER ARTICLE III, SECTION 3.50 VERTICALLY EXPAND THE ENVELOPE OF THE HOUSE TO 23 FT. CATHLEEN SHEA & BRADLEY WEISS, 38 JOBS CREEK RD; RURAL RESIDENTIAL ZONE

The applicants requested to postpone the hearing for another 30 days.

Vice Chair Claus made a motion to allow the applicant to continue Case ZBA: 21-10; Parcel ID: 0125-0011-0000, seeking a Special Exception per Article III, Section 3.50 to vertically expand the envelope of

491 the house to 23 ft; Cathleen Shea and Bradly Weiss, 38 Jobs Creek Rd, Rural Residential Zone. Ms.
492 Silverstein seconded the motion. A roll call vote was taken: Vice Chair Claus voted yes; Ms. Silverstein
493 voted yes; Mr. Munn voted yes; Mr. Lyons voted yes; and Chairman Simpson voted yes. The motion
494 passed unanimously.

495 **MINUTES**

496 Changes to the minutes from May 25, 2021: The minutes were continued to the next hearing.

497 Changes to the minutes from June 3, 2021: The minutes were continued to the next hearing.

498 **MISCELLANEOUS**

499 There was a discussion about voting on motions and if a Board member votes yes or no if they are voting
500 that they are not saying that they agree with all the criteria stated as they have already all said their
501 opinions in the deliberation.

502 There was a discussion about expert witnesses and the amount of time they are allowed to speak and
503 that there is no time limit.

504 Mr. Marquise told the Board that the Planning Board would like them to come to the July 8th Planning
505 Board meeting to start discussing Zoning Amendments. There was a discussion about potential Zoning
506 Amendments and how the members of the Board track things they would like to see changed, things
507 they have questions with, etc. There was also a discussion about height in the Ordinance and that they
508 are all in different contexts. There was also a discussion about having Shorefront Zoning and why it is
509 stricter around the lakes.

510 There was a discussion about additional training with the Town's attorney as the Board has new
511 members.

512 **Ms. Silverstein made a motion to adjourn the meeting at 8:30 pm. Mr. Lyons seconded the motion.**
513 **The motion passed unanimously.**

514 Respectfully submitted,

515 Melissa Pollari