

1 **TOWN OF SUNAPEE**

2 **ZONING BOARD**

3 **JULY 1, 2021**

4 Chairman Simpson called the meeting to order at 6:00 pm and read from the agenda "The public has
5 access to contemporaneously listen and participate in this meeting through electronic online video
6 conferencing at <https://zoom.us/> with Meeting ID 979 9537 1537 and Passcode 705609, or by telephone
7 by calling (929) 205 6099."

8 A roll call of members present was taken.

9 **MEMBERS PRESENT IN THE MEETING ROOM:** Aaron Simpson, Chair; Jeffrey Claus, Vice Chair; Jim Lyons;
10 Jamie Silverstein; David Munn

11 **MEMBERS PRESENT BY VIDEO:** Carol Wallace, Alternate; Michael Marquise, Planning & Zoning Director

12 **ALSO PRESENT IN THE MEETING ROOM:** Barry Schuster; Brad Weiss; Cathy Shea; Dale Dewey; Natalie
13 Dewey; Doug Gamsby; Melissa Pollari

14 **ALSO PRESENT BY VIDEO:** Kuan Chen; James Ogden; Brad & Sarah Lassey

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

18 Attorney Schuster gave the Board copies of two plans to the Board. He said that part of the proposed
19 house needs a Special Exception because the 50 ft road setback cuts into the frontage; the 50 ft road
20 setback does not go parallel to the frontage, it cuts into it. Most of the house is behind the 50 ft road
21 setback, there is only a small portion of the building that will be higher than the existing building within
22 the setback. The Ordinance permits by Special Exception the vertical expansion of a house under
23 Section 3.50(i) that says that the ZBA may allow a pre-existing non-conforming structure to undergo
24 vertical expansion or be replaced with a higher structure provided that the existing structure is a house,
25 garage or commercial building that is less than 24 ft in height. The current building is 14 ft tall and the
26 total height will be 23 ft at that area so the vertical expansion will be no more than 10 ft higher than the
27 pre-existing structure as it will be 9 ft higher. Another special exception criterion is that any roof
28 changes are within the height requirements in the Ordinance and they are. Chairman Simpson asked
29 about the roof changes as set forth in the Ordinance. Attorney Schuster said that he believes that the
30 height requirements are that that part of the roof would be no more than 24 ft and no more than 10 ft
31 higher. Chairman Simpson said that there are approximately seven different height requirements in the
32 Ordinance. Attorney Schuster said that they comply with all of them because all that is being done is an
33 elevation of a small portion of the house in that corner. Another special exception criterion is that no
34 abutter will be adversely affected by the enlargement and per all the abutters letters that were
35 previously submitted they are not. Another criterion is that all state and local permits being acquired to

36 ensure compliance with Article VII would be a building permit and would need to be a condition of
37 approval. Lastly, a criterion is that such enlargement is consistent with the intent of the Ordinance, he
38 believes that if the Ordinance specifically allows this by special exception and the intent would be to
39 allow it so long as there are no adverse impacts due to the vertical expansion and this vertical expansion
40 is just a small section of the house as the rest of the roof goes up outside the 50 ft setback. It is as small
41 of a request that can possibly be made and still allow the roof to have a consistent slope. Chairman
42 Simpson asked and Attorney Schuster confirmed that this property is on Town sewer. Chairman
43 Simpson said that Article VII discusses septic flow and water utilization.

44 Vice Chair Claus asked if the house has been shifted further away from the road. Attorney Schuster said
45 that the proposed house will maintain the same footprint along the road. Vice Chair Claus said that on
46 all the other plans he is looking at the 50 ft road setback is different than the current plan. Attorney
47 Schuster said that the plan he is talking about is the one that they have been working from and it shows
48 the footprint of the existing building, the drip edge, and the drainage. Vice Chair Claus said that the
49 plans from the August 2020 public hearing shows something different with the high peak in the 50 ft
50 road setback. Attorney Schuster said that those plans were changed. Chairman Simpson said that the
51 proposed house was rotated slightly. Mr. Weiss said that the proposed house was rotated and originally
52 10 ft higher as the engineer had put in a retaining wall. They do not want the house to be that tall so
53 they shifted it and lowered it as per the new plans submitted in April 2021. Chairman Simpson asked if
54 there are plans that show the height of the existing structure. Attorney Schuster said that Mr. Weiss has
55 measured it to be 14 ft at that point. Chairman Simpson asked and Attorney Schuster said that they just
56 have Mr. Weiss' testimony about the height. Chairman Simpson said that, technically, he can take a
57 sworn oath if the Board would like the applicant to testify to the height.

58 Mr. Lyons asked if there were variances approved in August as the applicants have now changed the
59 plan. Attorney Schuster said that if the variances still apply, the applicants they are requesting the
60 special exception for the height in order to redesign the house. The other two variances remain in
61 place. Mr. Lyons asked if they remain even though the plans have changed. Attorney Schuster said that
62 one of the variance approvals did not refer to the plans as submitted and the west side variance said per
63 the submitted plans. They would like to speak about this issue after the special exception. Chairman
64 Simpson agreed that the Board should concentrate on the special exception.

65 Chairman Simpson asked and Attorney Schuster said that the plan shows the proposed house will be 23
66 ft, which is 9 ft higher than the existing structure. Attorney Schuster said that they would like to request
67 that the special exception be approved for a 23 ft maximum height within the 50 ft road front setback as
68 shown on the plans submitted. Chairman Simpson said that his concern is if the plan changes so that
69 more of the structure is within the 50 ft setback, not just what is shown. Vice Chair Claus said that if the
70 special exception is approved, the applicants cannot expand the footprint without coming back before
71 the Board. Attorney Schuster said that what the Board is seeing is what they are asking for. Vice Chair
72 Claus said that if they want to expand any distance outside of what is shown in the non-conforming area
73 they will have to come back before the Board.

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

Mr. Lyons said that he cannot be sure without a plan that something that gets granted will not adversely impact the public as the Board does not know what they are voting on. Chairman Simpson said that the Board is voting on the footprint of the plan submitted and if they want to make anything more conforming then they will have to come back before the Board.

Ms. Silverstein said that she thinks the applicants are very sensitive to the height. The Board has heard at previous hearings that they are not looking to go higher and given where the structure sits on the hill, they are very sensitive and it is reasonable. Chairman Simpson said that reasonableness is not a criterion for a special exception. Ms. Silverstein said that she does believe it meets the criteria for a special exception.

Mr. Lyons said he does not think that this is in the public's interest. Chairman Simpson said that is not part of the criteria, the Board only looks at the criteria under Section 3.50(i) and the variance criteria are not applicable. Mr. Lyons said that one of the criteria is that the proposal is consistent with the intent of the Ordinance and he does not believe that it is. He believes that the public at large's interest is served by people who take pleasure and recreate on Lake Sunapee. He thinks that the individual owners at White Shutters are a small minority of the population at large and he does not agree with having a tall structure. Ms. Shea said that this will not be visible from Lake Sunapee. Attorney Schuster said that the section being discussed is the roadside. Mr. Lyons said that the whole house is visible from the road. Chairman Simpson said that he does not agree with Mr. Lyon's assessment as there are parts in the center of the house that are conforming that will be higher. Mr. Lyons said that this is a potential build-out nightmare. Chairman Simpson said that he understands Mr. Lyons' concerns but these issues are more appropriate in the context of a variance and the variance criteria cannot be brought into intent of the Ordinance.

Ms. Silverstein made a motion to approve Case 21-10: Parcel ID: 0125-0011-0000: seeking a Special Exception per Article III, Section 3.50 to vertically expand the envelope of the house to 23 ft per the drawing supplied to the Board which is the far-right corner from the road as indicated on the drawing and circled in yellow for 38 Jobs Creek Rd, Rural Residential Zone. Mr. Munn seconded the motion. A roll call vote was taken: Ms. Silverstein voted yes; Mr. Munn voted yes; Vice Chair Claus voted yes; Mr. Lyons voted no as he does not believe it is consistent with the intent of the Ordinance; Chairman Simpson voted yes. The motion passed with four in favor and one opposed.

Attorney Schuster asked about the variance for the west side as the line of the house has changed though it is still no closer. Chairman Simpson said that the Town's attorney has said that the variance is for the non-conforming area on the plan submitted that is approved and if the applicants want to increase anything in the non-conforming area, they will need to come back before the Board. Attorney Schuster said that he thinks that it is going no closer than the existing house in that side. Chairman Simpson said that what was approved is a more modest encroachment than what is being requested now. Attorney Schuster asked if they should apply for a new variance or for an amendment to the

approved variance. Chairman Simpson said that he has never heard of an amendment to a prior approval. Attorney Schuster said that he has submitted a number of applications for amendments to prior approvals because plans can change. Chairman Simpson asked and Attorney Schuster said that it would be up to the Board what criteria they would be applying as it is simply a recognition that they are changing something that is already approved. Chairman Simpson said that he will ask the Town's attorney as he does believe that the variance criteria will need to be met as there will be a change. There was further discussion regarding how the plans changed from August to April.

CASE ZBA: 21-20: PARCEL ID: 0125-0030-0000: SEEKING A VARIANCE FROM ARTICLE III, SECTION 3.40(C) TO PERMIT STRUCTURE TO BE BUILT WITHIN 30 FT 5 INCHES OF THE WATERBODY OF LAKE SUNAPEE WHERE 50 FT IS PERMITTED (THE EXISTING STRUCTURE IS 36.5 FT FROM THE WATERBODY); DALE N. DEWEY, ET AL; 146 GARNET ST; RESIDENTIAL ZONE W/ SHORELINE OVERLAY

Dale Dewey and Natalia Dewey presented the case.

Mr. Dewey said that this is an old family house where the main cottage is a seasonal residence that is not usable in the winter. There is a small back cottage that was winterized about 20 years ago. Chairman Simpson asked and Mr. and Mrs. Dewey explained which structure on the submitted plans they are discussing.

Mr. Dewey said that he and Mrs. Dewey decided to move to Sunapee as full-time residents about a year ago. He is the only person of his generation to be involved in the house. They do not want the house to be lost from the family so they decided to move here as he has the ability to work remotely. They spent the winter living in a small house that is less than 700 sq ft and have done a good job making good use of the space.

Chairman Simpson asked and Mr. Dewey said that he has spoken to DES but not yet submitted the Shoreline Permit. Chairman Simpson said generally the Board conditions approvals on DES approvals; they cannot override DES but can make conditioned approvals. Mr. Dewey said that he spoke with DES and was told he needed a survey to prove the point of reference to the lake and it is 44 ft from the shorefront. He has spoken to DES and sent them pictures and they said that, effectively, they are grandfathered; they are not technically grandfathered but the existing main house is much closer to the water and they have the right to expand the house and in case the house is two structures.

Chairman Simpson asked and Mr. Dewey explained the ownership structure of the house. Chairman Simpson asked and Mr. Dewey confirmed that he has received permission from the other property owners to present this application.

Mr. Dewey said that they do not want to expand the main house because the interior of the house is historic and old and winterizing the house would ruin its historic integrity. They just want to make the back cottage slightly more livable.

Mr. Dewey said that this is their desired way to expand for financial and practicality reasons; however, they also cannot expand in the other three directions. They cannot go towards the house because the

148 main house is only 6 ft away. Expanding toward the driveway would be nothing but ledge and there is a
149 walkway up to driveway. The other way has a septic pumping station and several large trees that would
150 need to be removed. Going the way that they want to go is easier and they would only require them to
151 only cut one tree; there is also an extremely large hemlock that they will not be removing. They are
152 trying to be respectful of the land and the lake.

153 Mr. Lyons asked if the applicants build the deck if they are allowed to enclose under the deck as living
154 space. Chairman Simpson said that in the past there was not the criteria about envelopes. Ms. Wallace
155 asked if the existing cottage has a basement that would make it possible to have a walkout basement
156 under the deck. Mr. Dewey said that it does not have a basement, there is a partial foundation under
157 one corner. Ms. Wallace said that digging out a basement on an existing structure and then building out
158 the living space under the deck might be challenging on a ledged slope. Mr. Dewey said that at that
159 point there is not ledge but there is not enough height to have any living space underneath. Chairman
160 Simpson said that Section 3.40(k) talks about pre-existing structures containing enclosed living spaces
161 over non-conforming open areas can be enclosed. There was further discussion regarding this matter.

162 Ms. Silverstein asked and Mr. Dewey said that the existing house is approximately 44 ft from the lake
163 and the deck is another 9 ft so that will be 36 ft from the lake. The existing deck is three quarters across
164 the length of the house and they want to make it the full length of the house and turn all of that into an
165 addition and build a smaller 6 ft deck.

166 Ms. Silverstein asked if the proposal is approved what the applicants will do to divert water flow away
167 from the lake and what they will do for erosion control. Mr. Dewey said that the DES application asks
168 about that and one of the conditions is to demonstrate an improvement. He is a member of
169 environmental committee and has learned about erosion and native species. They will plant 50 to 100
170 plants in certain areas where trees have been killed to help with erosion control. However, the land is
171 flat with little vegetation and a lot of rocks so he does not think the proposal will have impact. They will
172 do the right amount of plantings to ensure that any additional impact is mitigated. Mr. Lyons asked and
173 Mr. Dewey said that this lot is heavily forested without any lawn. Mr. Lyons said there are enormous
174 trees on this lot so it is different than many lots. Also, behind the house there is a drop off that gets flat
175 and goes to the shore and the boathouse. Mr. Dewey said that it is very steep up to the back cottage,
176 then there is the deck and then it drops off so at the edge of the deck it is flat. Mr. Lyons asked and Mr.
177 Dewey said that the front is not treed, it is full of rocks. Mrs. Dewey said that she has already started to
178 purchase plant for rock gardens to ensure that it goes back to its original perennial state.

179 Mr. Munn said that this looks like a difficult lot as there are just a lot of trees and rocks. Mr. Dewey said
180 that the historic name of the cottage is The Boulders.

181 Ms. Silverstein asked and Mr. Dewey said that the cottage is quite a ways from the road. Ms. Silverstein
182 asked and Mr. Dewey said that they cannot add on to the back side of the cottage as it is a steep rock
183 ledge; the tiny bit of crawl space abuts the rocks.

184 Vice Chair Claus asked about expanding toward the septic pump. Mr. Dewey said that they would not
185 like to go towards the side because of the septic pump and the trees that would need to be cut down.

186 Vice Chair Claus said that he does not see a lot of trees in the picture. The existing structure is 25 ft
187 from the pump and if they did a 20 ft expansion to stay 5 ft from the pump, they would have an
188 additional 300 sq ft of living space and the majority would be outside the 50 ft setback. Ms. Silverstein
189 asked and Vice Chair Claus said that the existing house is already on that topographic plain so they could
190 just expand towards the septic pump. Ms. Silverstein asked and Vice Chair Claus said that the applicants
191 said that this would require them to cut more trees down. Mr. Dewey said that there is also a steep
192 slope there. Vice Chair Claus said that they will be building on that same slope. Mr. Dewey said that
193 from their standpoint it would be much more expensive and much closer to the road to build on that
194 side of the house and would have a much greater impact to the public as it would be noticed more from
195 the road.

196 Chairman Simpson asked and Mr. Dewey said that they do not plan on taking down the big hemlock by
197 the edge of the house.

198 Ms. Silverstein asked and Mr. Dewey said that they would like to do a two-story addition that would not
199 change the footprint. Chairman Simpson said that it would change the envelope. Mr. Dewey asked and
200 Chairman Simpson said that if someone has a non-conforming structure and the envelope is changed it
201 requires a variance. Mr. Dewey said that is why they are asking for a variance and he believes they put
202 that they would like to have two-stories on the application. Chairman Simpson asked and Mr. Dewey
203 said that the proposed addition will be lower than the existing structure because the current structure
204 has a tall, pitched roof above the second floor and the addition will have a lean-to roof that will be
205 below the roof of the existing structure. The floors will match the floor levels but the roof will be lower.

206 Ms. Wallace said that in the documentation it is referenced that the property is grandfathered to be
207 within the 50 ft setback and asked if it is the buildings that are grandfathered. Chairman Simpson said
208 that the lot is conforming but the structures are non-conforming. Ms. Wallace said that she does not
209 think that the Board can rely on grandfathering as the lot is conforming. The Board cannot assume that
210 just because the main building is within the 50 ft setback that all the buildings should be grandfathered
211 to that same level or distance from the lake. Mr. Dewey said that DES explained to him that it is
212 effectively grandfathered as they have the right to expand the house. Chairman Simpson said that is
213 according to DES standards and regulations and he understands what Mr. Dewey is saying though he
214 does not know if he agrees with it. Vice Chair Claus said that DES does not look at setbacks, they look at
215 coverage.

216 Mr. Dewey said that to the extent that this is a mitigating circumstance, they are one of the only lots on
217 Garnet St that is conforming and everything else is significantly less than one acre. The impact on their
218 one acre of land is extremely low compared to everything else on the street. Other people are jamming
219 enormous boxes into tiny envelopes and he does not know how many variances these houses get but
220 that is more impact. Chairman Simpson said that he appreciates this and asked to refocus on the
221 application.

222 Mr. Dewey said that they are moving 6 ft closer as the back cottage is already within the 50 ft setback;
223 nothing is not within the 50 ft setback. They are grandfathered because they have been there for 100

224 years. This is the most practical with the least impact on the community and the most affordable. There
225 is a need for living space and they would not request something that is unreasonable.

226 Chairman Simpson said that is a less-conforming application because they are asking for the variance
227 and creating more non-conformity. This is the way the Board looks at it, however, it is not a reason to
228 say no if all the criteria are met and one of the most difficult criteria is hardship. There is a pre-existing
229 structure and some other limitations.

230 Chairman Simpson asked and Mr. Dewey said that the lot is very steep and in front of the cottage it gets
231 flat. Chairman Simpson asked and Mr. Dewey said that the front section is within the setback and there
232 are rocks.

233 Mrs. Dewey said that they cannot live in the tiny space any longer but if they sold someone might tear it
234 down.

235 Chairman Simpson asked and Mr. Dewey said that it would cost a lot to winterize the main house. Mr.
236 Lyons asked and Mr. Dewey said that they drain the house in the winter. Mr. Dewey said that the house
237 is unoccupied in the winter as it is all open stud and is very historic and winterizing it would be an
238 elaborate do over to the house. They are trying to not ruin any of the historic character of the main
239 cottage. The back cottage is still quite rustic in general but does not have the same historic character as
240 the main cottage. They are looking at this as a pragmatic solution to preserve the history.

241 Mr. Lyons asked and Mr. Dewey said that the property is not subdividable. Chairman Simpson said that
242 the Zoning Board does not weigh in on subdivisions. Mr. Dewey said that if the Board does not grant the
243 variance they could potentially build another structure somewhere else on the property which would
244 have more of an impact as they would need to cut down a lot of trees. There was further discussion
245 regarding this matter and how many dwelling units are permitted on a lot.

246 Mr. Dewey said that the main house was originally a Victorian house built in 1878 and his great-
247 grandfather bought it in the 1890s and made it bigger by putting a roof across the addition so the
248 bedrooms have a lot of slopes which gives the house a lot of character and charm. Mr. Dewey
249 continued to explain the history of the house.

250 Ms. Silverstein asked and Mr. Dewey confirmed that they do not have a garage.

251 Ms. Wallace said that on one of the plans they indicated that the side setback is approximately 30 ft to
252 the property line but the Town requires 25 ft. Mr. Dewey said that was his approximate calculations
253 before he got a proper survey. Chairman Simpson asked and Mr. Dewey confirmed that he did get a
254 survey. Chairman Simpson said that it is not a full survey, just measurements. Mr. Dewey said that he
255 learned from Clayton Platt that the property line is closer to his neighbor's house than he thought so
256 there is more than 50 ft to the property line.

257 Ms. Wallace asked and about expanding towards the north side as along the roof line there would be
258 room to move in that direction without impinging on the sewer pump and without impinging on the
259 property line. Mr. Dewey said that is partially correct but not the best analysis of the situation as it

260 would get close to the sewer and also because doing that would require the removal of 8 to 12
261 substantially large trees. The Board said that they do not see the large trees indicated in the pictures
262 provided. Mr. Dewey said that he may not have the best angled photos and explained the where the
263 trees are located that would need to be removed. There was further discussion regarding this matter.

264 Vice Chair Claus said that the 50 ft shoreline setback has been something the Board has always tried to
265 maintain to the best they can with the sensitivities of the lake so that has a certain priority and is a
266 concern. If the Board sees another way that there is to do something then there is not a hardship that is
267 forcing the construction out towards the lake.

268 Chairman Simpson said that Mr. Dewey is talking about other features of the land that the Board cannot
269 see and that Mrs. Dewey is talking about boulders. Mr. Dewey said that between the septic and the
270 house it is very steep and there is a lot of ledge. Vice Chair Claus said that he thinks they are looking at
271 surface stone and asked if there will be a foundation. Mr. Dewey said that there will not be a
272 foundation but piers. Vice Chair Claus said that even piers have to go 4 ft into the ground and he thinks
273 they will hit rock wherever they go on the lot. Mr. Dewey said that where the deck is, at the edge and
274 underneath, it starts to flatten out rapidly and there is not as much of a ledge and the pier type
275 construction would be easier. Chairman Simpson said that there are already piers for the existing deck.
276 There was further discussion regarding this matter.

277 Ms. Wallace said that she is concerned if the structure moves forward and becomes more non-
278 conforming that the Board is opening it up to allow anyone with two structures on their property to also
279 become more non-conforming. Chairman Simpson said that there is always this potential and he cannot
280 give a definitive answer.

281 Chairman Simpson asked what the height of the proposed structure will be. Mr. Dewey said that the
282 proposed structure will be approximately 22 ft tall with a sloping roof. Chairman Simpson said that Mr.
283 Dewey will need to apply for a special exception or variance for the vertical expansion. Mr. Dewey
284 asked if this is related specifically to having two stories or would they need a variance or special
285 exception if they have only one story. Chairman Simpson read the definition of living space from the
286 Ordinance and said that the deck is not a pre-existing non-conforming structure. There was further
287 discussion related to a deck not being a pre-existing structure but is part of the footprint but is not living
288 space and that all the requirements of 3.50(i) have to be met to get a special exception.

289 Vice Chair says that if the addition stays less than the current height of the structure he does not think
290 anything is needed. Chairman Simpson said that because the construction is within the shoreline
291 setback Section 3.10 says that the maximum structure height in a reduced side or rear setback is 25 ft.
292 Mr. Dewey said that he is 99% certain that they would be less than 25 ft as the addition would join the
293 two floors. Vice Chair Claus said that it is a non-issue at this point but if a plan for a permit is requested
294 and the drawing shows that it will be over 25 ft then Mr. Dewey will need to return to the Board. There
295 was further discussion regarding this matter and that the issue would be handled if they file for a
296 permit. Mr. Munn said that it is hard to determine height without a plan.

297 Mr. Dewey said that he spoke with Mrs. Pollari who said that he needed to talk to DES and he did and
298 that he needed to get a survey, which he did. He understands it is not an official survey, however, it
299 does establish the 50 ft setback. He does not want to pay for an architect and plans without getting the
300 variance approval first.

301 Mr. Lyons asked if they could just use the existing footprint without expanding. Chairman Simpson said
302 that they can build anything that complies with the Ordinance. Mr. Lyons said that it would be useful to
303 know if they are allowed to replace a deck with a structure. Chairman Simpson said that they could not
304 without coming before the Board as it is not a primary structure.

305 Chairman Simpson asked and there were no questions or comments from anyone regarding the case for
306 the applicant so he closed the hearing to public comments.

307 Mr. Lyons said that he is concerned about the plan for the house going towards the lake as opposed to
308 another direction. He understands there are features of the lot that make it the way to go but would
309 like to see it more clearly spelled out.

310 Chairman Simpson asked the Board if they would like to request the applicant come back with more
311 information before voting on the case. Vice Chair Claus said that if the Board has this capability he
312 would strongly recommend it because they need to prove the hardship that the building only needs to
313 go that way and with the evidence in front of him, it is not really depicted that strongly for him. He does
314 sympathize with the cost of providing more information. Mr. Lyons said that more information such as
315 photographs taken at better angles might be helpful or someone standing next to a tree to give an idea
316 of a scale. Chairman Simpson said that the Board can do a site visit. There was further discussion about
317 this matter.

318 Ms. Silverstein said that the request is modest and reasonable and the Board is supposed to be a relief
319 valve to offer the relief to the Ordinance. However, she does not have enough information to offer that
320 relief and to serve the Board's purpose they have to justify.

321 Chairman Simpson opened the meeting to public comments.

322 Mr. Dewey said that he would like to ask and submit that the Board consider a weighing the issues of
323 hardship and public interest because they are both of importance. The question is not whether or not
324 the building can be in the 50 ft setback as it already is. He thinks that a site visit and additional pictures
325 would demonstrate to the Board that there are a lot of trees and a lot of ledge. There is no question
326 that he could not build on the side as anything is doable but it is not in the public's interest to bring in
327 huge machines and tear down trees at great costs for a lack of 6 ft. He sympathizes with the Board to
328 protect the 50 ft setback as that is what they are supposed to do. However, DES, whose ultimate goal is
329 to control and manage all the lakes and shorelines in the State, has deemed this permissible. He
330 understands that they are separate from the Town and there could be overlapping and contradicting
331 goals and objectives, but they are a higher body who is concerned with environmental issues. The
332 whole reason not to go closer than 50 ft is for environmental reasons and they believe that the special
333 nature of the topography is that there will be little or no impact to the lake as there is a big, flat

334 retaining area for drainage. The amount that is being built is very small. There would be more impact to
335 the lake and environment by cutting down more trees. There would be more impact to the public by
336 having a building closer to the road as it will be seeable as now there is a forest. They are a very
337 environmentally thoughtful family and for years have fought to not cut trees and gave hundreds of acres
338 of forests to the Town. He respects that the Board wants to maintain the 50 ft setback and supports
339 that but there are reasonable exceptions that can be made given the totality of the circumstances.

340 Chairman Simpson said that going back to the issue of hardship, the Board is looking to establish the
341 hardship and they do not think that they have enough information. Chairman Simpson asked and Mr.
342 Dewey said that it is possible to build to the side but it would not be easy.

343 Mr. Lyons said that he thinks the Board was on the right track when they suggested to do a site visit look
344 at the property because he thinks that it is unique but it is not clear as to how the house could be
345 expanded. He would like to look at it to see how feasible it would be. Ms. Wallace said that she agrees
346 and would like an opportunity to see the site with the applicants. She saw the site but did not walk
347 around.

348 **Mr. Lyons made a motion to continue the hearing to have a site visit with the Board and the**
349 **applicants. Mr. Munn seconded the motion.** Ms. Silverstein asked what Mr. Lyons thinks the Board
350 would see by doing a site visit. Mr. Lyons said that he thinks that they would see woods. Ms. Silverstein
351 said that she could concede that the property is surrounded by woods and that there are a lot of rocks.
352 She is not sure that a site visit would offer the Board anything more than what they already know and
353 would delay them another month and she is not sure it is something the applicant would want to do.
354 She also thinks Mr. Dewey's reference to the public interest is strong. Chairman Simpson asked and Mr.
355 Dewey said that the Board is welcome to do a site visit. He does not think the Board will see how
356 feasible or buildable the site is and he would like the Board to debate the public interest verses the
357 exception to moving 6 ft closer to the lake and what is the most important issue. He supports the 50 ft
358 setback but anytime trees are cut down it cuts down irreplaceable history. They may not be the most
359 elegant trees but they constitute wooded land. He knows that going to the side would be mostly
360 conforming because some of the 50 ft setback goes into the house now. Right now, the structure is not
361 very visible from Garnet St but an addition to the side would be visible. It would not be desirable for
362 them and also does not think other people would want to see it and that is the part of the public
363 interest. He would like the Board to deliberate on that a few minutes and if they need to continue the
364 hearing that is fine. They are hoping to start construction before the winter so they can have more
365 space. However, he thinks that it is an important consideration for the Board in general to determine
366 where to draw the line between an exception and the public's interest as he sees a lot of heavy
367 construction around Town going up to the edge of properties.

368 Mr. Lyons said that the hardship criteria needs to be met for a variance to be approved. He asked if Mr.
369 Dewey considers removing the trees to accommodate building north as opposed to east a hardship
370 because the Board is looking at rock between the house and the lake and trees the other way. Mr.
371 Dewey said that he does not know the proper definition of a hardship as there are a lot of different ways
372 that he would consider something a hardship. Chairman Simpson said that he thinks Mr. Lyons is asking

373 if the existence of the trees is unique for the area and would be considered a hardship. Mr. Dewey said
374 that he would consider it a hardship to have to remove the trees.

375 Vice Chair Claus asked and Mr. Dewey said that he will be keeping the 30-inch hemlock; it is a couple of
376 feet away from where the building will be and there will only be one pier there. Vice Chair Claus said
377 that there will be a structure going over the root zone of the tree. Mr. Dewey said that if that proves to
378 be a problem, they will need to change their plan because there is no way they want to lose that tree.

379 Chairman Simpson closed the hearing to public comments and asked for the Board to vote.

380 Vice Chair Claus said that he does not think that there would be anything on the site visit that would
381 convince him. Chairman Simpson said that if there are more trees there that would need to be removed
382 that may convince him. Vice Chair Claus said that the state uses a point scale and the 30 inch hemlock
383 could have more value than those other trees. His background dealing with trees that close to a
384 structure is that people usually do not leave trees that close because they have a chance of failing and
385 falling on the house. The tree is going to be inches from the house and the likelihood of it surviving is
386 anyone's guess but when he plans for something like that he plans for failure; you are not supposed to
387 disturb any of the root zone outside the drip edge. It concerns him if the Board is going to weigh more
388 heavily on the trees as uniqueness for the hardship. Chairman Simpson said that the hardship question
389 addresses the uniqueness of a property as compared to others in this area. There are a lot of small lots
390 with a lot of building coverage around the lake. The fact that this is existing forest is not normally
391 considered a hardship but, in this instance, it is somewhat persuasive; however, he does not see that
392 from the pictures and thinks that going to the site and looking at the site would give him more insight.
393 Vice Chair Claus said that he thinks that anything might be more helpful than the information that he
394 has but he is not sure it is enough for him. He thinks that there is a lack of information for him right
395 now. Chairman Simpson asked the Board to vote on the motion.

396 **A roll call vote was taken: Mr. Lyons voted yes; Vice Chair Claus voted yes; Mr. Munn voted yes;**
397 **Chairman Simpson voted yes; Ms. Silverstein voted no. The motion passed with four in favor and one**
398 **opposed.**

399 Chairman Simpson said that the hearing has been continued in order to allow the Board to do a site visit
400 as all of the criteria for the variance must be met; hardest just often overrides the other because it is the
401 hardest to prove. Chairman Simpson asked and Mr. Dewey said that he would be happy to walk the site
402 with the Board when they do the site visit. There was further discussion regarding the site visit and the
403 date of the next hearing and that the Board cannot vote on the case while at the site because it needs to
404 be on record.

405 **CASE ZBA: 21-21; PARCEL ID: 0148-0037-0000: SEEKING A VARIANCE FROM ARTICLE III, SECTION**
406 **3.40(C) TO PERMIT A SHED TO BE BUILT WITHIN 24 FT OF THE WATERBODY OF MOUNTAIN VIEW LAKE**
407 **WHERE 50 FT IS PERMITTED (EXISTING SHED HAS THE SAME FOOTPRINT BUT IS CLOSER TO THE**
408 **WATERBODY); BRADFORD S & SARAH C LASSEY; 16 SUNNYSIDE DR; RURAL RESIDENTIAL ZONE W/**
409 **AQUIFER & SHORELINE OVERLAYS**

**CASE ZBA: 21-22; PARCEL ID: 0148-0037-0000: SEEKING A VARIANCE FROM ARTICLE III, SECTION 3.10
TO PERMIT A SHED TO BE BUILT WITHIN 12 FT OF THE SIDE SETBACK WHERE 15 FT IS PERMITTED FOR
A PRE-EXISTING LOT BELOW MINIMUM SIZE; BRADFORD S & SARAH C LASSEY; 16 SUNNYSIDE DR;
RURAL RESIDENTIAL ZONE W/ AQUIFER & SHORELINE OVERLAYS**

Doug Gamsby presented the cases on behalf of the applicants.

Mr. Gamsby said that there is an existing shed on the property with the closest point about 10 ft from the lake. The shed is in poor condition and they want to take it down and rebuild it farther from the lake in a more conforming area that will be 21 ft from the lake. Chairman Simpson asked and Mr. Gamsby said that they are not building a new shed. Chairman Simpson said that he does not think that it is a rebuild then as it will be building a new shed in a new area. Mr. Gamsby said that they want to take a building that is about 10 ft from the lake and move it to a new location that is about 21 ft from the lake in order to enjoy more of the scenery of the lake.

Chairman Simpson asked and Mr. Gamsby confirmed that the proposed shed will be less non-conforming than the existing shed.

Mr. Gamsby said that the entire lot is less than 50 ft from the lake. In January 2020, he came before the Board to get a special exception to take a building down that a tree fell on and build a new one with a second story and that was granted. Since that time, the applicants have decided they want to move the shed.

Mr. Gamsby said that they have received a Shoreland Permit for this project as well as for a dock in June and gave copies to the Board.

Mr. Gamsby said that other improvements to the property has been additional pervious areas and adding trees to meet the tree counts. There will be no trees removed for the shed to be rebuilt in the new location. The new shed will have the same footprint, it will just be a more structurally sound building.

Vice Chair Claus asked and Mr. Gamsby confirmed that the proposed shed will be 12 ft from the side setback where 15 ft is required.

Chairman Simpson asked what makes this unique to the lots in the area. Mr. Gamsby said that this lot is unique as it is fully within the 50 ft setback. Chairman Simpson asked and Mr. Gamsby said that he does not know if the other lots in the area are fully outside the 50 ft setback but he believes they are. The lot is also very small as the total area is 8,500 sq ft. They are also impacted because on the left there is a 10 ft deeded right of way easement for people behind this lot to get to the lake. Chairman Simpson asked and Mr. Gamsby said that it is not a deeded right of way, it is an access easement. Vice Chair Claus asked and Mr. Gamsby said that the area is not graveled, it is just lawn.

Mr. Gamsby said there is a septic tank and pump on the side of the parking area and on the other side is the leach field which is a very small clean solution leach field that is a 5 ft high pump in the ground as the water table is so high in the area. There is nothing that can go in that area and they have pushed

446 the shed right up against the bottom of the slope and as far as they can from the house given the
447 limitations.

448 Mr. Gamsby said that another issue is that the leach field is essentially a hump and, in the winter, people
449 are using it as a launching point for snowmobiles.

450 Chairman Simpson asked and Mr. Gamsby explained the location of the lot.

451 Ms. Silverstein asked why the shed cannot be pushed any farther onto the lot in order to maintain the
452 15 ft setback. Mr. Gamsby said that the other variance request is for the 12 ft setback and the reason is
453 because the more the shed gets pushed more towards the house it needs to be angled more and it
454 would be closer to the lake. It will also impact the pervious parking area.

455 Ms. Wallace asked if the red outlined trees are existing and Mr. Gamsby said that they are proposed
456 trees to get them 25 points per cell. Ms. Wallace asked if the building is rotated a few degrees and
457 moved to the north if it would be able to be outside the 15 ft setback and not in the leach field. Mr.
458 Gamsby said that the shed could be moved a little more but it would be bringing it a little closer to the
459 lake. Vice Chair Claus asked if the shed were turned to be parallel with the berm if it would still be
460 closer to the lake.

461 Ms. Silverstein asked and Mr. Gamsby said that the shed is 12 ft x 10 ft. Ms. Silverstein asked and Mr.
462 Gamsby said that the shed will be on a concrete slab. Chairman Simpson asked and Mr. Gamsby said
463 that the existing shed is on a concrete shed.

464 Mr. Gamsby said that the shed could be moved over a little more but it would get a bit closer to the lake
465 which is defeating the purpose.

466 Chairman Simpson asked about the hatched area between the proposed shed and the house. Mr.
467 Gamsby said that they are removing a propane tank and putting cylinder tanks next to the proposed
468 shed and the hatched area is the gas line.

469 Mr. Gamsby said that there are two existing sheds on the property on one side of the lot and one of the
470 sheds is 1.2 ft from the property line. There is a garage on the property on the other side of this lot that
471 is 8.2 ft from the property line. The photographs submitted with the application show these buildings.

472 Chairman Simpson said that he does not have an objection to move the shed back from the lake as it will
473 be a new shed that will be the same size as the existing shed. However, he is having a hard time with
474 the side setback as it looks like it could be built to not be in the setback. Mr. Gamsby said that it could
475 be done and the applicants are willing to not have it there and if it does not get approved, they will go to
476 the 15 ft.

477 Mr. Lyons asked and Mr. Gamsby confirmed that there is a stump that is to the right of the proposed
478 shed where the new tree is supposed to be. Mr. Lyons said that he is concerned is if the roots go out
479 they might need to be dug up which will possibly interfere with the leach field. Mr. Gamsby said that it
480 would help to not need to move the shed closer to the stump. When he did the plan, he did think the

481 tree was still there because he originally did the existing conditions plan two years ago so that was also
482 why he angled the shed.

483 Ms. Silverstein asked the reason for a 10 ft by 12 ft shed as opposed to a smaller shed. Mr. Gamsby said
484 that is what is existing with the same footprint and it is used for storage.

485 Ms. Silverstein asked about the photographs submitted and Mr. Gamsby explained which building is the
486 shed being discussed as well as the neighbor's properties.

487 Chairman Simpson asked and Mr. Gamsby said that they will not be doing a survey. There was a survey
488 done on the property next door when they replaced the septic and there is monumentation on all four
489 corners. Ms. Silverstein asked and Mr. Gamsby explained the property lines shown on the photographs
490 submitted. Chairman Simpson asked and Mr. Gamsby confirmed that the monuments that were found
491 were what are called for in the deed. There was further discussion regarding this matter.

492 Vice Chair Claus asked and Mr. Gamsby said that he is showing the roofline of the shed which is why it
493 looks to be bigger than 10 ft by 12 ft on the plan.

494 Vice Chair Claus said that if the shed is turned parallel to the leach field mound it looks like it could be
495 out of the side setback and be slightly further back from the lake. Instead of redesigning the plan the
496 Board could approve only the first setback variance request to still allow the building on the lot.

497 Brad Lassey said that they are trying to create an area for their kids to play as the shed's current location
498 creates a bad sight line so they are trying to create a continuous area.

499 James Ogden, 22 Sunnyside Dr, said that he has been visiting the property since he was born and the
500 proposed shed location used to be where there was a propane tank and he thinks that there also used
501 to be a shed there. With the angle of the proposed location, there is a line that comes off the septic
502 distribution box that comes over to a vent pipe that is the reason the shed is angled. He believes that is
503 the second existing vent pipe and he does not think the vent pipe could be moved. He thinks that it
504 would just be simpler to leave the shed 12 ft from the property line. Chairman Simpson asked Mr.
505 Gamsby said that there are two vents, a high vent and a low vent. Chairman Simpson asked and Mr.
506 Gamsby said that moving the vent pipe does not affect anything, there just needs to be a low vent and a
507 high vent.

508 Mr. Ogden said that he thinks the current owners have done a fantastic job taking care of the property
509 and the landscaping. He thinks that this would be an improvement to get the shed farther from the
510 waterfront and it would only encroach in the side setback a little bit which is a small price to pay to
511 move the shed away from the water.

512 Kuan Chen, 19 Sunnyside Dr, asked and Chairman Simpson said that there will be a concrete slab. Mr.
513 Gamsby said that there will be a 3-inch concrete slab on the ground. Chairman Simpson asked and Mr.
514 Chen confirmed that he lives at 19 Sunnyside Dr. Mrs. Lassey said that Mr. Chen rents the property to
515 tenants. Mr. Chen said that he goes up to his property a lot in the summer.

516 Mr. Chen said that he does not see the point of building a new shed that will not meet the setback
517 requirement for the waterfront or for the property line. The new shed will be right next to the right of
518 way that is shared by a few neighbors in the area. His main concern is the the height of the new shed
519 and if there will be a foundation and a drainage plan because when the applicants rebuilt the house they
520 had said the house would be 24 ft high but failed to say they were going to have a foundation that was 3
521 ft high, which put the house higher. He is not sure anyone will care if the shed is only a few inches
522 higher; however, the house is 2 ft to 3 ft higher which changed the water flow which has affected his
523 property. He is very concerned with the height of the new shed and if there will be a foundation and
524 drainage plan as he does not want to see all the rain and snow go to the right of way and make it not
525 usable or muddy. Chairman Simpson said that Mr. Chen will need to express his concerns about the
526 height of the house to the Board of Selectmen and suggests that he do that in writing. As far as the
527 view, unless there is a view easement the is no right to the view or the lake and the Board is not allowed
528 to consider aesthetics in an application. Regarding the impact to the right of way, the Board will take
529 that into consideration.

530 Ms. Silverstein said that the Board is discussing the shed and the discussion has moved to the applicant's
531 residence, which is not under discussion.

532 Mr. Chen said that he is concerned because this is something that the applicants did before. He is
533 concerned about the height of the new foundation and does not want it to be 1 ft high. Mr. Chen
534 continued to explain his concerns to the Board regarding the 10 ft easement that will be next to the
535 shed becoming muddy and that the height of the shed will block their view.

536 Mrs. Lassey said that the right of way is on their property and they do not want it to be a muddy mess so
537 they intend to maintain it as a lawn and understand they cannot do anything on it.

538 Mr. Gamsby said that intent is that the shed will be essentially the same height that it is now and they
539 will be moving it a new location that will be 2 ft from the 10 ft right of way. The shed will be on a slab so
540 it will stick up about 2 ft to 3 ft above the leach field and the applicants are thinking of adding some
541 trees or boulders; they have to be short trees with little root systems but are intended to keep
542 snowmobilers off. Ms. Wallace asked and Mr. Gamsby said that it will be approximately the same
543 elevation, just a few feet different.

544 Mr. Lassey said that their other abutters on the other side of their property have expressed support but
545 could not make it because they were going out to dinner. Chairman Simpson asked and Mrs. Lassey said
546 that they have text messages they can send to Mrs. Pollari.

547 Nick Williamson, 19 Sunnyside Dr, said that he owns the property with Mr. Chen and shares the same
548 concerns. They do want the applicants to be able to do what they want to do; however, his concern is
549 that they have done a lot to block the view and they are getting complaints from neighbors and tenants
550 because the septic field was raised and the shed will block the view. Chairman Simpson said that he
551 understands the concerns about the view but that is not something the Board considers. Chairman
552 Simpson asked about Mr. Chen's concern with the impact to the right of way. Mr. Williamson said that

553 Mrs. Lassey has said that they are going to maintain it but they are concerned about drainage and it
554 becoming a muddy mess.

555 Chairman Simpson asked and Mr. Gamsby said that he is not addressing drainage for the shed as it will
556 be small. Chairman Simpson said that they are going to be adding a slab at the base of the septic field.
557 Mr. Gamsby said that as long as the area in front of the shed remains a lawn type area it should
558 percolate very well.

559 Ms. Silverstein asked and Mr. Gamsby confirmed that the right of way area will be maintained to the
560 same standard as the rest of the property based on what Mr. Ogden shared with the Board.

561 Chairman Simpson asked if the State required a stormwater management system on the property if it
562 will be complied with and Mr. Gamsby said that it will be but this is a small area. Mr. Gamsby said that if
563 they had to, they could put a gutter on the shed and run it to a small area. Chairman Simpson said he is
564 more concerned with the impact to the lake. There was further discussion regarding this matter.

565 Chairman Simpson said that he does not know the extent to what the easement is for but believes the
566 people who have the easement rights could maintain or improve it. If a situation is created where the
567 easement area becomes muddy, the neighbors could do something to improve it so they may want to
568 address these concerns.

569 Vice Chair Claus said that there is no front setback on the drawings. Mr. Gamsby said that the entire
570 property is in the 50 ft shoreline setback and asked if there is a variance needed for the road setback.
571 Mrs. Pollari said that the road is not a town-maintained road, it is private. Chairman Simpson asked and
572 Mr. Gamsby said that the road is not up to Town specifications. Chairman Simpson said that if it is not
573 up to Town specifications then the road setback does not apply.

574 Ms. Wallace asked and Mr. Gamsby said that they are not creating any new impervious area, they are
575 taking the shed with 150 sq ft of impervious area and moving the impervious area to another location.
576 The only other impervious area is the house which will not be changing. Chairman Simpson asked and
577 Mr. Gamsby said that they will be removing the slab under the existing shed.

578 Vice Chair Claus asked and Chairman Simpson said that the maximum height of the shed would be 25 ft
579 because it is a structure that will be permitted to be in a reduced setback. However, he is hearing the
580 shed will be in the same dimensions and proposes that it will be a condition.

581 Mrs. Pollari said that she received the email from Mrs. Lassey and read that the neighbor, Bruce Bissett,
582 was in favor of the shed moving.

583 Chairman Simpson closed the meeting to public comments.

584 Ms. Silverstein said that the property in itself is a hardship as it is less than 50 ft wide so there is no
585 setback from the lake. The Board has heard that the applicants have made significant improvements to
586 the property and relocating the shed away from the lake is a smart decision and reasonable. She is not
587 concerned with shortening the side setback from 15 ft to 12 ft if they are maintaining the right of way.

588 The concerns the Board heard from the abutters is that as business owners they have other interests
589 and no one is saying the right of way will be encumbered. There are also two abutters who support the
590 shed. Mr. Munn said that he agrees with Ms. Silverstein but would add that maintaining the right of
591 way is imperative to the process.

592 Vice Chair Claus said the hardship is they are in the 50 ft shoreline setback and no matter what they do
593 they are infringing on that. He does not have an issue with the request for the side setback, however,
594 there is no need or hardship that is forcing them to infringe on the side setback. He does not think that
595 there is anything pressing for the side setback.

596 Mr. Lyons said that taking a structure and moving it farther from the lake is a win. He would argue the
597 uniqueness a little differently as there are other properties like this but what makes this unique is the
598 configuration with the way that the house is situated and where the well and septic are situated and
599 that ties the hands for relocating things like sheds. The side setback seems reasonable given everything
600 else on this property. There is also no grade so the septic system has to pump up and it is a precarious
601 system and the tiniest thing could cause a leak to the lake.

602 Chairman Simpson said that he agrees with Vice Chair Claus. He agrees that moving the shed back
603 makes it less non-conforming but moving it inside the side setback when they do not have to makes the
604 property more attractive but is not a hardship. He would like to see in a motion that the front slab must
605 be removed so it does not become a patio and that they comply with the DES Permit, and that the
606 building is constructed to the same dimensions as the existing building.

607 Ms. Wallace said that on the first variance request she is in favor of moving away from the lake. On the
608 next variance request, she thinks the shed could be rotated clockwise to be out of the 15 ft setback
609 relatively easily without impacting the septic system and without harming any trees and without
610 changing the whole rationale for moving the shed as it would still perform the same function.

611 Chairman Simpson said one of the DES permits is for a dock and he does not know what the Permit by
612 Notification is for as it is not clarified. Vice Chair Claus said that it is also not clear to him.

613 Chairman Simpson opened the meeting to public comments.

614 Mr. Gamsby said that he has the Permit by Notification application and read the description for the
615 Board. He also submitted a copy of the application to the Board.

616 Mrs. Lassey said that if they rotate the shed clockwise, they would have to pull the roots from the tree
617 that was dead that is now just a stump. Mr. Gamsby was asked and showed the Board on the plan
618 where the tree is located; he did not show it on the plan because it has died. Mr. Lassey said that
619 moving the shed would put it over the stump and they would have to deal with the roots which would
620 be more difficult.

621 Chairman Simpson closed the meeting to public comments.

Ms. Silverstein made a motion to approve Case #ZBA 21-21; Parcel ID: 0148-0037-0000: seeking a variance from Article III, Section 3.40(c) to permit a shed to be built within 21 ft of the waterbody of Mountain View Lake where 50 ft is permitted; the shed will be the same dimensions as the existing shed; with the conditions that the new shed will comply with DES Permit #2021-01747 and DES Permit #2021-01742; that they will remove the concrete slab that is currently under the existing shed; and that the new shed that will be 21 ft from the water will be the same dimensions as the 10 ft by 12 shed that is being removed. Vice Chair Claus seconded the motion. Vice Chair Claus said that the drawing shows 21 ft and the application says 24 ft from the lake. Mr. Gamsby said that the application should have said 21 ft. Chairman Simpson said that he thinks that the applicant needs to reapply. Ms. Silverstein said that her motion says 21 ft, not 24 ft and that is what she would like to vote on. A roll call vote was taken: Mr. Lyons voted yes; Vice Chair Claus voted yes; Mr. Munn voted yes; Chairman Simpson voted yes; Ms. Silverstein voted yes. The motion passed unanimously.

Vice Chair Claus made a motion to approve Case ZBA: 21-22; seeking a Variance from Article III, Section 3.10 to permit a shed to be built within 12 ft of the side setback where 15 ft is permitted for a pre-existing lot below minimum size; 16 Sunnyside Dr. Mr. Munn seconded the motion. A roll call vote was taken: Ms. Silverstein voted yes. Mr. Munn voted yes, Vice Chair Claus voted no, Mr. Lyons voted yes, Chairman Simpson voted no. The motion passed with three in favor and two opposed.

CASE ZBA: 21-23; PARCEL ID: 0115-0030-0000; SEEKING A VARIANCE FROM ARTICLE III, SECTION 3.10 TO PERMIT A 10 FT SIDE SETBACK ALONG THE NW PROPERTY LINE WHERE 15 FT IS PERMITTED FOR A PRE-EXISTING LOT BELOW MINIMUM SIZE; LU ANNE LANTZ TRUST; NORTH SHORE RD; RURAL RESIDENTIAL ZONE W/ SHORELINE OVERLAY

CASE ZBA: 21-24; PARCEL ID: 0115-0030-0000; SEEKING A VARIANCE FROM ARTICLE III, SECTION 3.10 TO PERMIT A 10 FT SIDE SETBACK ALONG THE SW PROPERTY LINE WHERE 15 FT IS PERMITTED FOR A PRE-EXISTING LOT BELOW MINIMUM SIZE; LU ANNE LANTZ TRUST; NORTH SHORE RD; RURAL RESIDENTIAL ZONE W/ SHORELINE OVERLAY

CASE ZBA: 21-25; PARCEL ID: 0115-0030-0000; SEEKING A VARIANCE FROM ARTICLE III, SECTION 3.10 TO PERMIT A 25 FT FRONT SETBACK WHERE 50 FT IS PERMITTED; LU ANNE LANTZ TRUST; NORTH SHORE RD; RURAL RESIDENTIAL ZONE W/ SHORELINE OVERLAY

Vice Chair Claus recused himself from the cases in order to present them on behalf of the applicants.

Mr. Lyons made a motion to appoint Ms. Wallace as a voting member for the hearings. Ms. Silverstein seconded the motion. The motion passed unanimously.

Mr. Claus said that on Case #21-25 for the front setback he asked for a 25 ft setback in the application but the drawing shows 20 ft and the correct number should be 20 ft.

Tanner Royce, 35 North Shore Rd, asked if there is an issue with the fact that as an abutter he received a certified copy of the agenda that says that it is for 25 ft when they are really seeking 20 ft. Chairman Simpson asked if Mr. Royce objects to the 20 ft setback. Mrs. Royce said that the certified mailing was

658 incorrect and other abutters may object. Chairman Simpson asked and Mr. Royce said that he does not
659 have a problem with hearing the case but thinks the Board needs to recognize the problem. Chairman
660 Simpson said that if there is a formal objection he will put that on record and the Board will consider
661 that when hearing the case; he understands that there is a problem with the notice. Chairman Simpson
662 asked and Mr. Claus said that there were three abutters and they have not been notified that there is an
663 issue.

664 Chairman Simpson asked the Board what they want to do as this is a potential problem. Mr. Lyons said
665 Mr. Royce has a point as there may be potential abutters who feel the 5 ft is important. Chairman
666 Simpson said that it is for the road setback. Mr. Lyons said that to him the front setback is the heart and
667 soul of the case because if nothing is done about the front setback there is no buildable space on the
668 site at all because the 50 ft setback from the lake and the 50 ft setback from the road creates an
669 envelope that is not buildable. He thinks the abutters need to be re-noticed. Mr. Royce said that he
670 road setback is not as much of a concern for him as he thinks it is more characteristic of the
671 neighborhood, he is more concerned with the side setback.

672 There was further discussion regarding notifying abutters about the mistake as well as the character of
673 North Shore Rd and that the Town could be sued for not correctly notifying abutters as they were not
674 made aware of the correct request.

675 Mr. Claus said that the Board just approved a case where the application said 24 ft and it should have
676 said 21 ft. Ms. Silverstein asked if an application can be improved subject to the abutters signing off.
677 Chairman Simpson said that the Board can do that but if an objection is filed then the variance would
678 not be granted. He thinks that this would create a lot of problems as it essentially gives the neighbors a
679 veto after the Board has heard the case. Ms. Wallace asked if it would be a huge issue for the applicant
680 to resubmit for the next hearing. Mr. Claus said that it would not be an issue and he respects the
681 Board's decision and will do whatever he needs to do. He has already notified the owner of the mistake
682 and the potential for the delay and they did not voice any concerns to him.

683 Chairman Simpson read from the OSI Handbook and said that he believes the notice has to be specific as
684 to what is being requested.

685 Mr. Lyons asked how busy the August calendar is because if the cases are continued the Board can hear
686 them at the July meeting with the other application that was continued. There was further discussion
687 regarding this matter.

688 Mr. Royce said that he is more in support of the front setback as the owners have paid taxes on a
689 buildable lot that without the front setback variance could never be built on which is truly a hardship.
690 He is more concerned with the side setback variances and recommends hearing those and then dealing
691 with the front setback.

692 Mr. Claus said that he would like to move forward with the two side setback applications. Chairman
693 Simpson asked and Mr. Claus said that the front setback is variance is more critical than the two side
694 setback variances but he might as well present the two side setback applications.

695 Mr. Claus said that he would like to provide some context to North Shore Rd. The lots and homes were
696 created before the Town adopted the Zoning Ordinance. There are 16 homes on the lake side of North
697 Shore Rd and the houses range from 659 sq ft to 3,742 sq ft with an average of 1,500 sq ft. The lot sizes
698 are 0.15 acres to 0.76 acres. This is not the smallest lot on North Shore Rd, however, due to the small
699 lots and the proximity to the lake, 15 out of the 16 homes are currently non-conforming with most in
700 the lake setback and some with multiple infringes on setbacks.

701 Mr. Claus said that this lot is unique as the owners have owned the property for 25 years with the
702 intention to build and retire on this property but their plans have changed and they have decided to sell
703 the lot. This has become a challenge because according to the Ordinance it is a non-buildable lot. It is
704 difficult to ask people to put the money into the design and to purchase a lot with no certainties. A
705 potential buyer has asked him to see if they can get a building envelope. The lot is a relatively steep lot
706 with trees; applying the horizontal controls shows that there is no buildable envelope. He sat down with
707 the potential buyers and came up with a schematic design and an understanding of their desires for
708 square footage. He also gave input as to the importance of some of the setbacks so they are not going
709 into the 50 ft waterfront setback and the potential buyers understand that. They needed to look at how
710 to get the home size they want while minimizing the impact on the setbacks. With the front setback
711 they will be over the 50% threshold with the 20 ft setback. He is looking to present to the Board a
712 building envelope and a schematic footprint of a house. They would like to have one and a half stories
713 with a walkout basement and a one to two car garage in the 1,800 to 2,000 sq ft range of living space.
714 They are not doing two stories with a full basement as architecturally that would not look good; from
715 the roadside one and a half stories would be visible and from the lake side there would be the two full
716 stories and a walkout basement.

717 Chairman Simpson asked and Mr. Claus said that the garage is 24 ft deep and 26 ft wide.

718 Ms. Silverstein asked and Mr. Claus said that the entire house is approximately 60 ft long, which is going
719 5 ft into each setback. Ms. Silverstein said that that the road is 75 ft wide and asked the width of the
720 house. Mr. Claus said that the house is 20 ft wide.

721 Chairman Simpson asked and Mr. Claus said that the survey was done in 2007 but there is no seal on the
722 drawing. The owners actually had a permit approved back in 2008 that has expired. A lot has changed
723 as the road was only a private road and the setback was only 15 ft. Chairman Simpson said that the
724 need for surveys is when there are tight setbacks on small lots. Mr. Claus said that a surveyor did the
725 drawing, there is just not a seal. Chairman Simpson asked if someone found the rods and said that it is
726 recommended that everyone building in the setbacks get a survey as the Board does not know if there
727 are easements.

728 Ms. Silverstein asked and Mr. Claus said that they are proposing a two-car garage. Mr. Silverstein asked
729 and Mr. Claus said that that if there is only a one car garage they may not need to be in the setback.

730 Mr. Claus said that the potential buyers have pulled back a lot from where they wanted to originally be
731 with square footage and he is trying to get them to understand what they can get for 1,800 sq ft to

732 2,000 sq ft. This is due diligence on their part as rather than buying something that is not certain, they
733 wanted to see if they could get an approval and then work with that.

734 Ms. Silverstein asked where the second car will be parked if there is only a one car garage. Mr. Claus
735 said that the reason that they asked for a two-car garage is because the difficulty with homes on this
736 road is the proximity to the road and where to park. Chairman Simpson asked and Mr. Royce said that
737 right now the owners park along the side of the road. Mrs. Royce said that the road is really a one-car
738 road. Mr. Claus said that the way the garage is designed is because the potential owners have two kids
739 and this will be a vacation home but may become their retirement home. Right now, the driveway
740 cannot not fit a car and have it stay outside the right of way as there is not enough room. Chairman
741 Simpson asked how wide the right of way is and Mr. Claus said that he does not know. There was
742 further discussion regarding the width of North Shore Rd.

743 Chairman Simpson asked and Mr. Claus said that they will conform to the 25 ft height requirement and
744 if not they will come back before the Board.

745 Ms. Wallace asked if the house was two full stories and complies with the height requirements if it could
746 make up for the square footage and allow the house to not be in the setbacks. Mr. Claus said that they
747 could do this but architecturally that would be a big mass.

748 Chairman Simpson said that he does not see any patios or decks proposed. Mr. Claus said that he said
749 that they cannot have a deck unless they carve into the house and he has proposed a pervious patio.
750 There was further discussion regarding this matter.

751 Mr. Royce said that he is concerned that there is no hardship for the width of the building as getting
752 1,800 to 2,000 sq ft is not a hardship; this is not a moderate sized home. There are a lot of 600 sq ft
753 camps and a lot of houses built up over the years on the road. He believes that the owners have been
754 paying taxes and deserve a buildable lot; however, he does not see the hardship on the side setbacks.

755 Ms. Wallace asked and Chairman Simpson said that the abutters are saying that they object to the side
756 setback as there is not a hardship.

757 Ms. Wallace said that she thinks they could build a smaller home of maybe 1,500 sq ft that would be the
758 average of the area. Mr. Claus said that the house is not 60 ft, there is 24 ft of of garage on the end.
759 Ms. Wallace asked if the garage is part of the square footage and Mr. Claus said that the garage is not
760 included. Chairman Simpson asked and Mr. Claus said that he does not know where the half story will
761 be located.

762 Ms. Silverstein asked the abutters if they have concerns about a two-story building from the road and
763 three story from the lake and going higher instead of wider. Mr. Royce said that he would not have a
764 problem as long as they met the height requirements.

765 Chairman Simpson asked and Mr. Royce explained which property they own.

766 April Royce said that the reason that the owners have had a difficult time selling the lot is because it is a
767 complicated lot. Ms. Silverstein asked and Ms. Royce said that she does not think that there is a
768 hardship because there are many other houses that are substantially smaller; they would love to expand
769 their property too but living on the water means there are concessions that must be made. She does
770 not believe that the want of a nicer house is a hardship.

771 Chairman Simpson closed the meeting to public comments.

772 Ms. Wallace asked what the Board's position has been regarding lots of this size that are so small that a
773 house could not be built without going into setbacks. Chairman Simpson said that he does not think the
774 Board has treated these consistently or set a precedence with past decisions.

775 Mr. Lyons said that not a lot of lots are unbuildable and it would seem that the Board has to sort out
776 how to put a structure on it and the most logical way of approaching this would be to make the fewest
777 changes in dimensional controls to make the lot buildable. The Royce's position is clear and correct that
778 the owners have been paying taxes on a buildable lot. Chairman Simpson said that it is a pre-existing
779 non-conforming lot. Mr. Lyons said that there is not an existing structure and the issue is to how to
780 make the lot buildable and the simplest way to him would be to do it with the front setback as with that
781 there is a reasonable building envelope. He does not see the need for the side setback variances.

782 Ms. Wallace asked about the hardship that is inherent in a pre-existing non-conforming lot as at the
783 time the owners bought it they did not know they would become prevented from doing anything if all
784 the setbacks were considered. She agrees with Mr. Lyons that the Board has to consider it as presented
785 and one setback may need to be approved.

786 Ms. Silverstein said that she thinks the side setbacks do not represent a hardship and the envelope can
787 conform on the sides. Mr. Munn agreed with Ms. Silverstein.

788 Chairman Simpson said that the real issue is the size of the house; he appreciates that they want to build
789 an 1,800 to 2,000 sq ft house and it might not be the prettiest house without going into the side
790 setbacks. He does think that they have a right to build something but the question is what they have the
791 right to do. Technically, this is an unbuildable lot; however, that would be a statutory taking because
792 the owners owned it prior to Zoning. He does think the hardship is that it is a vacant lot when most of
793 the other postage size lots in the area have a house already.

794 Chairman Simpson said that he believes that two parking spots are required per the Ordinance and if
795 there is not a structure there will still need to be a parking area. A driveway is not a structure though it
796 is counted as permeable or impermeable surface. Mr. Lyons said that the parking area and driveway
797 could be permeable.

798 Chairman Simpson reopened the meeting to public comments.

799 Mr. Claus said that regarding the parking they would need a variance for a retaining wall for the parking
800 lot as it would exceed the maximum height for retaining walls. He further explained the contours of the
801 land to the Board. The Board discussed that the retaining walls could be tiered to create the parking

802 area as all the parking must be on the property. There was a discussion about the reference lines for the
803 contours and CLD and Charlie Hirschberg used this plan to do their design in 2008. The Board talked
804 about the shoreline protected buffer as it relates to the potentially terraced retaining wall parking area.

805 Mr. Claus said that he knows the size of a home is brought up a lot and he does not think that an 1,800
806 sq ft home is excessive. Chairman Simpson asked and Mr. Claus said that he said that the average along
807 the road is 1,500 sq ft but they are camps. Mrs. Royce said that her lot is larger but her house is only
808 1,000 sq ft.

809 Chairman Simpson asked if they build a 60 inch or 70 inch retaining wall in the setback if that would
810 concern the abutters. Mrs. Royce said that she would have to see the plan. They are also planning on
811 retiring to this property and do not want to have to stare at something.

812 There was another discussion regarding the driveway and terracing retaining walls.

813 Ms. Silverstein asked about building a two-story house and Mr. Claus said that they have designed the
814 house for one-story living for when the potential owners retire.

815 Chairman Simpson asked if the garage is actually 24 ft by 26 ft. Mr. Claus said that is usually what he
816 does. Chairman Simpson asked and Mr. Claus said that it is 26 ft deep by 24 ft wide to give room in
817 front of the cars. Mr. Claus said that the minimum for a two car garage would be 22 ft by 22 ft.

818 Mr. Claus apologized for not having more elaborate plans but said that the potential owners are trying
819 to keep costs down.

820 Mr. Royce said that the math does not make sense with the 77 ft on the side boundary and he said that
821 the Town shows 85 ft. Mr. Claus said that GIS data is not always accurate. Mr. Royce said that the pins
822 are there and if someone measured it that is fine but he was confused as the Town shows 85 ft. Mr.
823 Claus said that the plan is based on a survey done by CLD Engineers when they did the original permit.
824 There was further discussion regarding this matter.

825 Mr. Claus showed the Board the plans he did for the proposed footprint and explained that they asked
826 for the full area in order to not have to come back to the Board if they make a minor change.

827 Ms. Silverstein asked if both side setback variances are needed. Mr. Claus said that he sits on the Board
828 and struggles with hardship; they can build less and there are ways to do it. They are trying to find a
829 way to do this but if they get shoehorned in, he will go back to the potential owners and look at the plan
830 and if they cannot do less square footage then they will have to move on. They are trying to do due
831 diligence.

832 Chairman Simpson said that he wishes there was a plan but appreciates what has been presented. Mr.
833 Claus showed the Board the measurements for the house and the garage and said that the garage is
834 actually only proposed to be 24 ft by 20 ft. Mr. Lyons asked about the proposed square footage and Mr.
835 Claus said that the first floor is proposed to be 810 sq ft, not including the garage; the garage is another
836 470 sq ft so the entire footprint is 1,280 sq ft with the reduced setbacks. Mr. Lyons asked if the house is

837 reduced to the 15 ft setbacks and Mr. Claus said that they would lose 100 sq ft on the house on the first
838 floor. Mr. Claus said that two floors gives approximately 1,600 sq ft which was why they were also
839 looking at doing a half story to get the 2,000 sq ft; this does not include anything under the garage. Mr.
840 Lyons asked about the square footage with the 15 ft setbacks.

841 Chairman Lyons said that he has offered to the Board if the meeting goes past 10 pm that he will
842 continue it and given the other case has will need to be continued he would entertain a motion to
843 continue these cases.

844 **Ms. Silverstein made a motion to continue the hearings. Mr. Munn seconded the motion. A roll call**
845 **vote was taken: Ms. Silverstein voted yes; Mr. Munn voted yes, Ms. Wallace voted yes, Mr. Lyons**
846 **voted no, and Chairman Simpson voted yes. The motion passed with four in favor and one opposed.**

847 **MINUTES**

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

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

850 Changes to the minutes from June 17, 2021: The minutes were continued to the next hearing.

851 **Mr. Lyons made a motion to adjourn the meeting at 10:14 pm. Ms. Silverstein seconded the motion.**
852 **The motion passed unanimously.**

853 Respectfully submitted,

854 Melissa Pollari