

1 **TOWN OF SUNAPEE**

2 **ZONING BOARD**

3 **JULY 20, 2021**

4 Chairman Simpson called the meeting to order at 6:03 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; Jamie  
10 Silverstein; David Munn; Carol Wallace, Alternate

11 **MEMBERS PRESENT BY VIDEO:** Jim Lyons

12 **ALSO PRESENT IN THE MEETING ROOM:** Dale Dewey; Theresa Uboldi

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

17 Dale Dewey stated that they are looking for more living space during the winter months, and to make  
18 the living space more livable. Building in any other direction would disturb the land and trees. They have  
19 a need for more practical living space during the winter months and believe that the suggested floor  
20 plan is the least invasive on the land and drainage system. Mr. Dewey's proposal would be moving the  
21 structure six feet closer to the shoreline the existing structure. Mr. Dewey continued, stating that he is  
22 hoped that the Board would grant this variance in the spirit of the Ordinance.

23 Chairman Simpson asked if the building will be no taller the 22 feet. Mr. Dewey replied that he is not  
24 sure exactly how tall it would be. He went on to state that there would be a lean-to roof off the addition  
25 that would be lower than the current roof. The question was raised by Chairman Simpson if this addition  
26 will be within the 50-foot setback from the road. As the Board investigated this matter, Chairman  
27 Simpson went on to state if this new build was within the road setback, they would need a variance for  
28 height as it would be considered new construction. It was then asked by Chairman Simpson if they  
29 planned to build this on piers. Mr. Dewey responded, yes. Mr. Dewey went on to state that the focus  
30 was more so on being more than 25 feet from the setback of the lake.

31 It was then shown on the Town's GIS that the new construction from the far corner of the house, where  
32 the proposed addition will be built, would be over 70 feet away from the road.

33 Mr. Dewey then said that he felt the GIS map does not have accurate locations of the buildings in  
34 respect to the waterfront. Mr. Claus showed on the GIS map that if they were to build off the other side

of the structure, facing north, it would get very close to the road setback. The addition they are proposing, however, would not be within of the road setback. There was further discussion regarding this matter.

**Chairman Simpson closed the hearing to public comments.**

Vice Chairman Claus stated that when this was first presented in the last Board meeting, he felt as though there was an alternative to the proposed expansion. Vice Chairman Claus then said, in contrast, when looking at the structure in person that there was nothing that concerned him about developing in the proposed location. Vice Chairman Claus went on to say that unfortunately, with where the proposal currently is, there is a lack of understanding of the existing house and what the expansion will be. Vice Chairman Claus continued that when surveying the house, it was evident that expanding off the back could expand each room on the first floor. If they expand on the other side of the house, to the north, that they would then need to reconfigure the whole interior of the house to expand each room and that there would be hardship with the floorplan.

Chairman Simpson agreed with Vice Chairman Claus that if they were to expand on any other side of the house that it could negatively impact the lake as well. Chairman Simpson then brought up the concern that this could creep. The current or future residents, coming back in 5 years, could ask for another expansion or to build to connect the house to the cabin and so on. There was further discussion regarding this matter.

Vice Chairman Claus stated that he agrees with the addition being on piers. He also spoke about the proposed deck of the expansion being the smallest deck they could do.

Ms. Silverstein asked Vice Chairman Claus, in his experience, what the likelihood is that they could save the 30-inch Hemlock tree with this new build. He responded that he was concerned. Doing piers will be better as opposed to a frost wall foundation. The piers will have less impact on the soil and the tree. Vice Chairman Claus asked if that is a condition they could add to the variance: that the tree not be removed during construction. Chairman Simpson stated that is something they could do. There was no further discussion on this matter.

Ms. Silverstein stated that she is challenged, in this position on the Board they want to make the least amount of impact. The job of the Board is to apply the Ordinance and that there are other options for this build and the Board's decision should have nothing to do with the interior layout. That's not what the Ordinance focuses on and that they must look at hardship and fairness and apply the Ordinance to the best of their ability. What she saw was that there are two other options that do not bring the house closer to the lake, including building off the front or side of the house with either piers or a traditional foundation. As a Board, they don't have to consider construction costs or house layouts.

Chairman Simpson responded by saying he had conflict with the statement made by Ms. Silverstein as construction costs play into the hardship analysis at some level if you have a very unbuildable site.

70 Ms. Silverstein interjected that that would be true if it were an unbuildable site, but in this case, it's not  
71 an unbuildable site. Chairman Simpson agreed with Ms. Silverstein on this. Ms. Silverstein went on to  
72 say that the Board needs to follow the Ordinance as they are written currently.

73 Vice Chairman Claus responded that there are situations where the floor plan should play in to affect  
74 such as where a garage makes sense to be put, or how an addition could make more sense being put on  
75 the back of the building rather than the front. He stated that the floorplan and construction price could  
76 be considered as factors of hardship. He went on to state that it could be cheaper, potentially, to build  
77 on the side of the house, but that when looking at the current floorplan, the proposed build makes more  
78 sense for the applicant, but that the construction costs are probably not considerable as a hardship to  
79 build on the other side of the house.

80 Mr. Dewey raised his hand and stated that he would like to add something.

81 **Chairman Simpson re-opened the hearing to public comments.**

82 Mr. Dewey stated that they refuse and will not take down or harm the tree. They would build around it  
83 before taking it down. The second point he made is that he had investigated expanding on the north  
84 side of the home and that to put down the foundation would be 4 to 5 times the cost of the total project  
85 and that it would be a financial hardship to go that way rather than the proposed build. The whole  
86 structure (apart from one corner that was on the ground) is pier style construction and doesn't have a  
87 conventional foundation. It was then asked if they had to do a conventional foundation if they built to  
88 the north. Mr. Dewey responded that he honestly hadn't asked, nor was it offered to do it on piers. He  
89 was told that a conventional foundation would be the way to do it if they built to the north.

90 Chairman Simpson asked if there were any further comments to be added. Mr. Dewey replied that that  
91 was it.

92 **Chairman Simpson closed the hearing to public comments.**

93 Chairman Simpson stated that this building is still farther back from the lake then the existing house  
94 which he sees as a positive. He is concerned about the creeping, such as them coming back asking about  
95 a garage or other structures. Chairman Simpson stated that the Board must look at this as more than  
96 what is currently being presented, but to also look at how they have handled other cases like this one.

97 Ms. Silverstein then brought up a few concerns, as the floorplan and cost could be a hardship; however,  
98 they are outside of the Ordinance that they are asked to apply. The Board's job is to take the Ordinance  
99 and apply it in a fair and unbiased way. This situation is not unique to this property, it is not prohibiting  
100 them from using the home, and there are alternative build options. They may not be options that the  
101 applicant wants to entertain but that's where she was challenged when it comes to the hardship.

102 Ms. Wallace stated that she feels that if there is any alternative that is reasonable, they should not allow  
103 encroachment towards the lake, even if the current house is closer to the lake than the new build. It  
104 would still make the property a less conforming lot which would be against the spirit of the Ordinance.

105 Ms. Silverstein agreed and went on to state that without further plans, a drawing, or an arborist offering  
106 a professional opinion, the Board is being asked to decide outside the scope of the Ordinance.

107 Chairman Simpson agreed and said that the Board could deny the variance as there is not enough  
108 information to decide based on what the applicant has proposed at this time. They could also ask for  
109 more information as to why this is the best option moving forward.

110 Mr. Lyons stated if the applicant builds on the other side of the house, toward the north as opposed to  
111 toward the lake, they would be avoiding the hemlock tree, but they would have to take out other trees.  
112 A concern that Mr. Lyons bought up was the variance goes with the property. It's obvious that the  
113 current applicants are being careful of the environmental effects, however, future owners or developers  
114 may not be. They are taking a deck that exists and taking a 6-foot structure and creating a 15-foot  
115 structure within the 50-foot setback that doesn't currently exist. The whole structure can't be  
116 surrounded by rock, there should be many other reasonable alternatives that don't bring the structure  
117 closer to the shore. Ms. Silverstein then asked if a deck is defined as a structure. Chairman Simpson  
118 found that decks are considered a secondary living space, or structure, but not a primary structure.  
119 There was no further discussion on this topic.

120 Chairman Simpson went over the options that the Board can do moving forward. They could make a  
121 motion, rule that they don't have enough information, ask the applicant if they are interested in  
122 withdrawing versus the Board deciding, or the Board can vote.

123 Ms. Silverstein asked if the Board votes if the applicants could still bring the variance back. Chairman  
124 Simpson clarified that if they are different variances with different information then yes. The variances  
125 themselves can't be the same. Chairman Simpson raised the question of how different they must be as  
126 he is unsure. There was no further discussion on this topic

127 **Ms. Silverstein made a motion that this case be set aside and let the applicant reconsider based on**  
128 **the information that they have heard this evening and entertain a new application for CASE ZBA: 21-**  
129 **20; Parcel ID: 0125-0030-0000 seeking a Variance from Article III, Section 3.40(c) to permit structure to**  
130 **be built within 30 ft 5 inches of the waterbody of Lake Sunapee where 50 ft is permitted (the existing**  
131 **structure is 36.5 ft from the waterbody) on behalf Dale N. Dewey at 146 Garnet St; Residential Zone**  
132 **w/ Shoreline Overlay; Seconded by David Munn.**

133 The Board then discussed what additional information they would like provided. They brought up the  
134 following ideas: information from a hired arborist and plans of both building to the north and toward  
135 the lake, and the hardship that would go with both options, the options of building a foundation on the  
136 parking lot side, the use of piers to the north, the specifics about the piers, requesting architectural  
137 plans, and/or surveys. During this discussion the applicant, Mr. Dewey raised his hand.

138 **Chairman Simpson re-opened the hearing to public comments.**

139 Mr. Dewey stated, "I would like to withdraw the application." Mr. Dewey went on to say that the house  
140 has been non-conforming since 1878. Every part of the main house is within 10 feet of the water. Mr.

141 Dewey went on to raise concerns about clear cutting that had been done in town, cutting down multiple  
142 trees. Mr. Dewey was frustrated that that was acceptable but that he couldn't add a 6-foot addition to  
143 his home. The State of NH DES, who focuses on preserving the waterways, had stated that this was  
144 permissible. Mr. Dewey went on to state very passionately why this is a reasonable variance, and that  
145 the house has been in his family for generations and has preserved the original property for the history  
146 of Sunapee. He also said that he would be willing to take off the deck if they would approve the  
147 addition.

148 Chairman Simpson asked Mr. Dewey if he was formally withdrawing the application. Mr. Dewey replied  
149 that he felt that the application will be turned down any way.

150 **Chairman Simpson closed the hearing to public comments.**

151 The Board continued to discuss if they wanted to continue with the motion that had been started, or if  
152 they would like to cancel that motion and motion to accept the withdrawal.

153 **Ms. Silverstein withdrew her motion for CASE ZBA: 21-20; Parcel ID: 0125-0030-0000 seeking a**  
154 **Variance from Article III, Section 3.40(c) to permit structure to be built within 30 ft 5 inches of the**  
155 **waterbody of Lake Sunapee where 50 ft is permitted (the existing structure is 36.5 ft from the**  
156 **waterbody) on behalf Dale N. Dewey at 146 Garnet St; Residential Zone w/ Shoreline Overlay.**

157 **Mr. Lyons made the motion to approve the proposed withdrawal for CASE ZBA: 21-20; Parcel ID: 0125-**  
158 **0030-0000 seeking a Variance from Article III, Section 3.40(c) to permit structure to be built within 30**  
159 **ft 5 inches of the waterbody of Lake Sunapee where 50 ft is permitted (the existing structure is 36.5 ft**  
160 **from the waterbody) on behalf Dale N. Dewey at 146 Garnet St; Residential Zone w/ Shoreline**  
161 **Overlay. Mr. Munn seconded. The motion passed unanimously.**

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

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

170 **REVISED: CASE ZBA: 21-25; PARCEL ID: 0115-0030-0000: SEEKING A VARIANCE FROM ARTICLE III,**  
171 **SECTION 3.10 TO PERMIT A 20 FT FRONT SETBACK WHERE A 50 FT IS PERMITTED FOR A PRE-EXISTING**  
172 **LOT BELOW MINIMUM LU ANNE LANT TRUST, NORTH SHORE RD; RURAL RESIDENTIAL ZONE W/**  
173 **SHORELINE OVERLAY**

174 Mr. Claus recused himself from the cases.

175 All three cases were presented at the same time by Mr. Claus.

176 The footprint has been revised from the last meeting asking for a different variance for the front  
177 setback. Mr. Claus went over the floorplan option that fit within the revised plan. Mr. Claus then  
178 provided basic information on average sizes of new home builds, including information from the 2020  
179 Census. It stated that the median size of a single-family home is approximately 2,261 square feet. The  
180 unit they are proposed to build was 1,800 to 2,000 square feet. He also showed information on average  
181 room sizes, stating that the room sizes they were proposing are smaller than the Census averages.

182 Mr. Lyons asked if the applicant has thought about ramps or elevators to be able to alleviate the need  
183 for a single-story living situation. Looking into what they would be able to build within the original  
184 barriers so they wouldn't need the additional side variances. Chairman Simpson asked what the distance  
185 between the two sides without the variance was 50 feet. Mr. Claus replied that the buyers were hoping  
186 that they wouldn't have to spend the additional money to have a full second story.

187 Ms. Uboldi, a neighbor to the applying lot, raised concerns about the proximity of the new build to the  
188 side setbacks, and the size of this new build in proximity to her lot. Ms. Silverstein asked if the applying  
189 property would increase the value of the homes around it. Ms. Uboldi replied that, to her, their home is  
190 priceless.

191 Mr. Claus stated that he was trying to show the hardship through the floorplans. He then addressed the  
192 second floorplan that shows a 2-car garage and the bedrooms on a second story, as it was a concern  
193 that had been brought up in the last meeting, that they needed two parking spots on the property so  
194 that the cars aren't being parked on the road. There was no further discussion on this topic.

195 Ms. Uboldi brought up the concern of the construction being so close to their property and asked if  
196 there was a way that the applicant could build closer to the water, as many of the other homes in the  
197 area were closer to the water. Vice Chairman Claus stated that he would have to apply for a new  
198 variance that would have to be approved. Vice Chairman Claus then said getting a variance closer to the  
199 water would be much harder to receive. The front setback was the true hardship. Without that variance  
200 there is no way to build on the lot at all, as the water and road setbacks overlap.

201 Mr. Lyons asked for clarification, that all variances will be voted on one at a time. Chairman Simpson  
202 confirmed that that is correct.

203 **Chairman Simpson closed the hearing to public comments.**

204 Chairman Simpson opened the discussion with the point that the Board could make it narrower and  
205 closer to the road however most of the surrounding houses are closer to the water. There is a variance  
206 exception if other properties on the road were closer to the road already but that is not the case in this  
207 application. He stated that the lot is usable without the side setbacks but can see the need for the front  
208 setback. Chairman Simpson pointed out that the applicant could come back to the Board with a floor  
209 plan that encroached the front setback, but is something a bit deeper, or a full two-story home to avoid  
210 the side variance.

**Mr. Lyons made a motion to approve Case 21-25; Parcel ID: 0115-0030-0000: seeking a Variance from Article III, Section 3.10 to permit a 20 FT front setback where 50 ft is permitted subject to all the usual permits from DES, shoreline overlay. Motion seconded by Carol Wallace.**

Chairman Simpson stated that he is unsure of what the applicant will do. He brought up the point that they may want to put an amendment to this case that they cannot encroach on the lake side setback. Chairman Simpson then said that without more information from the applicant he's not sure what he is voting on. Mr. Lyons responded that if we do not put this variance through that the property is basically deemed worthless for the current owners who have been paying taxes on it for years. At this point Mr. Claus requested to speak.

**Chairman Simpson re-opened the hearing to public comments.**

Mr. Claus stated that the person applying for this is a potential buyer, however, it was stated by Chairman Simpson that if they vote on it, that the variance is tied to the land, no matter who the buyer is. It was then said by Mr. Claus that if the footprint of the build changed in any way, then they would have to come back for another variance no matter what the situation was.

**Chairman Simpson closed the hearing to public.**

**Mr. Lyons withdrew his motion on Case 21-25.**

**Ms. Wallace made a motion to approve Case 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 Northwest property line where 15 ft is permitted for a pre-existing lot below minimum size, complying to all shoreline overlay, and general permits. Seconded by Ms. Silverstein. A roll call vote was taken: Mr. Munn voted no; Ms. Silverstein voted no; Ms. Wallace voted no; Mr. Lyons voted No as he does not believe it is consistent with the intent of the Ordinance; Chairman Simpson voted no. The motion was denied unanimously.**

**Ms. Wallace made a motion to approve 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 southwest property line where 15 ft is permitted for a pre-existing lot below minimum size. Seconded by Mr. Munn. A roll call vote was taken: Mr. Lyons voted no, as he does not believe it is consistent with the intent of the Ordinance; Mr. Munn voted no; Ms. Silverstein voted no; Ms. Wallace voted no; Chairman Simpson voted no. The motion was denied unanimously.**

**Ms. Wallace made a motion to approve Case 21-25; Parcel ID: 0115-0030-0000: seeking a Variance from Article III, Section 3.10 to permit a 20 ft front setback where 50 ft is permitted subject to all the usual permits from DES Shoreland Overlay. Seconded by Mr. Munn. Mr. Lyons voted yes; Mr. Munn voted yes; Ms. Silverstein voted yes; Ms. Wallace voted yes; Chairman Simpson abstained. The motion passed with four in favor and one abstention.**

**MINUTES**

Changes to the minutes from July 1, 2021:

- 246 1) line 59, striking out “hey”, replace with “they”
- 247 2) line 79, striking out “conforming”, replace with “non-conforming”
- 248 3) line 139, add “this” between in and case
- 249 4) line 154, striking out “there was not the” replace with “there was no”
- 250 5) line 168, strike out “of” and replace with “in”
- 251 6) line 178, strike out “plant”, replace with “plants”
- 252 7) line 226, strike out the second “a”
- 253 8) line 257, strike out “and”
- 254 9) line 262, strike “and explained the”, replace with “that explain”
- 255 10) line 289, strike out “says”, replace with “said”
- 256 11) line 326, strike out “not”
- 257 12) line 418, strike out “not”
- 258 13) line 527, strike out “or”, replace with “of”

259 **Chainman Simpson made a motion to move the July first minutes as amended, seconded by Mr.**  
260 **Munn. The motion was approved unanimously.**

261 Changes to the minutes from May 25, 2021: The minutes were continued to the next hearing. Assigned  
262 to Carol Wallace.

263 Changes to the minutes from June 3, 2021: The minutes were continued to the next hearing. Assigned  
264 to David Munn

265 Changes to the minutes from June 17, 2021: The minutes were continued to the next hearing. Assigned  
266 to Jeff Claus

267 **Mr. Lyons made a motion to adjourn the meeting at 8:23 pm. Ms. Silverstein seconded the motion.**  
268 **The motion passed unanimously.**

269 Respectfully submitted,

270 Sarah Liang

271