

TOWN OF SUNAPEE

ZONING BOARD

August 5, 2021

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

A roll call of members present was taken.

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

PRESENT IN THE MEETING ROOM: Chris Kessler, Drew MacDermott

PRESENT VIA ZOOM: Scott Seaver, Chris Jorgensen

CASE ZBA: 21-26; PARCEL ID: 0128-0054-0000: SEEKING A SPECIAL EXCEPTION FROM ARTICLE III SECTION 3.50(G) TO PERMIT AN 8 FT PRIVACY FENCE 3 FT FROM THE PROPERTY LINE. MICHAEL & ANITA HAYES, 77 LAKE AVE, RSIDENTIAL ZONE W/ SHORELINE OVERLAY

Chris Kessler, a landscape architect, presented on behalf of Michael and Anita Hayes as their agent.

Chris Kessler stated that the plan he is presenting is to build a privacy screening fencing from the neighboring property. The applicant is working on landscape improvement to the property that has gone through shorelands, wetlands, land disturbance due to town tree cutting, erosion control, etcetera. As the applicant started seeing the neighboring space, it was more exposed than they thought it was going to be, especially after some trees were removed recently. Mr. Kessler went on to say that, due to the exposure of the applicant's lot, they are requesting to put up a fence, no more than 8 feet high, and no closer than 3 feet from the property line. The abutter, John Wiggins, has seen the plans for the fencing and wrote a letter stating he is ok with the fencing going up.

Mr. Kessler talked about the logistics of the build. He said the fence will be an L shaped screened fencing, with a 6.5-foot portion going from the foundation of the home to about 4 feet off the property line. The second portion will run parallel with the property line, with the closes point to the property line being about 3 feet. The grade on the longer side is sloping, therefore, as the grade slopes the panels will be stepped down with the grade. The height of each panel will never exceed 8 feet from the ground. The 6-foot section will be facing Lake Ave. The fencing will be just behind a pre-existing retaining wall. The retaining wall is getting re-built, and it is less than 42 inches tall so there is no conflict with the definition of a structure from the town. The paneling will be a dark colored solid paneling. The applicant's goal is to not be intrusive. Mr. Kessler goes on to talk about a planting plan that was part of the shoreland restoration application. They will be planted around the fencing.

Mr. Lyons commented that there was quite a bit of shoreland restoration that was planned.

Chairman Simpson asked Mr. Kessler why they decided on 8 feet as the height of the fence. Mr. Kessler responded that the height was determined based off sight lines from within the home and where the

proposed patios will be. Mr. Kessler took into consideration the viewshed when sitting down and looking out the windows and where the windows are on the adjacent property. Mr. Kessler tried to find the balance of keeping the view of the lake from the second story windows, while keeping a sense of enclosure and privacy from the neighbors. The applicant had thought about doing some sort of vegetation instead, however, there is drainage in that area. They would not be able to obtain the same height with vegetation.

Chairman Simpson asked if there were any other questions that the board had for the applicant. There was no response.

Chairman Simpson closed the hearing to public comments.

Mr. Munn stated that he is trying to understand if a fence would be considered a structure, as it doesn't get moved easily. Chairman Simpson replied that it is a fence, which is a minor structure. The applicant brought up the retaining wall which has its own rules. A retaining wall with a fence on top of it could be up to 12 feet high. The Board then discussed this further as it was not clear from the application if the fence would be on or off the retaining wall.

Chairman Simpson re-opened the hearing to public comments.

Mr. Kessler then clarified that the fence will not be more than 8 feet off the grade at any time.

Chairman Simpson closed the hearing to public comments.

Vice Chairman Claus stated that, personally, he felt that an 8-foot privacy fence is getting up there, however, so long as the neighbor is ok with it, he couldn't find anything in the code that states they can't build the fence. Mr. Lyons pointed out that they could ask that a licensed surveyor go out and look at everything. Ms. Silverstein agreed that due to the complexity of the lakeshore and erosion that it would be good to have the survey done.

Ms. Silverstein made a motion to approve CASE ZBA: 21-26; PARCEL ID: 0128-0054-0000 seeking a special exception from Article III Section 3.50(g) to permit 8 foot privacy fence 3 feet from the property line, 77 Lake Ave, Residential Zone w/ Shoreline Overlay subject to a survey by a licensed surveyor providing a survey to the Town Hall. Chairman Simpson seconded. The motion was passed unanimously.

Mr. Kessler provided the requested survey to the Board.

CASE ZBA: 21-27; PARCEL ID: 0113-0029-0000: SEEKING A VARIANCE FROM ARTICLE III, SECTION 3.40(C) TO PERMIT A 16.9 FT SETBACK FROM THE WATER BODY WHERE 50 FT IS PERMITTED (THE EXISTING DECK IS 16.8 FT FROM THE WATER BODY RIDGEWOOD POINT, LLC, 18 RIDGWOOD POINT RD. RURAL RESIDENTIAL ZONE W/ SHORELINE OVERLAY

CASE ZBA: 21-28; PARCEL ID: 0113-0029-0000: SEEKING A VARIANCE FROM ARTICLE III, SECTION 3.10 TO PERMIT A 5.3 FT SIDE SETBACK WHERE 15 FT IS PERMITTED (THE EXISTING STRUCTURE IS 7.4 FT FROM THE PROPERTY LINE) RIDGEWOOD POINT, LLC, 18 RIDGWOOD POINT RD. RURAL RESIDENTIAL ZONE W/ SHORELINE OVERLAY

CASE ZBA: 21-29; PARCEL ID: 0113-0029-0000: SEEKING A VARIANCE FROM ARTICLE III, SECTION 3.10 TO PERMIT A STRUCTURE HEIGHT OF 29 FT 6 INCHES IN THE REDUCED SIDE SETBACK WHERE 25 FT IS

PERMITTED (EXISTING STRUCTURE HEIGHT IS 28 FT IN THE REDUCED SIDE SETBACK) RIDGEWOOD POINT, LLC, 18 RIDGWOOD POINT RD. RURAL RESIDENTIAL ZONE W/ SHORELINE OVERLAY

All three cases are being presented together; each case will be voted on separately.

Mr. Seaver started by describing the current structure, it is an A-frame home, with a two-story addition on the street side. The house is obsolete, the interior is obsolete, and they are looking to take it down and stay as close as they can to the same envelope with a modern build. The applicant plans to keep the proposed house no taller than the existing structure is now.

Mr. MacDermott then brought up the fact that there is a shoreline variance there as well and directed the Board to look at the presentation packet that shows the shoreline outline. The applicant is proposing to demolish the existing house and rebuilding it. They will also be updating the storm drainage. Mr. MacDermott explained the dimensions of the new structure, and the variances that they are asking for. He brought up the first variance within the waterbody setback, they are taking the new structure back 0.10 feet farther away from the water body than the existing structure.

Mr. MacDermott stated that the second variance that is for the side setback would be getting closer to the property line. The current structure is 7.4 feet from the property line, whereas the new proposed build will be 5.3 feet. Mr. MacDermott then said that they are moving the new structures 2 feet away from the road.

Chairman Simpson stated that they are tearing down the building, therefore, it is no longer a grandfathered building. Mr. Lyons responded that the envelope is still grandfathered though. Chairman Simpson then stated that they are not building within the envelope. Mr. Lyon stated that one side of the proposed build is within the envelope. Chairman Simpson replied that that is not fully within the envelope.

Ms. Silverstein asked if there were any rebutting neighbors. Chairman Simpson interjected that they should let Mr. MacDermott finish his presentation.

Mr. MacDermott went on to state the Ordinance article that they are applying for or requesting for are the dimensional controls. They are not reducing the setback to the property line of the west side, but they are decreasing it on the east side. The front face of the building that points to the road is being reduced by 2.5 feet.

Mr. MacDermott continued that the third variance is due to the lot size being such a small area, and the fact that the existing structure is a pre-existing, non-conforming lot. The subdivision was done in the 1950s and there is only a small area beyond the setbacks to build. He believes that the middle portion of the property only has 23.5-feet of building space within the setback. That is the reason they are applying for the third variance. The new maximum height of the new structure will be 33 feet 5 inches. They will not be building any higher than the pre-existing structure.

Mr. Lyons then made the statement that the Ordinance for the height of the structure is 25 feet, the current structure is 28 feet tall, and the application for the variance is asking for 29.5 feet.

Mr. MacDermott replied by showing the blueprints that showed the outline of the peak of the roof. He then handed out preliminary sketches of the profile of the building. Mr. Lyons stated that architectural drawings like the one that was passed out should have been in the agenda.

Chairman Simpson asked about the screened in porch and deck that is outside of the original building envelope. Mr. Munn then clarified that it looked like the screened in deck was within the envelope. There was then a discussion by the Board as to if the preexisting deck is considered a primary structure. Chairman Simpson stated that a deck is considered a structure.

Ms. Silverstein asked the applicant if they had their shoreland permit, Mr. MacDermott responded that they were in the process. The applicant had completed it and they were waiting for a check and should have it by next week. Ms. Silverstein then asked if the applicant had any letters from abutting neighbors. Mr. MacDermott stated that they did not have any.

Vice Chairman Claus asked what the square footage of the existing structure is. Mr. MacDermott replied that it is approximately 2,247 square feet. The proposed build will be 3,055 square feet.

Chairman Simpson then asked the applicant to address the criteria for variances either individually or for all three requests at once.

Mr. MacDermott started with the variance on the waterfront setback. The applicants were hoping to move the new build away from the water, it will not be harming the public, they are trying to improve the site overall, many other properties in the area have had or are doing construction currently, and they are trying to modernize the home and increase value to the area. Mr. MacDermott went on to say that the lot is the smallest lot in the area, and it appears that some of the other homes are closer to the water, however, they did not do a formal analysis on the surrounding homes.

Mr. MacDermott then went over the side setback variance request. He stated that these are already non-conforming lots thus the side setbacks are set to 15 feet. They currently are already more than 50% into the setback and are not looking to build further into the setback on the west side, just the east side. The east entrance of the building, the stairs and corner are what are creating this need for the variance. The use of the property will not be changing, it is a single-family home. The applicant hoped to build similarly to the style of the other homes in the area. The value of the home would increase due to the construction.

Mr. MacDermott then went over the last variance on the height of the new construction. They were looking to increase the height from the preexisting structure to the new build by 1.8 feet. The grade would stay the same as the preexisting structure. The highest point of the building would be 33.5 feet, however at the line of the setback the largest height will only be 28.6 feet. That is why they are asking for this variance at the measurement that they are.

Ms. Silverstein then asked about the side setbacks. Mr. MacDermott showed on a blueprint where the existing house is versus where the proposed new build will be. They would like to build 5.3 feet from the property line. Mr. Lyons stated that there is a concern due to the proximity to the neighboring structure. The two structures would only be 17 feet from one another. There was no further discussion on this matter.

Chairman Simpson then brought the height variance up. He wanted clarification as to why they were only asking for 28 feet when the maximum height of the structure is 33.5 feet. Mr. MacDermott explained that the overall height of the proposed structure would be a few inches shorter than the existing structure. Vice Chairman Claus then pulled up the blueprint and pointed out that the peak is within the side setback, he believed that they did the measurement from the line of the setback, not the

fully encompassed space within the setback. For the proposed structure to be built they will need a 33.5-foot variance not a 29-foot variance. However, Vice Chairman Claus proposed that they move forward with the presentation.

Mr. Lyons then responded that he was not comfortable moving forward with this and that he would like more time to review these plans. Vice Chairman Claus then said that they should try and find more context within the proposal. Vice Chairman Claus asked Mr. MacDermott for clarification on the height variance of the existing and proposed structures and how they decided on the number that was being asked within the application. Mr. MacDermott stated that the existing structures maximum height from the lowest grade to the peak of the existing structure is 33.6 feet and that what they are proposing for the new structure would be 33.5 feet. Vice Chairman Claus then stated that it is obvious that the building could be shorter, but that in the existing structure the maximum structure height was in a different spot, within different setbacks. He questioned if they would see the height differences in different spots. Chairman Simpson agreed with Vice Chairman Claus that the variance should be the tallest height within the set back not at the side setback line. There was further discussion on what maximum height meant within the Ordinance

Mr. MacDermott then asked that they pull up the chart within the ordinances on page 11. He went on to explain that they did not interpret that it was from the lowest grade of the whole structure but just the lowest point within the setback. Chairman Simpson responded by reading the definition of "Maximum Structure Height" within the Ordinance on page 55.

Vice Chairman Claus then asked if they could discuss the significance or, due to the mis-reorientation of what they are asking for, was there is no further discussion. Chairman Simpson responded that they could take the opportunity to give it back to the applicant for revision.

Mr. Lyon then stated that he had a concern about the abutters being notified properly with this height variance issue, he is concerned in making the changes to the variance during the current meeting.

Chairman Simpson then asked what the maximum structure height would be in the south side setback. As shown in the blueprint at that point, the proposed top ridge would also be in the south side setback.

The Board then went on to discuss if on page 11 of the Ordinance if the note made under the chart that states "If a structure is allowed a reduced side or rear setback due to inadequate lot size, the portion of the structure in the are of reduced setback shall have a maximum height of 25 feet" if it means maximum structure height or not, it was agreed that an amendment would need to be discussed at a later point. Vice Chairman Claus stated that they should move forward with the cases based on what the applicant has been advised on.

Ms. Silverstein then brought up the point of hardship and asked that Mr. MacDermott explain the point of hardship for the owner. Mr. MacDermott replied the owner is trying to replace the structure due to some structural problems such as the foundation.

Chairman Simpson interjected, asking if the house was usable, and asked why they can't build within the pre-existing envelope. Mr. MacDermott then replied that they don't have the space to expand within the envelope. Mr. Lyons elaborated on this, that the expansion is to create a normal second floor where the A-frame home is. That is where they are proposing to build outside of the envelope. There is a lot of

volume increase in this proposed structure compared to the current structure. Chairman Simpson then asked what was preventing them from using the property as it is.

Mr. MacDermott replied that they were looking to build a solid home with the full second floor and the A-frame envelope is restricting them from doing that. Mr. Seaver then stated that even if they added a dormer that it would still be building outside the envelope, there was no way to get a second floor without going outside of the A-frame envelope. Mr. Jorgensen also added that they were trying to break down the massing. The livability of the A-frame style is not ideal. The goal of the new structure is to break down the massing and build a more traditional and modern home that is more comfortable on this lot and would fit in with some of the other designs on the lake. Mr. Jorgensen went on to state that they are open to refining the plans depending on how the Board moves on these cases.

Chairman Simpson closed the hearing to public.

Mr. Lyons stated that he is concerned about voting on the variances without giving the abutters proper notice on the height of the proposed structure. Chairman Simpson stated that the application will need to be changed or re-written. The fact that the proposed application is a new structure on a pre-existing non-conforming lot, not completely within the existing envelope makes it complicated.

Vice Chairman pointed out again that the Ordinance may need amending and the applicant needs to make revisions as the measurements are not accurate on the current application.

Chairman Simpson re-opened the hearing to public comments.

Mr. MacDermott said the architectural plans for the exterior of the proposed structure are preliminary. The interior of the structure is still undecided.

Mr. Lyons then stated that all three cases need to be re-noticed. Chairman Simpson asked Mr. MacDermott if the applicant would be open to coming back with a new application.

Mr. Lyons responded that he feels that the applicants are stuck in the middle of this amendment problem with the Ordinances and asked Chairman Simpson if they can waive the new application fees. Chairman Simpson agreed and stated that they could invite the applicants back to make amendments to their cases at the September 21st ZBA meeting.

Chairman Simpson closed the hearing to public.

Ms. Silverstein made a motion to continue cases ZBA: 21-27, ZBA: 21-28, ZBA: 21-29 PARCEL ID: 0113-0029-0000, seconded by Mr. Munn. The motion was approved unanimously.

Changes to the minutes from May 25th, 2021:

- 1) Line 61- Strike "are", replace with "or"
- 2) Line 71- Strike out "to no", replace with "will not"
- 3) Line 75- Strike out "be continued" with "continue"
- 4) Line 137- Strike out "to"
- 5) Line 146- Strike out "not" replace with "no"
- 6) Line 149- Strike out "supposed that"

- 7) Line 151- Strike out "one", replace with "variance separately".
- 8) Line 206- Strike "adds a", replace with "adds that as"
- 9) Line 237- Strike "is", replace with "as"
- 10) Line 288- Strike out "through"
- 11) Line 297- Strike "the", replace with "they"
- 12) Line 326- Strike "see", Replace with "say"
- 13) Line 435- Strike "when", replace with "in"
- 14) Line 435- Capitalize "simplex"
- 15) Line 448- Strike "applicant", replace with "application"
- 16) Line 452- Strike out "talk to"
- 17) Line 469- Strike "on ", replace with "in"
- 18) Line 470- Strike "file", replace with "filed"

Changes to the minutes from June 3rd, 2021:

- 1) Line 44- Strike "that", replace with "and"
- 2) Line 128- Strike Mr. Claus, replace with "Ms. Silverstein"
- 3) Line 141- strike "asked and", replace with "noted that"
- 4) Line 247- Strike "it", replace with "if"
- 5) Line 307- Strike "it"
- 6) Line 307- Strike "so" Replace with "and"
- 7) Line 472- Strike "will all", replace with "with all"
- 8) Line 506- Strike "4-1-2", replace with 412
- 9) Line 558- Strike "conforming" replace with 'non-conforming"
- 10) Line 609- Insert "(Chairman Claus Paused)" after "provided that"
- 11) Line 667- Strike "it"

Changes to the minutes from July 20, 2021

- 1) Line 68- Strike "responded by saying he had conflict", replace with "disagreed"
- 2) Line 185- Insert "was" before "without"
- 3) Line 185- Insert "need for a" before "variance"
- 4) Line 185- Strike "50 feet"

Chairman Simpson made a motion to move the minutes as amended, seconded by Mr. Munn. The motion was approved unanimously.

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

Chairman Simpson made a motion to adjourn the meeting at 8:51 pm. Mr. Lyons seconded the motion. The motion passed unanimously.

Respectfully submitted,

Sarah Liang