

1 **TOWN OF SUNAPEE**

2 **ZONING BOARD**

3 **October 7, 2021**

4 Vice-Chairman Claus called the meeting to order at 6:01 pm

5 Roll call was taken.

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

8 **ALSO PRESENT IN THE MEETING ROOM:** Melissa Pollari, Barry Schuster, Bradley Weiss, Daniel Cave,
9 MaryBeth Cave, Peter White, Craig Howe, Daniel Monette

10 **PRESENT VIA ZOOM:** Cathleen Shea, Mary Zatta Chiamis, Dorothy Doughan

11 Changes to the minutes from September 2, 2021:

12 Line 132 add: Mr. Lyons rebutted to the fact that the driveway would not cut the property in half, it is
13 closer to the edge of the property.

14 Line 190 change: foul to "afoul"

15 There was no motion made to approve the changes to the minutes.

16 **CONTINUATION**

17 **CASE ZBA:21-30; PARCEL ID 0125-0011-0000: SEEKING A VARIANCE FROM ARTICLE III, SECTION 3.10**
18 **TO PERMIT A 8.7 FT SETBACK FROM THE WEST SIDE PROPERTY LINE WHERE 15 FT IS REQUIRED (THE**
19 **8.7 FT SETBACK HAS BEEN PREVIOUSLY APPROVED, HOWEVER, THE PLAN CHANGED SO THAT THE**
20 **ENTIRE LENGTH OF THE HOUSE WILL BE WITHIN THE 8.7 FT SETBACK). CATHLEEN SHEA & BRADLEY**
21 **WEISS; 38 JOBS CREEK RD, RURAL RESIDENTIAL ZONE W/ SHORELINE OVERLAY.**

22 Attorney Barry Schuster presented the case.

23 Chairman Simpson stated that council had suggested that the change was not significant enough to
24 require a hearing. Ms. Silverstein agreed with Council. Mr. Lyons disagreed, stating that he wanted to
25 know when this change was made and why it hadn't been presented in the beginning. Chairman
26 Simpson stated that they had made the change between their first application and their second.

27 **Vice-Chairman Claus made a motion that Case ZBA 21-30 does not need to be presented before the**
28 **Board because it is insignificant and does not need the Boards review. Seconded by Ms. Silverstein.**

29 Mr. Lyons stated that he disagreed because it originally was only supposed to be part of the length of
30 the structure and is now becoming the whole length of the house, as it is being rotated to the west he
31 believes, as he pointed out that there is no compass on the map. It puts the structure a foot or two
32 closer to another deck. They have 15-foot setbacks to create a 30-foot buffer between structures for
33 safety reasons, and this proposal is encroaching on those safety measures. He stated that this change is

34 increasing non-conformity. Ms. Silverstein responded that the drawings presented show a 28.5 square
35 foot impact, it is not the full length of the house it is only 28.5 square feet. Mr. Lyons responded to her
36 that he is not worried about the square feet, he is worried about the space between the two structures.
37 They are bringing the structure closer to the abutter's deck; he feels that that is significant.

38 Vice-Chairman Claus stated that there is no opposition from the abutters. He saw this as an insignificant
39 maximum 1.9-foot shift of this building. Mr. Lyons interjected that if it was a conforming structure with a
40 conforming lot, he would agree, but none of that is the case with this proposal.

41 **Vice-Chairman Clause and Ms. Silverstein voted in yes, Mr. Lyons and Chairman Simpson voted no.**
42 **The motion was denied, two in favor and two opposed.**

43 Attorney Schuster stated that the application shows that the house would be shifted 1.9 feet at the
44 south-west corner of the structure. The 28.5 square feet is the area added to the setback. The whole
45 purpose of moving it was to create greater space on the east side of the structure which was suggested
46 by this Board. The original plan showed a 4-foot setback on the east side. This shift creates a 6-foot
47 setback on the east side. They would be gaining 2 feet in the east setback and only adding 1.9 feet to the
48 one south-west corner.

49 Attorney Schuster said that this application is not contrary to public interest as it allows for greater
50 space on the east side. It would observe the spirit of the Ordinance by trying to comply with the
51 suggestions of the Board to work on that east side. It would provide substantial justice because the
52 public would not loose from this, it wouldn't even be noticeable from any angle having it less than two
53 feet. It would create justice by creating more space on the east side. The use is reasonable, as it is a way
54 to address the overall location. It would provide greater flexibility to protect the east side. It would still
55 have substantial distance from the deck, not the house, of the abutter. There have been no objections
56 from any of the abutters, so the public is certainly in favor of this. They wanted to bring this either as an
57 amendment to the variance already approved or as a new variance. At the southwest corner is the
58 largest change, it is only different by a foot in the middle of the house however it would not negatively
59 impact any of the public or abutters. For these reasons they request this variance

60 Mr. Lyons stated that there were a couple of cases that are being appealed. Chairman Simpson felt that
61 this isn't proper because they don't know what the rest of the house will look like. He appreciates the
62 fact that they are representing this based on the Boards recommendation. To him it sounds like it had
63 been suggested that they make the east side less non-conforming than the original proposal, but now he
64 doesn't know what the proposal is. Depending on how the court appeal goes the applicant may have to
65 propose a completely new home.

66 Attorney Schuster stated that no matter what happens with the court case this variance, this line would
67 allow for more flexibility on the east side. Without this variance the house gets squeezed on the east
68 side. This variance makes what ever happens in the court case far more reasonable in a design by having
69 a property line parallel to the building line. Again, they were trying to listen to the Board and work on
70 that line by rotating the structure which would allow for a more flexible east side setback. That is why
71 they have proposed this and are requesting the variance.

Mr. Lyons stated that he is not comfortable when he doesn't really know what the current plan is or what the proposed envelope will be. Chairman Simpson asked about the original proposal and the suggested height within these setbacks. Chairman Simpson stated that if the variance is approved, they are allowed 25-foot structure. There was further discussion started by Vice Chairman Claus on if they had applied for the 33.5-foot height variance within the west side setback previously or not. Mrs. Pollari found that at the August of 2020 meeting the variance for the 33.5-foot height was denied. The June 17th plan also shows that the height proposed is the same as the 2020 meeting. There was some confusion from the applicant on what they needed to measure.

Mrs. Shae interjected, asking how the height was relevant to the variance they are asking for currently. Vice-Chairman Claus responded that he was trying to help Mr. Lyons understand what it was they were voting on and what the envelope they are agreeing to would be. Mr. Lyons stated that he would like to see a current plan to scale. Attorney Schuster stated that he does not have that, but the height would be no more than what had already been approved. There was additional discussion on what the Ordinance says for height. Vice-Chairman Claus then stated that they should be voting on this based on the last plans presented. Chairman Simpson disagreed, stating that they may not be the same plans. Mr. Lyons responded that he agrees with Chairman Simpson, he feels that this entire project has just been surrounded by confusion, some of it on the Board's side, some on the applicant's side. He would really like to see a set of hard plans, with scaling, before voting on this. Mr. Lyons stated that he is concerned that if they approve the variance that if there is a height problem down the line that they are going to be told that the Board approved the plan. Attorney Schuster interrupted stating that that would not be the case.

Attorney Schuster said the applicant came tonight with just one variance; they are only asking for a horizontal shift and there is no height variance application. If height becomes a problem, then the applicant will be back for that. Vice-Chairman Claus added that they are only approving the westerly edge of a footprint.

Chairman Simpson stated that they may be giving the 33 feet height within the setback because of the plans that were approved in the past. Mr. Lyons responded that Attorney Schuster had just said that they wouldn't do that. Chairman Simpson disagreed, stating that Attorney Schuster stated that he would not be taking a position on the subject of height. Chairman Simpson then pointed out page 8 in the application. He stated that it doesn't look like there is 8.7 feet, the proposed looks the same as the old plan. Attorney Schuster pointed out that one of the plans provided was just showing what had been approved in 2020, the second plan provided had a greyed-out space, that is what they are proposing. Ms. Silverstein added that it also shows the shift on the east side from 3 feet to 6 feet.

Mr. Weiss stated that before they build, he believed that there had to be someone that checks the building permit and makes sure that they have all the variances they need before approving it so if they need a height variance they will be back, they want to do this the right way. Chairman Simpson stated that they are essentially losing what they had with the first application that was granted. Attorney Schuster clarified that they do have a different plan now than what was proposed in 2020 and Mr. Weiss confirmed that. They rotated it, moved it down, shrunk it a little bit to help reduce the amount on non-conformity.

112 Chairman Simpson asked if there were any additional comments or questions. There were none at this
113 time.

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

115 Chairman Simpson stated that he would be more comfortable approving this if they were subject to
116 complying with the height requirements as written which is a 25-foot height under 3.10 within the
117 Ordinance or that they apply for another variance or special exception to address what they are going to
118 build. He is concerned that this is a line of a certain length. Vice Chairman Claus stated that they would
119 be approving it based on the footprint and length provided in application and that it would not be in
120 connection to any other footprint that had been previously provided.

121 Mr. Lyons stated that he was concerned about the un-knowns within this project; he was concerned
122 about furthering the confusion to this case. He does not see the hardship here; the property is not
123 unique it is similar to all the other properties in the general area. He thought the hardship is within the
124 plan, not the uniqueness of the property. He added that the public in no way is represented by the other
125 private property owners in the area, the public is much larger than that. He would propose that by
126 expanding into the setbacks that this variance falls short. The over all structure will be much larger than
127 the structure it is replacing which would contribute to over development of the shorefront and
128 congestion which is not in the spirit of the Ordinance or in the public interest. Lastly, Mr. Lyons stated
129 that moving the house closer to the property line would be increasing the non-conformity of the
130 structure. The purpose of the Board is to limit the expansion of non-conforming uses and reducing them
131 to conformity, if possible, which is being negated by this particular variance.

132 Ms. Silverstein stated that this applicant has come before the Board multiple times. Her takeaway from
133 that is that they are trying and willing to work with the Board. She didn't see it being an anomaly within
134 the neighborhood, there are other homes that are larger in scale to this one on equally small properties
135 They heard the Boards concerns about the 3-foot setback on the east side and even though there are
136 many unknowns they have represented that they are strictly looking at this one side of the property and
137 she would submit that it is not a significant departure from the previous approval.

138 Mr. Lyons stated that his concern was the size of the overall plan. Ms. Silverstein responded that they
139 are only looking at one side of the property. They have not seen the house plans or know the size. She
140 felt it was overreaching for them to make a discission based on the unknowns. Mr. Lyons stated that by
141 granting this variance they would be granting higher non-conformity which is not what they are
142 supposed to be doing. He had serious concerns about the safety especially when it comes to fire; bigger
143 houses, closer together, means larger fires. Dimensional controls are there for a reason and one of them
144 is public safety. This variance is pointing them in the direction that detracts from that.

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

146 Attorney Schuster requested all of the records from Case 20-04, 21-08, 21-09, and 21-10 be included in
147 the records because that provides a substantial amount of background information which is useful for
148 this application.

149 Attorney Schuster added that it is impossible to design a house not knowing what the limits are. They
150 have tried to design a house a number of times to be told they couldn't do it. They are now trying to do

151 this one wall at a time, and that is why they are here for this variance. There was not a single member of
152 the public responding to the public notices that have had objection to this application and if people
153 don't come to the meeting to object the application, they lose that right and speaking for them is going
154 a bit far because they don't have any testimony in the scene; what Mr. Lyons stated is just hearsay at
155 this point.

156 Chairman Simpson said that Mr. Lyons was just saying that the abutters are not the public. He then went
157 on to say that if they are trying to determine the bounds of building, its all in the Ordinance. Attorney
158 Schuster interrupted stating there is a variance procedure when certain conditions are met, and Mr.
159 Wiess and Ms. Shea believe those conditions exist here and that is why there is a relief valve in the
160 Ordinance. Chairman Simpson interrupted, stating its one thing to say they don't want to comply with
161 the parameters versus not knowing them; they don't want to comply with the parameters.

162 Attorney Schuster stated that they would love to comply with the parameters, however, the building has
163 been there long before the parameters and they would like to make it a year-round residence. They
164 would also be making it safer, and Mr. Skantze (reference June 17th ZBA meeting) testified about that. It
165 would be a much safer house. Chairman Simpson stated that any house built with modern material will
166 be a much safer house. Attorney Schuster responded, "not any, but certainly the one they proposed".

167 Mr. Lyons then stated that he has built a non-conforming house on a non-conforming lot, he had no
168 trouble designing his house around the existence of a grandfathered structure on a non-conforming lot,
169 and he believed others on the Board had also done so. He does not "buy" the inability of an architect to
170 come up with a plan that would satisfy the Board.

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

172 Chairman Simpson said there are three things the Board can do: they can approve the application, they
173 can deny the application, or they can state the application is pre-mature and shouldn't be brought to
174 the Board until they have a set of plans. Mr. Lyons asked if it would also be contingent on the litigation
175 going on. Chairman Simpson stated that they should focus on those three options to get them through
176 this application.

177 Vice-Chairman Claus asked for clarification on if the 8.7-foot setback had actually been approved or was
178 it just grandfathered because of the existing structure. He went on to say that if he just looked at the lot,
179 he could see that it is relatively narrow, and with the current structure being where it is, he can
180 potentially see the hardship. Chairman Simpson stated that the applicant has asked them to bring in all
181 the prior applications, however, he has not reviewed all prior applications. He stated that he did pull up
182 the minutes from the June 2021 meeting and it looked like all the houses there were lined up the same
183 as far as angle of the house on the lots. His issue was that he doesn't know what they are proposing, and
184 they have only talked about this one corner. Vice-Chairman Claus stated that he would like whatever
185 motion is made to have a condition that if approved there is no baring on a height condition, and that
186 they will have to follow the Ordinance as written as far as the height is concerned within the setback.
187 The Board then looked back at the minutes from the previous cases, the applicant had previously
188 applied for a height variance of 33.6 feet. The Board had denied the height application and approved the
189 side setback application. Mr. Lyons suggested continuing this application so that the Board had time to
190 review the cases that Attorney Schuster had stated where relevant to this case. Ms. Silverstein stated

191 that she believed that the Board should be able to work with the applicant and vote on this case that
192 evening.

193 **Mr. Lyons made a motion to continue this case pending receiving accurate and current plans, and time**
194 **to review the previous meetings pertaining to this case. There was no second on the motion.**

195 Vice-Chairman Claus stated that he agreed with Ms. Silverstein, that the Board had a better
196 understanding of the projects that have been presented and that the Board doesn't need floorplans to
197 approve or vote on this matter. He stated that unless they proposed building a three-story home, in
198 which they would have to come back to the Board for a height variance, seeing site plans wouldn't affect
199 his vote on this application.

200 **Ms. Silverstein made a motion to approve Case ZBA: 21-30 Parcel ID: 0125-0011-0000 located at 38**
201 **Jobs Creek Road, seeking a variance from Article III, Section 3.10 to permit an 8.7-foot setback from**
202 **the west side property line where 15 feet is required noting that the 8.7-foot setback has been**
203 **previously approved, however, the plan changed so that the entire length of the house on the west**
204 **side will be within the 8.7-foot setback; in addition, all prior decisions will apply to this case as it was**
205 **brought in by the Attorney including the height requirement which had been denied. Seconded by Mr.**
206 **Lyons.**

207 Chairman Simpson brought up the concern that the motion was to open ended with "all prior
208 decisions". He is concerned that the applicants may come back again looking for the height requirement
209 because there was a significant enough change to the plan. He would like it noted in the motion that
210 they have to meet the height requirement of 25 feet, or they will have to be back for another variance,
211 and he wants the members to keep in mind the five criteria when voting. He thought the one positive of
212 approving this was that it would be moving the property out of the east side setback, but that was for a
213 plan that is no longer on the table, so he was struggling with that. He also had a concern about the
214 length of this new side, he doesn't know how close it is to the road or the lake. There is no scale on the
215 plan that states how long that wall is on that side.

216 Vice-Chairman Claus stated that he was looking at the plans proposed in June, and the wall proposed
217 was 29 feet 6 inches long however there is another 12 feet that sits in front of that for a deck. There was
218 more discussion between Vice-Chairman Claus and Chairman Simpson about the deck and the other
219 setbacks. Chairman Simpson asked about access to the lot and Mr. Lyons answered that the access is
220 from Jobs Creek Road. Vice-Chairman Claus pointed out that it does not look like they are going into the
221 rear setback.

222 **Ms. Silverstein amended her motion to remove the discussion about the prior cases and the variances**
223 **that were approved or denied and strictly focus on the height requirements, that they will comply**
224 **with the Ordinance of no higher than 25 feet within the setback on the west side of the property.**
225 **Vice-Chairman Claus seconded the motion.**

226 The applicant asked that the point of 25 feet be taken out and that they must comply with the
227 Ordinance.

228 **Ms. Silverstein withdrew her motion, Mr. Lyons and Vice-Chairman Claus withdrew their seconds.**

Ms. Silverstein made a motion to approve Case ZBA: 21-30 for owners Cathleen Shea and Bradley Weiss Parcel ID: 0125-0011-0000 located at 38 Jobs Creek Road, to permit a variance from Article III, Section 3.10 to permit a 8.7 foot setback from the west side property line where 15 feet is required noting that the 8.7 foot setback has been previously approved, however, the plan changed so that the entire length of the house on the west side will be within the 8.7 foot setback; this is with the understanding that the height Ordinance will be maintained. Vice-Chairman Claus seconded the motion.

Chairman asked, and Ms. Silverstein and Vice-Chairman Claus agreed that he could amend the motion.

Chairman Simpson made a motion to amend the motion that they comply the height requirements for the side setback on the west side unless they come before the Board again for a variance or special exception. Ms. Silverstein seconded the motion. The motion to amend the motion was approved unanimously.

Vice-Chairman Claus stated again that he sees the hardship in the size of the lot. Ms. Silverstein agreed.

Ms. Silverstein voted yes; Vice-Chairman Claus voted yes; Chairman Simpson voted yes; Mr. Lyons voted no, as he does not see the hardship. The motion was passed three in favor, one opposed.

CONTINUATION

CASE ZBA: 21-31; PARCEL ID 0118-0051-0000: SEEKING A VARIANCE FROM ARTICLE III, SECTION 3.40 (C) TO PERMIT A 27 FT 8-INCH SETBACK FROM THE WATERBODY (PERKINS POND) WHERE 50 FT IS REQUIRED (THE EXISTING SETBACK IS 16 FT 8-INCHES TO THE DECK AND 26 FT 8-INCHES TO THE EXISTING HOUSE). DANIEL D. CAVE; 90 BURMA RD, RURAL RESIDENTIAL ZONE W/ SHORELINE OVERLAY.

CONTINUATION, AMENDED (UNDERLINED)

CASE ZBA: 21-32; PARCEL ID 0118-0051-0000: SEEKING A VARIANCE FROM ARTICLE III, SECTION 3.10 TO PERMIT A 20 FOOT 6 INCH SETBACK FROM THE CENTERLINE OF THE ROAD WHERE 50 FEET IS REQUIRED. DANIEL D. CAVE; 90 BURMA RD, RURAL RESIDENTIAL ZONE W/ SHORELINE OVERLAY.

CONTINUATION

CASE ZBA: 21-34; PARCEL ID 0118-0051-0000: SEEKING A SPECIAL EXCEPTION PER ARTICLE IV, SECTION 4.90 TO PERMIT AN ACCESSORY DWELLING UNIT (ADU) IN A NEW GARAGE. DANIEL D. CAVE; 90 BURMA RD, RURAL RESIDENTIAL ZONE W/ SHORELINE OVERLAY.

Mr. Cave would be presenting the case. He started with just a few points from the last meeting as refreshers. He wanted to go over the two variances and save the special exception for last. In the last meeting they had gone over the history of the home when the family bought it back in 1970, and how he and his dad had done so much work on it, and how his dad had a dream of this nice home type lodge for the property. He stated that his mom just turned 88 yesterday and his dream is that both his parents get to see the new place finished. There were a few questions at the last meeting of what variances they needed and things like that. Mr. Cave stated that he publicly wanted to thank Mrs. Pollari and the team as they scrambled after that meeting to get the proper information in with some clarification from her.

Mr. Cave stated that some of the changes were that one of the variances has now consumed the special exception that they had applied for previously.

Mr. Cave then stated the three points that he had for this meeting. The first being the front "garage" variance. The second being the footprint relocation concept where they are moving the current structure away from the side property line, which now includes that strip connecting it to the main property which they had asked for a special exception for previously. Lastly, the third is a special exception for an ADU in the garage. In summary, he stated the driving factors and intent they are working for here included the new wetlands within the buildable area that has been tested by a soil scientist and they did identify it as wetlands. Unfortunately, it does take up about 23 percent of the buildable area within the lot. Secondly, they are there trying to protect their neighbors and do the right thing. They want to make the structure more conforming to improve conformity with the waterfront setback, and they have moved the structure completely out of the side setback. It would provide better safety, better fire safety, and better water dispersion and runoff between the two properties which also protects the pond. It will create greater distance between the two structures. They are moving the structure away from, not only, their neighbor but away from the water as well. They are also trying to be respectful of the pond. So those are the drivers of why they are at this meeting and the intent of continuing this project.

Chairman Simpson pointed out that they do not have a full Board. Mr. Cave stated that he had been made aware of that and is ok with proceeding. Mr. Cave then pointed out the new proposed movement of the building in the back. He showed that they were moving it completely out of the rear setback. They are moving the deck and pulling the building a foot back. The total amount of structure they are removing from setbacks would be 123 square feet. This variance also includes the small portion of the structure that will connect it to the main structure. As far as the criteria of the Ordinance is concerned, they believe it is in the public's best interest as it is much more conforming of a structure than it is today. They believe the spirit of the Ordinance is observed as they are now showing full conformity within the side setback; they are improving the waterfront setback substantially. They are moving it 11 feet away from the water at the closest point, they are removing the additional sheds that are currently completely within the side setbacks, and the 40-foot connector is part of that 123 square foot improvement. They believe that approval of this would do substantial justice. It would allow the property to be developed in more compliance with the current regulation in the Ordinance. It improves fire safety; it improves water dispersion and absorption between the two structures, it improves property value for both them and their neighbors, and it certainly is more environmentally sensitive by eliminating the 123 square feet of impervious structure within those setbacks. Mr. Cave stated that not approving this variance for the waterfront setback would not be in the public's best interest as that makes them build in the same area it currently is located which is almost completely within the setbacks. They also believe that the denial of the variance would add unnecessary hardship because it would force them back into that less conforming footprint. This would decrease property value for them and their neighbor, the concern of fire safety would be compromised relative to the proposed plan, and it is also an environmental hardship in his estimation as the current structure is much closer to Perkins Pond.

Chairman Simpson stated that he can appreciate the effort to be more conforming, however, this would be considered a new build and they do have a buildable lot. He's not sure that the existing structure can

be considered a hardship. He feels the plan is well thought out and he understand that they have memories attached to the property and where the structure sits, but he's not sure he can justify that as hardship. Mr. Cave responded that he understood what he was saying but that brings it back to the letter of the Ordinance versus the intent and spirit of the Ordinance. Chairman Simpson said the hardship looks at the nature of the lot, and while they have wetlands, the wetlands don't make enough of an impact. There is still enough space to build a reasonable structure on the property.

Mr. Cave stated that he will not be building in that area in the middle of the lot. He said that there would be unnecessary hardship if they do not approve the variance. Ms. Silverstein asked to explain that hardship when they could be fully conforming. Mr. Cave stated that if the variance is denied he will use the grandfathered footprint and come back for the special exception to raise the structure, there is no third option, however, building the structure in its current footprint would be a hardship to them and their neighbors.

Chairman Simpson then asked about the uniqueness of the property in respect to the hardship. Mr. Cave pointed out there aren't any other properties in the area that have wetlands like the one on his lot but wanted clarification on what he was looking for exactly. Chairman Simpson asked what the other properties look like in the neighborhood. Mr. Cave stated that the property is wide and narrow, or not deep. The neighborhood is turning over because town sewer was put in on Burma Road. A few smaller houses have been taken down and new larger buildings are getting put up. He felt that it's inverse logic that given that the Board knows what the two options are, that they would be imposing a hardship on neighbors if they don't approve this because he will be back for a special exception. Also, the wetlands are a truly special condition of this lot as none of the other properties in the area have that.

Vice-Chairman Claus stated that it may be a stretch to say that that is the only wetlands in the area, many people don't know they have wetlands until they have a soil scientist come out and test it, so there could be others. Mr. Cave stated that Vice-Chairman Claus was correct he shouldn't generalize but he does know the area very well and his abutters and the other lots in the area that he knows do not have wetlands. Mr. Cave stated that he wants to bring it back to the practical matter of purpose of intent and the spirit of the Ordinance. The Ordinance is there to guide the Board to do what is in the public's best interest. He thought making a more conforming structure is in the public interest. The Board has the job of balancing all of those things with the criteria of what's in the public's interest.

Mrs. Cave said that she understands that the Board may want them to build completely within the conforming area, but the heart of the home is within the grandfathered footprint, and the cost of building has gone up tremendously so adding more brand-new structure in a different spot on the lot would be more expensive and that's not something they want to do.

Chairman Simpson stated that what they are saying is that if they don't approve the variance, they will keep the current structure where it is and raise the structure with a special exception. He then called it a threat. Mr. Cave stated that it wasn't a threat it is just what will happen.

Mr. White then addressed Chairman Simpson and stated that over the years the Boards have seen many cases like this where structures were completely within setbacks, and they have worked very hard to let them build something more conforming. The Ordinance does not say "if you want to do something with that, you have to give it up". Chairman Simpson replied that they are not talking about a pre-existing

348 build. Mr. White stated that he understood that, but they can't completely disregard the fact that that
349 structure is there. That's not what the Zoning Board has done in the past and that is not what the
350 Ordinance does either. The Ordinance actually states that they can raise and expand a pre-existing, non-
351 conforming structure with variances and special exceptions.

352 Chairman Simpson responded that he recognized that this is a less non-conforming structure. He has not
353 made many amendments to the Ordinance. He understood the fact that if they don't approve the
354 variance that they could come back with special exceptions, and keep the footprint they are currently in.
355 Mr. Cave stated again that it is about the purpose, intent, and the spirit of the Ordinance and that this
356 variance serves those well. Vice-Chairman Claus responded by reading from the Zoning Board
357 Handbook, "The Board does not have the discretion to grant a variance because they like the applicant
358 or because they think it is a good idea." They have to meet the five criteria. When it comes to hardship
359 when the "hardship is owned equally by all property owners no grounds for a variance exists. Only when
360 some characteristics of the particular land in question makes it different from others can an unnecessary
361 hardship be claimed."

362 Mr. White responded that a huge three-story home on this land wouldn't be what the Ordinance wants.
363 Ms. Silverstein disagreed because that would be fully conforming. Mr. Cave disagreed stating that his
364 abutters would be hounding him if he were to do something like that. Chairman Simpson stated that
365 they wouldn't be at this meeting if they did that.

366 Mr. White stated that this discussion reminds him of the 1980s where if you put a cow on the land, you
367 couldn't meet the hardship criteria. Over the years, that had been loosened by the courts so the Boards
368 could have more flexibility. Mr. Lyons responded that they have tightened them a bit since then though,
369 not to where they were, but they are tightening them. Mr. White stated that this felt like a step
370 backwards, and he was taken aback by this. Mr. Lyons responded that he agreed that if this had been
371 brought in front of them a year or two ago, they would have probably had no problem with this
372 variance, but due to recent litigation cases against the Board, there has been a major focus on
373 consistency, to make sure that they don't have "Spot Zoning". This is really the only way to make it fair
374 for those that come before the Board. Mr. Cave responded that he felt that there already were
375 inconsistencies as it had been said in the last meeting that if they had come before the Board a week
376 earlier, before the meeting with Town council, that they potentially may not have had a hard time
377 getting this approved. Mr. Cave stated that if he were in their shoes, whether in a court or not, he would
378 vote to do the right thing and making this structure more conforming than the current structure. He said
379 "That would be the right thing."

380 Chairman Simpson asked about the garage variance. Mr. Cave stated the concept is driven by wetlands;
381 if the wetlands were not there, that's where they would put the garage. Chairman Simpson asked why
382 they couldn't build it within the footprint. Mr. Cave stated that to build a reasonable home, not a 12,000
383 square foot box; Chairman Simpson interjected to ask how big it would be. Mr. Cave stated that the
384 main floor is 2,800 square feet and the second floor is between 500-600 square feet; all together it
385 would be in the low 3,000 range. They are proposing a three-car garage to have off street parking. Mr.
386 White went on to say that they want to point out the ADU so that it's not a surprise to anyone. They
387 need the garage to be of a certain size to make that ADU work. The ADU will only be 510 square feet in
388 size. They are "calling a duck a duck" and trying to be transparent. Mr. Cave stated that they made the

389 garage smaller as they were originally proposing 20 feet 6 inches. He had asked Mr. White to cut it down
390 in any way they could for financial reasons, and they were coming back with a request of 19 feet 6
391 inches. That cut the size of the ADU from 580 feet to 510 feet, making it as small as they possibly could
392 for a small apartment. They are 13 to 15 feet of the edge of the road and 20 to 22 feet 6 inches from the
393 centerline of the road.

394 Mr. Cave then discussed some of the criteria, they felt that it is not contrary to public interest it is
395 consistent with other properties on Burma Road that also have garages in the road front setbacks. It is
396 also consistent with other waterfront properties within the town of Sunapee, such as Lake Avenue or
397 Garnet Street. He felt that it does observe the spirit of the Ordinance stating that the area currently is
398 mostly grass and driveway, and they have kept the majority of the main home within the buildable area.
399 They kept it out of the side setback keeping the wetlands even more in mind. He felt that it does justice
400 by letting them develop the property similarly to other properties in the neighborhood and within the
401 Town of Sunapee. They are looking for a reasonable home for permanent residents; this will not be a
402 seasonal home any longer and they are looking to retire here. He stated that he believed the
403 surrounding property values will not be diminished and that the proposed plan will increase property
404 values compared to what is on the land currently. He also stated that all of the abutters have written to
405 the Board stating that they are in support of this plan. He stated that the non-conforming lots on the
406 waterfront make it hard to follow the Ordinance and that is some of the hardship. They have many
407 family members that may use the ADU over the next few decades. Lastly, the wetlands constitute
408 special conditions on the property. He stated that over time the road has been raised three to four feet
409 which has played a big part in to those wetlands.

410 Chairman Simpson asked how many bedrooms there would be in the home. Mr. Cave stated they had
411 three in the house, and then the ADU. Chairman Simpson responded that they were not talking about
412 the ADU. Chairman Simpson asked and Mr. White responded that it met all the dimensional
413 requirements. Chairman Simpson stated that the number of bedrooms is important due to the
414 regulations of how many parking spots off the road they need.

415 Mr. White then stated that if the wetlands were not there, they would swing the garage into the
416 buildable area as it would fit perfectly in that spot. But they can not place it there due to the unique
417 wetlands on the lot. Chairman Simpson replied that he is struggling to see that as a hardship as there is
418 still plenty of buildable area within the lot that they could put the garage in.

419 Mr. Cave stated that they could also come back asking for the special exception to put the garage in as
420 well. There was further discussion on the regulations of that and what would be needed for that to be
421 approved. Mr. Cave stated that that would be a hypothetical conversation at this point as he was hoping
422 that the variance would suffice. Vice-Chairman Claus stated that he was struggling because they have
423 had other applicants come before them and get denied for less. What they are asking for could fit well
424 within the buildable area of the lot. Mr. White disagreed stating that that could be a completely
425 different lot under completely different circumstances.

426 Mrs. Cave stated that it is not the job of the Board to say, "well you could build this or that instead of
427 what you have". Chairman Simpson responded that they have to see the hardship. Mrs. Cave stated that
428 they have stated the hardship. Chairman Simpson replied that it may not be considered a hardship as
429 they still have plenty of buildable area. He stated that he would like to hear about how this plan

430 compares to other lots in the neighborhood. Mr. Cave stated that if you go down Burma Road you will
431 find other lots with garages close to the road. Chairman Simpson responded that that would be relevant
432 to the special exception for a garage. Vice-Chairman Claus asked for them to show the hardship of not
433 building this garage in the buildable lot. Mr. Cave stated that if they put the garage in the area that they
434 are building the main structure they will have to put the third bedroom on the second floor and he has
435 bad knees and they are looking to retire in this home. He stated that that would also make the structure
436 more of a box like structure and an eye sore to the area.

437 Chairman Simpson stated that they could build what ever they wanted in the buildable area even if it
438 doesn't match the plan that they are presenting now. Mr. White stated that that is not what they are
439 proposing. He then said he if they do take the garage and put it in the buildable area, he's not sure
440 where they would put the part of the house that they would have to move to do so. Its not like they can
441 say I'm going to give up my kitchen, and living room, and dining area. That just isn't realistic. He
442 presented the question to Chairman Simpson that the wetlands are not a unique scenario taking up
443 almost 25 percent of the buildable area and can it not be considered a hardship for that buildable area
444 of the lot. Ms. Silverstein replied it would be defined as a hardship if it stops them from building in the
445 buildable area. Mr. White disagreed stating that it does not say that within the Ordinance. That is not
446 part of the hardship criteria. This is unique to this piece of property.

447 Chairman Simpson summed it up stating this is not a hardship if you still have enough buildable lot
448 somewhere else on that property. Mrs. Cave brought up the value of the land, stating that she knew
449 that that is also something that is brought into consideration in these variances. Mr. Lyons stated that
450 he believed that she was talking about reasonable return, where the Board doesn't want to deprive the
451 land owner the ability to use the land and they have to provide some reasonable return but that is up to
452 the discretion of the Board what is considered reasonable.

453 Mr. Cave said that if they were to take the footprint off of the lot and just look at the property as whole
454 the loss of 22 percent of their buildable area of this lot would be considered to have a hardship from
455 those wetlands. Chairman Simpson stated that that is one way to look at it, but some could say that the
456 setbacks are a hardship, they have buildable area. Mr. Cave stated that the variances are available to
457 allow things into the setbacks when there are special conditions on the property.

458 Chairman Simpson asked if the applicant had any other information that he wanted to present to the
459 Board other than threats and control. Mr. Cave stated he wasn't trying to threaten anyone. Chairman
460 Simpson asked if they have any new information to share with them. He understood and appreciated
461 the presentation that was given; however, the Board has to make a ruling on this, and whatever that
462 ruling is Mr. Cave has the right to make whatever decisions he would like after that. Mr. Cave checked
463 his notes and stated that there wasn't anything else.

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

465 Chairman Simpson stated that he does see and is slightly persuaded that they are trying to be more
466 conforming with the lake variance, however, he is not as persuaded on the garage. Ms. Silverstein stated
467 that she is struggling as there have been a lot of conflicts in what the applicant has stated. They have
468 looked at other lots in the area but are attached to this property. They say they want to be respectful of
469 the lake and of their neighbors, but they will come back for a special exception to be more non-

conforming if the variance isn't granted. Vice-Chairman Claus isn't persuaded by the special exception, he did not see the hardship on the waterfront front side. He sees that they are trying to make something better, but it doesn't meet the criteria for the variance. He feels that the Board is becoming more consistent by following the criteria and by not letting the "its reasonable" theory trump over the other criteria. Just because the plan makes sense doesn't mean it meets the criteria of hardship.

Mr. Lyons stated that the grandfathering was the escape valve to allow people to continue to do things that have already been done. The applicants attempted to come with a plan to make things more conforming to the Ordinance which makes a lot of sense, but he thought that Chairman Simpson had a point that you can't fiddle with that grey area because then it's a question of where the limit is. It becomes a judgement call, and the Board gets in to trouble with being arbitrary. He understood the grandfathering, he also understood the drawbacks of standing by the grandfathering. He didn't feel he has to go by the grandfathering though or nothing at all. If that means going with the special exception and ending up with something worse, looking at what the Ordinance accomplishes Town wide, that may be the route that the Board may have to take. They have to think of the whole town, and when people go to these ponds and lakes, they are looking to see trees and rocks not homes within the waterfront.

Vice-Chairman Claus said that it is unfortunate that people are taking advantage of their grandfathered properties as something they are going to use that as a celebratory thing. The goal of the Ordinance when it comes to grandfathering, is that its there to not punish those who had structures that were there prior to the zoning Ordinance. It forces them to either stay where they are or be conforming.

Ms. Silverstein made a motion for ZBA Case: 21-31; owner Daniel Cave; Parcel ID 0118-0051-0000; located at 90 Burma Road; to approve the variance for a 27-foot 8-inch setback from the waterbody on Perkins Pond where 50 feet is required (the existing setback is 16 feet 8 inches to the deck and 26 feet 8 inches to the existing house); subject to the approve of the shoreland permit which is in process. Mr. Lyons seconded the motion. Vice-Chairman Claus voted no due to lack of hardship, Ms. Silverstein voted no as she sees it as a new structure therefore not subject to the land swap that they are proposing. Mr. Lyons voted no, agreeing with Ms. Silverstein adding that it does not meet the criteria for grandfathering. Chairman Simpson voted yes on the grounds that the project would be less nonconforming, and the applicant can now come before the Board with special exceptions. The motion was denied, 3 opposed and 1 in favor.

Ms. Silverstein made a motion for ZBA Case: 21-32; owner Daniel Cave; Parcel ID 0118-0051-0000; located at 90 Burma Road; to approve a variance for a 20-foot 6-inch setback from the centerline of the road where 50 feet is required. Vice Chairman Claus seconded the motion. Vice-Chairman Claus voted no due to a lack of hardship as they could have applied for something more reasonable. Ms. Silverstein voted no. Chairman Simpson voted no due to lack of hardship and the amount of buildable space. Mr. Lyons voted yes; he believes the wetlands do meet the hardship criteria. The motion was denied, 3 opposed and 1 in favor.

Mr. Cave withdrew his application for case 21-34.

NEW CASES

508 **CASE ZBA: 21-36; PARCEL ID: 0134-0021-0000: SEEKING A VARIANCE FROM ARTICLE III, SECTION 3.10**
509 **TO PERMIT A 0.7 FT SETBACK FROM THE EAST SIDE SETBACK WHERE 10 FT IS REQUIRED (THE EXISTING**
510 **SETBACK IS 10.7 INCHES OVER THE PROPERTY LINE) TO MAKE THE ENTIRE HOUSE ON THE PROPERTY.**
511 **MARY ZATTA CHIAMIS; 251 LAKE AVE, RESIDENTIAL ZONE W/ SHORELINE OVERLAY**

512 **CASE ZBA: 21-37; PARCEL ID: 0134-0021-0000: SEEKING A VARIANCE FROM ARTICLE III, SECTION 3.40**
513 **(C) TO PERMIT A 2.3 FT SETBACK FROM THE WATERBODY (LAKE SUNAPEE) WHERE 50 FT IS REQUIRED**
514 **(CURRENT SETBACK IS -2 INCHES OVER THE EDGE OF THE WATER/7.1 FT OVER THE REFERENCE**
515 **LINE/SETBACK & PROPOSED STRUCTURE WILL BE 19.5 FT FROM THE EDGE OF THE WATER. MARY**
516 **ZATTA CHIAMIS; 251 LAKE AVE, RESIDENTIAL ZONE W/ SHORELINE OVERLAY.**

517 **CASE ZBA: 21-38; PARCEL ID: 0134-0021-0000: SEEKING A VARIANCE FROM ARTICLE III, SECTION 3.10**
518 **TO PERMIT A 35 FT STRUCTURE WITHIN THE REDUCED SIDE SETBACKS ENTIRELY WITHIN THE 50 FT**
519 **WATERBODY (LAKE SUNAPEE). MARY ZATTA CHIAMIS; 251 LAKE AVE, RESIDENTIAL ZONE W/**
520 **SHORELINE OVERLAY.**

521 **CASE ZBA: 21-39; PARCEL ID: 0134-0021-0000: SEEKING A VARIANCE FROM ARTICLE III, SECTION 3.10**
522 **TO PERMIT A 4.3 FT SETBACK FROM THE WEST SIDE SETBACK WHERE 10 FT IS REQUIRED. MARY ZATTA**
523 **CHIAMIS; 251 LAKE AVE, RESIDENTIAL ZONE W/ SHORELINE OVERLAY.**

524 Chairman Simpson stated to the presenter that there are only four Board members present this evening
525 and any case needs three votes to pass, the presenter acknowledged this. Chairman Simpson stated that
526 he will be continuing any cases that are not voted on past 9 pm.

527 There was a brief break.

528 Daniel Monette with Fuss & O'Neill presented the cases. They have a pre-existing lot that is .14 acres
529 which is a 1/8th of the size of a conforming 1-acre lot within this zone. The current house is completely
530 within the 50-foot water buffer and overlaying almost every setback on the property. There is a very
531 small section of the lot that is legal building area that is at the toe of a deep slope going down into the
532 lot. The driveway is unsafe in winter conditions. They are giving up their grandfathered pre-existing
533 envelope. Their plan is to move the house back off the lake and try to get some more conformity on the
534 side setbacks. They want to correct a couple of known issues one of which being the roof overhang on
535 the east side going over the property line, and they want to get some buffering between the house and
536 the lake. The footprint size is not changing drastically from the existing footprint. There is a difference of
537 about 60 square feet, and a lot of the difference is because of a modern envelope, they need insulation
538 in the walls. The current house is a seasonal camp that is on piers. The plumbing is above ground and
539 freezes in the winter unless it is treated. The property owner wants to turn it in to a year-round
540 residence, so they are looking to put a full foundation in underneath that would be serviced by a pump
541 station. Chairman Simpson referenced Reverend Smiley and that this lot looked like one of his lots, very
542 undersized.

543 Ms. Chiamis stated that they have neighbors close by that Reverend Smiley had owned but not this
544 property specifically. Mr. Monette went on; the first variance is the eastern side setbacks. They have 10-
545 foot 7-inch encroachment. They want to move the house on to the property by .7 putting them 9.3 feet
546 into the setback instead of 10.7 feet into the setback. Granting the variance would not be contrary to

547 the public interest because they are trying to get it closer to compliance. They are removing the existing
548 structure that over hangs the property line. They would like to construct a house that is further back
549 from the reference line. He stated that an issue with pushing the house back away from the lake does
550 make it less conforming in the side setbacks as the property narrows the closer to the road they get.
551 They did have to slide it over a little bit to make sure that the new house would actually be on the
552 property. He stated he liked to have at least a foot from the property line, however, due to the overhang
553 from the roof of the porch they did the best they could.

554 The proposed house is 1,245 square feet. the existing home is 1,207 square feet; these numbers include
555 porches and decks. The interior livable space on the proposed house is 672 square feet. Mr. Lyons asked
556 what the current interior livable space is. Mr. Monette did not have that number. Chairman Simpson
557 asked if the existing driveway goes though the neighboring property. Mr. Monette stated it was. They
558 are hoping to correct that if they can and fix the grading of the driveway as well. They are trying to bring
559 the driveway from 25 percent to 5 percent in winter conditions. Mr. Monette stated that they made the
560 driveway shorter and the grade less. They can still fit 3 cars off the road. He got a statement from Scott
561 Hazelton confirming the safety of the driveway, it's not safe in its current condition. The proposed will
562 have a level landing for sight distance on either side and for drainage to go by. Vice-Chairman Claus
563 asked what the grade was to the right of the stairs on the side and Mr. Monette responded 3 to 1.
564 Usually, they would suggest 4 inches of soil, but that may be filled with forest litter as it is a heavily
565 wooded area. He went on to state that as they go up the property it does get steeper. It doesn't quite
566 meet Sunapee's Steep Slope Ordinance, but they are not proposing any structures in that area, they are
567 proposing driveway modification and extensive stormwater management. Vice-Chairman Claus clarified
568 that they have an existing condition, and they are making it better. Mr. Lyons asked, and Mr. Monette
569 pointed out the different grades and pointed out some of the wooden buffer that they are trying not to
570 affect.

571 Ms. Doughan called via Zoom on behalf of Harold and Yvonne Shukovski, the western abutters. They had
572 concerns of them moving closer to their home, and the proposed home is going to be three stories high
573 when it currently is only a story and a half. The Chiamis' are currently storing a rowboat on their lot.
574 They are concerned that if they move the patio closer to the house, they are going to continue to move
575 on to the property. There dock is 95 percent over the Shukovski's property line, and their deck isn't on
576 the property map. She contacted Mrs. Pollari and she was advised to reach out to the State. The State
577 had no guidance for her. The State said many regulations that the dock was not abiding by. Their biggest
578 concern is that it will be a large 3 story structure that they are getting closer to their house. This will be
579 taking away property value for them.

580 Ms. Chiamis asked if it is acceptable to have someone other than an abutter to speak for an abutter.
581 Chairman Simpson stated that anyone in the town can speak to it but only abutters can appeal. Ms.
582 Doughan stated that the abutters are more then willing to put this in writing and have it notarized for
583 the Board. Chairman Simpson stated that they can submit anything they want, but it should have been
584 submitted for the meeting currently happening. The abutters are free to ask for a rehearing and are free
585 to appeal this. There is no dock application in front of them or being requested tonight so that would be
586 pre-existing.

Mr. Monette responded that he had a photo of the abutter that is potentially being represented, and their home is right on the lake; he passed it around. He stated that the fact that they are moving the house back away from the lake would not diminish the property value of the abutters home; it actually would give them a clearer, better view of the lake. He also wanted to make a point that the dock is an existing permanent, grandfather dock of Ms. Chiamis. They are not making any changes to the dock.

Mr. Monette also handed out pictures of two other abutting properties (in reference to the height variance, which is skipping ahead a bit) that were cottages that are now rebuilding and becoming larger three-story homes. He went back to the criteria for the west side variance. If it were to be granted, the spirit of the Ordinance would be observed because the Ordinance is meant to promote the health safety and welfare of the community, protecting the environment, preserving the vitality of the Town. The current house is a grandfathered non-conforming structure on a legal non-conforming lot. The property has less than half the road frontage requirement and is 1/8th the size of a conforming lot. The proposed house makes the property more nearly conforming. The Ordinance allows improvements within grandfathered footprints; however, they are not doing that. They are trying to build a new house and make it better than the grandfathered footprint. The variance is being requested because the grandfathered footprint is off the property and over water. They want to move the home completely behind the State reference line as they can only repair the home, they cannot rebuild or expand past that reference line as it is against the law. The proposal is consistent with the spirit of the Ordinance as they are reducing the historical non-conformity of the structure. The images he passed out are an example of how it would be doing substantial justice as it shows that other similar operations have happened.

Chairman Simpson asked for the amount of livable area in the current and proposed structures. After some confusion between footprint and livable space they broke down the floorplan to get to 1,824 square feet of livable space. The current structure is 674 on the first floor and Mr. Monette was unsure of what the square footage would be on the second floor. The Board estimated 1,200 square feet in the current structure. Mr. Monette stated that they are trying to go from a seasonal camp to a permanent residence. There will be three bedrooms and the basement would be finished living space with a walk out. Restructure of a seasonal home that is out of date is of no harm to the general public. It increases property values and improves storm water management near the waterfront portion of the lot. This proposal would benefit the general public and the environment so substantial justice would be done by granting the variance.

Mr. Monette moved on to the next criteria. The surrounding property values would increase as the new structure would have higher tax evaluation than what is currently standing and the structure would be completely on the property resulting in better lake views for the neighbors due to the house being further set back from the lake as the two abutter's structures to each side are right on the water.

Lastly, Mr. Monette went over hardship. The lot is severely undersize, and the lot is very narrow. There is only 33 feet of road frontage where 75 is required. The current building is already non-conforming, and any reasonable construction is going to require some Zoning relief requirements. They are entirely within the 50-foot buffer, they are in both side setbacks, and there is no buildable area in the lot. The Board rebutted stating that there is under 100 square feet of buildable area. Mr. Monette replied that when you get up to that buildable area they are in the steep slopes.

628 Chairman Simpson asked about the proposed decks. Mr. Monette stated that it would be 1207 minus
629 672. The total porch and deck space would be 535 square feet. It will be about the same amount of deck
630 and porch space as the pre-existing structure. They are tampering off one corner to keep it away from
631 the reference line. Chairman Simpson clarified for Mr. Lyons that porches would count as living space,
632 but not decks.

633 Mr. Monette stated that they have similar verbiage for the west side setback variance with the same
634 reasoning and criteria. They are also applying for a waterfront buffer variance because they are within
635 the 50 feet of the lake. This application also has the same reasoning and criteria.

636 Mr. Monette stated that the height variance was the hardest case for him and for the Board. He said
637 some good evidence for him are the two properties to the north that are within the waterfront setback
638 that are 3 story homes that have been approved. The application has the same general description this
639 pre-existing non-conformities of the existing house, they are proposing building a modern home that is
640 more conforming that will be 10 feet higher than the existing structure.

641 There was a discussion between Mr. Monette and the Board about the definition of what the
642 measurements of the structure height and the definition of maximum structure height within the side
643 setbacks were. Mr. Monette pointed out that because the entire home will be in setbacks their
644 maximum structure height within the setbacks is the maximum structure height of the property. They
645 are asking for 10 feet more than the legal structure height of the Ordinance for additional living space.
646 They are looking to make this new home into a 3 to 4 season house from the camp that it is now. They
647 are looking for some extra storage space and an extra bedroom, so they are looking to expand, and
648 really the only way to expand is to go vertically. They can't go back because they are already completely
649 within the 50-foot setback, and there are woodland buffers that they are trying to preserve. If they
650 expand in any other direction, they are expanding the impervious area of the lot. The grandfathered
651 structure is at 49 percent impervious area, and they are looking to reduce it. Chairman Simpson argued
652 that the 49 percent is not grandfathered. He recognizes that they are trying to make it better, but he
653 wasn't sure that that's spelled out in the Ordinance in the way the applicant is stating it. Mr. Monette
654 stated they had a pre-application meeting about this.

655 Mrs. Pollari stated that they had discussed it with Town Council and had gone back and forth on this and
656 came to the agreement that they didn't need to have a variance for that. There was further discussion of
657 what the State requires and what had been interpreted in the Ordinance and by Council. Chairman
658 Simpson stated that he wished it was clearer within the Ordinance if they are reducing, they don't need
659 to apply for a variance when it came to impervious area.

660 Mr. Monette said they are looking to build a modern home that could be a year-round residence and
661 increase living space to do so. They have two abutting properties that have done the same expansion
662 that were approved that look less conforming than their proposal so substantial justice is done. They
663 have the same hardship case with the height variance as they did in the other cases. They have very
664 little buildable area and almost no buildable area due to the steep slopes. A lot of the things they are
665 doing are for the environment in general. The applicant wanted to pull the property back to put
666 plantings in the current footprint. They have a large storm water retention area and they are starting a
667 reservoir, they have multiple drains and trenches that will be going in, they also have temporary
668 preventions for the construction planned such as walls and straw fences. One of their main goals is to

669 make the driveway safer. They do have a shoreline permit pending. They also submitted an application
670 to the state for a more ordinarily- conforming request which speeds up the process because you are
671 making the lot better and helping the environment.

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

673 Vice-Chairman Claus stated that there were a lot of good things happening with this application, but it
674 brings him back to the question with the height and side setbacks, what is reasonable. He feels that a
675 year-round home of 1800 square feet is reasonable and in concerns to the hardship is met with the
676 criteria with all the positives to the proposed property, no matter where they go, they would be in
677 violation of the Ordinance. He saw this proposal as less non-conforming. Vice-Chairman Claus
678 acknowledged the neighbors concerns of the height and encroachment; however, he did like seeing that
679 they tampered the deck to try and pull things back even more. He does see that the applicant is trying
680 to do the right thing and is also trying to be reasonable.

681 Ms. Silverstein agreed, she stated that just starting with putting their house fully on their property and
682 that all construction will be on their own parcel, she appreciates that they are making the driveway safer
683 and bringing it on to their property. Their erosion plan is excellent, she feels that the overall plan is very
684 positive and beyond reasonable.

685 Mr. Lyons agreed as well, stating that he sees all 5 criteria for a variance, his only concern is the 35-foot
686 height. There are a lot of trees on the property, if those trees stay, they will create insolation from
687 interference from the neighboring properties. Vice-Chairman Claus responds that there are only 7 trees
688 being removed and the bordering trees of the property are not proposed to be removed. Mr. Lyons then
689 stated that from the lake it would still look like a reasonable home on a sloped lot, not this
690 overpowering home that they have seen in the past. He is a little unsure on the height and the impact of
691 the height, but otherwise feels that all the criteria are met for the other variances being asked. Vice-
692 Chairman Claus stated that the proposal if reasonable and that building up is better than out for the
693 environment.

694 Chairman Simpson stated that he questions if they need to keep all the porches and decks as the
695 existing home but he does see two major hardships on this lot, the size and the fact that there is
696 virtually no buildable space. He also feels that moving it away from the lake will have a better impact on
697 the environment. He did state that just because there are two other large homes on the lake doesn't
698 make it ok. He doesn't think that every home has to be the biggest on the lake, he is concerned about
699 over development, however, he does believe that the overall proposal does improve this property. He
700 sees that there are major hardships with this property.

701 **Ms. Silverstein made a motion to approve ZBA Case 21-36, property owner Mary Zatta Chiamis; Parcel**
702 **ID: 0134-0021-0000; located at 251 Lake Avenue to permit a 0.7 setback from the east side setback**
703 **where 10 feet is required, the existing setback is 10.7 inches over the property line; subject to the**
704 **lakeshore permit, and future maintenance and support of the storm water management system**
705 **proposed with this application. Vice-Chairman Claus seconded the motion. The motion passed**
706 **unanimously without further discussion.**

Mr. Lyons made a motion to approve ZBA Case 21-37; Parcel ID: 0134-0021-0000; for 251 Lake Avenue; seeking a variance from Article III, Section 3.40 (c) to permit a 2.3-foot setback from the waterbody where 50 feet is required (current setback is -2 inches over the edge of the water and 7.1 feet over the reference line setback/proposed structures will be 19.5 feet from the edge of the water; property owned by Mary Zatta Chiamis; subject to successful completion of the Shoreline permit and its acceptance, and maintenance of the various storm water runoff features shown on this plan. Ms. Silverstein seconded this motion. The motion passed unanimously without further discussion.

Ms. Silverstein made a motion to approve ZBA Case 21-38; Parcel ID: 0134-0021-0000; located at 251 Lake Avenue; to permit a 35-foot structure in the reduced side setbacks entirely within the 50-foot lake setback from lake Sunapee and to clarify this is both on the east and west side of the proposed house subject to the approval of the lakeshore permit and maintenance of the water systems as proposed in accordance with the plan submitted with this application. Seconded by Vice-Chairman Claus. Vice-Chairman Claus voted yes, Ms. Silverstein voted yes, Mr. Lyons voted no, that it will be too visible from the lake, and he thinks 35 feet from the lowest point is a bit of a stretch, and he's not sure he sees the height having a hardship. Chairman Simpson voted yes as he feels that this is a modest house. The motion passed three in favor and one opposed.

Vice-Chairman Claus made a motion to approve ZBA Case 21-39; Parcel ID: 0134-0021-0000; seeking a variance from Article III, Section 3.10 to permit a 4.3-foot setback from the west side setback where 10 feet is required subject to successful completion of the Shoreline permit and its acceptance, and maintenance of the various storm water runoff features shown on this plan. Mr. Lyons seconded the motion. The motion passed unanimously without further discussion.

CASE ZBA21-40; PARCEL ID 0133-0011-0000: SEEKING A VARIANCE FROM ARTICLE III, SECTION 3.10 TO PERMIT A NEW LOT TO BE CREATED WITH 32.50 FT OF ROAD FRONTAGE WHERE 75 FT IS REQUIRED. 16 HIGH ST. CORY L & RENEE P. FLINT; VILLAGE COMMERCIAL ZONE.

Chairman Simpson recused himself from this case.

Ms. Silverstein made a motion to continue Case ZBA 21-40; Parcel ID 0133-0011-0000 for a property located at 16 High Street owned by Cory L and Renee P. Flint in the Village Commercial Zone to continue a subsequent meeting date. Mr. Lyons seconded the motion. The motion passed unanimously.

Chairman Simpson made a motion to adjourn the meeting at 10:46 PM. Ms. Silverstein seconded the motion. The motion was passed unanimously.

Respectfully submitted,

Sarah Liang