

1 **TOWN OF SUNAPEE**

2 **ZONING BOARD**

3 **MARCH 3, 2022**

4 Vice-Chairman Jeff Claus called the meeting to order at 6:05 pm and pointed to the applicants
5 that they only have 4 voting members out of 5 present and that they would need 3 out of 4
6 votes in order to proceed, and asked them if they want to continue, to which they answered
7 yes. Vice-Chairman Jeff Claus then read from the agenda and announced the first case.

8 **MEMBERS PRESENT IN THE MEETING ROOM:** Jeff Claus, Jamie Silverstein, David Munn and
9 James Lyons.

10 **MEMBERS PRESENT VIA ZOOM:**

11 **ALSO PRESENT IN THE MEETING ROOM:** Jeremy Bonin, Bonin Architects and Will Davis, VP of
12 Horizons Engineering, presenters for the Tibbetts appeal, Roger Landry, Zoning Administrator
13 and town employee, Shannon Martinez, Town Manager.

14 **PRESENT VIA ZOOM:** Michael Marquise

15 **CONTINUATION**

16 **CASE ZBA: 22-01; Parcel ID: 0127-0002-0000: APPEAL OF ADMINISTRATIVE DECISION OF THE**
17 **BOARD OF SELECTMEN/LAND USE ACCESSING COORDINATOR DENYING REQUEST FOR A**
18 **NEW, LARGER HOME WHICH WILL REPLACE AN EXISTING HOME WITHIN THE 50' SHORELAND**
19 **SETBACK. SUZANNE W. TIBBETTS; 2015 REVOCABLE TRUST 189 LAKE AVENUE; RESIDENTIAL**
20 **ZONE.**

21 Jeremy Bonin presented the case. He explained that they have filed an appeal and a variance,
22 which would be based on the appeal, that's why it is not a typical process. The appeal is about
23 the decision to deny the Certificate of Zoning Compliance (CZC). If the appeal fails then the
24 variance would be enough to come forward with the Article 6.12. He mentioned that both
25 Horizons Engineering and Bonin Architects have worked together for a long time in Town of
26 Sunapee and they always try to leave the properties in better condition that they are in.
27 Specifically for waterfront properties, which are governed by the State, and this means
28 designing and installation of stormwater controls and careful balance of permeable surfaces.
29 This project requires moving of the house away from what it is currently, in less than zero
30 setback from the lake. The appeal is based on similar projects not requiring a variance, without
31 any change to the Ordinance.

32 It was brought by Mr. Lyons that regarding to procedures, in the past when they had an appeal
33 of their decisions, they've made a point of formally accepting the appeals and he thinks that
34 they should decide on whether they accept the appeal or not.

35 Mr. Landry pointed that the only way a Board can listen to an appeal on their decisions, it has
36 to have new information that the Board had never listened before. Otherwise, it has to go
37 through Superior Court.

38 The Board established that this is not an appeal on the decision that they have made, rather it
39 was put before the Board of selectmen with a recommendation to deny it, from Melissa Pollari
40 and Michael Marquise. It was a building permit application and never made it to the ZBA.

41 Mr. Bonin said that there are 2 reasons for the decision to be overturned. First one is that the
42 Zoning Board considered Article VI, Section 6.12 to mean if you tear down an existing structure
43 is no longer pre-existing and nonconforming structure and therefore requires a variance of
44 special exception. Second part is about the Article VI, Section 6.32 The part of the house that is
45 expanding beyond the existing envelope and is still within the 50' waterfront setback is no
46 longer the same "envelope" and is increasing the nonconformity. The reason that they are
47 appealing this decision is based on several points: first one is that there is no difference
48 between the version of the Section 6.12 from 1991 and the one from 2021, except minor
49 grammar changes. There is substantive change, even though it has been amended many times
50 throughout years. Second reason is that this is a contrary interpretation based on several
51 reasons. One is that increase of nonconformity is defined in the current version of Section 6.12
52 as vertically or horizontally, not by area or the location of envelope and those legal definitions
53 of locations of envelope are not in the Ordinance. He mentions 3 other similar projects under
54 Section 6.12 that have gone through Bonin Architects dated as far as 2012 that have not
55 required that variance.

56 The Board had a discussion about the interpretation of a footprint and when and how it is
57 allowed to take the house down and build a new one within the existing footprint or less. Mr.
58 Lyons also mentions that if the case that they are discussing would use the same footprint they
59 would not discuss it, but it doesn't use the same footprint.

60 The argument of Mr. Bonin was that they have not needed a variance in the past to move a
61 house. He also points that this decision is based on the change of the Section 6.12, which
62 according to him has not been really changed.

63 Vice-Chairman Claus argued against that, mentioning the keywords footprint and envelope as
64 two different things. The envelope takes the full volume of the structure and the footprints only
65 where it touches the ground, and that is significant.

66 Mr. Bonin says that the part that requires a variance has the word increase and the definition of
67 an increase is vertically or horizontally. This isn't an increase, it's a move, actually it's a
68 reduction of overall impermeable area. He also points footprints and envelope and their
69 placements on the site is not defined on Section 6.12.

70 Mr. Marquise points that the only other way that a Zoning administrator can approve
71 something that is not expansion and going into a nonconformity area is if it's within the same

exact offset as the envelope and that anything that isn't in nonconformity area is not permissible by law, and that's why their application was denied and required a variance.

Mr. Bonin noted that the law doesn't really say that and that you can go in the same or smaller envelope, and they are smaller by area and they are not increasing the nonconformity

Mr. Lyons argues that they are not in the same place. Also, he said that every case is unique and that this Board is unique and they are taking cases individually.

Ms. Silverstein suggests that they should first vote on the appeal and then move on to hear the variance.

Vice-Chairman Claus says that he never seen the term "administrative gloss" before but he found the case that Mr. Bonin talked about and that he found that the Supreme court clarified that "administrative gloss" functions to clarify existing laws, not to make new ones. So, to him this "administrative gloss" doesn't apply to this case. He thinks that Mr. Bonin's approach to the nonconformity is the opposite to his own, because once they expand the envelope to any directions, they are expanding it to nonconformity.

Ms. Silverstein went back to appeal and asked Mr. Bonin why did they apply for CZC instead of applying for variance, on which Mr. Bonin answered that they had to have denied application in order to come before the Board and you can't apply for a variance without something getting denied.

Vice-Chairman Claus closed the hearing to the public.

Mr. Lyons thinks that he made his thoughts very clear and that in fact this is a substitute change to the footprint within the 50' barrier and he thinks that is precisely what the Zoning Ordinance is to prevent. So, a bigger structure cannot be built, and the administrative worker did the right thing.

Mr. Munn is trying to get a clarification about the concept of improving the violation of getting next to the water by moving/dragging the structure than getting back a little further than it needs to be.

Ms. Silverstein is only going to speak on the purpose of the appeal and thinks that the administrator made the right decision.

Vice-Chairman Claus thinks that the applicant put a very good argument together but that each case is different. He can't apply the "administrative gloss" on this case.

Ms. Silverstein makes a motion for Case ZBA: 22-01; parcel ID: 0127-0002-0000: appeal of administrative decision of the board of selectmen/land use accessing coordinator denying request for a new, larger home which will replace an existing home within the 50' shoreland setback. Suzanne W. Tibbetts; 2015 Revocable Trust 189 Lake Avenue; residential zone to support the administrative decision to deny the appeal.

107 **Mr. Lyons seconded the motion.**

108 **The motion was voted in favor unanimously.**

109 Vice-Chairman Claus decided to move to the variance now.

110 **Ms. Silverstein makes a motion for CASE ZBA: 22-03: Parcel ID: 0118-0051-0000: Seeking a**
111 **Variance from Article III, Section 3.10 for construction of a structure (garage) approximately**
112 **40.5 feet from the centerline of Burma Road where a 50-foot front yard setback is required.**
113 **Daniel Cave 90 Burma Road; Rural Residential Zone to be continued at the request of the**
114 **applicant's agent Brett Allard.**

115 **Mr. Lyons seconded the motion.**

116 **The motion was voted in favor unanimously.**

117 **Ms. Silverstein makes a motion for CASE ZBA: 22-04: Parcel ID: 0118-0051-0000: Seeking a**
118 **Special Exemption from Article III, Section 3.50 (k) for construction of addition to a pre-**
119 **existing nonconforming house within the 50-foot waterbody setback. Daniel Cave 90 Burma**
120 **Road; Rural Residential Zone to be continued at the request of the applicant's agent Brett**
121 **Allard.**

122 **Mr. Lyons seconded the motion.**

123 **The motion was voted in favor unanimously.**

124 **Ms. Silverstein makes a motion for CASE ZBA: 22-05: Parcel ID: 0118-0051-0000: Seeking a**
125 **Special Exemption from Article III, Section 3.50 (i) to replace a pre-existing nonconforming**
126 **structure with a vertically higher structure in the same footprint. Daniel Cave 90 Burma Road;**
127 **Rural Residential Zone to be continued at the request of the applicant's agent Brett Allard.**

128 **Mr. Lyons seconded the motion.**

129 **The motion was voted in favor unanimously.**

130 Vice-Chairman Claus clarified to agent Brett Allard that their cases will be continued for next
131 month's meeting which will be held on April 7.

132 Mr. Bonin continued to present his Case ZBA: 22-02: Parcel ID: 0127-0002-0000: Seeking a
133 Variance from Article III, Section 3.40 (c) for a new, larger home within the water body setback
134 to replace an existing home. New home will be 7' from the water body (Lake Sunapee). Suzanne
135 W. Tibbetts 2015 Revocable Trust 189 Lake Avenue; Residential Zone.

136 This site is a .22-acre lot in Sunapee, with sloping topography descending from Lake Ave. to
137 Lake Sunapee with approximately 120.6 lineal feet of shorefront. This project proposes the
138 reconstruction of a deteriorating structure located entirely within the Waterfront Buffer with a
139 more nearly conforming structure. Both the existing structure and the proposed replacement

140 are residences and therefore a conforming use within the Residential District. The proposed
141 residence reduces impermeable area within the Waterfront Buffer by 76 square feet and
142 increases the distance of the residence to the lake Reference Line from zero linear feet to 9.75
143 linear feet. Appeal to the ZBA is required based on the denied CZC application by the Select
144 Board or their agent.

145 Mr. Bonin wants to specifically address one comment that was made in the last application by
146 Mr. Lyons that they have a perfectly great building that can be rebuild in its place and that that
147 is actually not true, because DES will not allow them to. The State wants them to remove the
148 building from the water, and they have conflicting issues.

149 Mr. Lyons said he was completely unaware of that.

150 Mr. Bonin shows the Board their proposed setback and stormwater controls and asks Mr. Davis
151 to go on with the presentation.

152 Mr. Lyons asks him about the capacity of collecting waters to which Mr. Davis answers that is
153 about 6 inches of rain within 24 hours.

154 Mr. Landry also had concerns about the maintenance of the system, because they have had
155 problems in the past when the owner was responsible for that but in reality, they did not take
156 good care of the maintenance and the Town had to step in, so they should make that as a
157 condition.

158 Town Manager Martinez noted that they have Code Enforcing Officer within the Town budget
159 to deal with that.

160 Vice-Chairman Claus has concerns about the impermeable surfaces on the proposed project,
161 since they are not presented there on detail that they are going to be as such.

162 Mr. Bonin and Mr. Davis assured the Board that it's a practice for them to build impermeable
163 surfaces within the threshold of 30% but if the Board wishes to make it a condition, they are
164 fine with that.

165 Ms. Silverstein asked if they have letters of approval from abutter neighbors, to which Mr.
166 Bonin answered that they are notified, and Mr. Landry said that the Town has not received
167 anything yet.

168 Vice-Chairman Claus could not find the setbacks on the drawing and the other thing is that
169 walls would be all within the front setback and need to have 42" height minimum or they fall
170 under a structure and need to be fall under variance, because they have one existing wall and
171 now, they have three proposed walls.

172 Ms. Silverstein asked about the height of the existing wall, which was about 10'.

173 Vice-Chairman Claus had another concern about the terrace which has to be equal to or greater
174 than the wall, in this case 42" or more, which is not the case here.

175 Mr. Lyons asked for clarification about existing conditions back from the 50' setback there is a
176 pin in a south halfway to the water with dash lines labeled possible location-is there a dispute
177 to whether who owns the property? And the second point he made is that he is very concerned
178 about the shoreline permit, as where did the 7' come from?

179 Mr. Bonin continued with reading the 5 criteria from the Application.

180 Mr. Lyons argument is that they have to have a document that they are not allowed to rebuild
181 the house. He also asks the applicants how big is the existing footprint now, to which Mr. Davis
182 answered 1600 sq. ft. According to Mr. Lyons, if they build a two-story house, it would be total
183 of 3200 sq. ft.

184 Ms. Silverstein clarifies that the area right now is 1420 sq. ft and 65 sq. ft. from the decks and
185 the post are 2348 sq. ft.

186 Vice-Chairman Claus and Ms. Silverstein notified the applicants that they would have to submit
187 another variance for the front setback and for the walls.

188 **Vice-Chairman Claus closed the hearing to the public.**

189 Ms. Silverstein thinks that the State has endorsed moving back from the zero and thinks that
190 the 7' setback is great, maintains a side setback and that is reasonable that they want a new
191 house on an existing place and that they are entitled to that.

192 Vice-Chairman Claus thinks that they have to look on the size of the house as a new structure,
193 and according to the drawings, it looks like a reasonable size home and smaller. He also is giving
194 some thoughts about turning the house sideways and took the same envelope, then the
195 setback could be more than 7', maybe 20'. He also mentions that the Ordinance allows a
196 maximum of 25' height of the house.

197 Mr. Lyons is wondering that he doesn't have a sense of how the house and the drainage is
198 going to look like, because it looks so much bigger on the project that it is now and how much
199 of the property is the new house going to take up, as opposed to the existing one. He thinks
200 that it has to be a better way than taking up a huge chunk of a 50' setback Buffer to be
201 disturbed. He also says that he wants to see a document from the State that is stating that they
202 cannot build the house there.

203 Vice-Chairman Claus is responding that they have a permit from the State and they have done
204 what they need to do on a State level.

205 They all agreed that that should be enough to make a motion.

206 **Ms. Silverstein makes a motion for Case ZBA: 22-02; parcel ID: 0127-0002-0000: Seeking a**
207 **Variance from Article III, Section 3.40 (c) for a new, larger home within the water body**
208 **setback to replace an existing home. New home will be 7' or greater from the water body**
209 **(Lake Sunapee). Will comply with the shoreline permit which is on file with the application**
210 **and to maintain the storm water management system and will provide detailed drawings of**
211 **pervious paths/stepping stones and maintenance manual. Suzanne W. Tibbetts; 2015**
212 **Revocable Trust 189 Lake Avenue; residential zone, to approve this variance.**

213 **Mr. Munn seconded the motion.**

214 **Mr. Lyons voted against the motion, Mr. Munn, Ms. Silverstein and Vice-Chairman Claus**
215 **voted for.**

216 **Ms. Silverstein made a motion to adjourn the meeting at 8:20 PM. Mr. Munn seconded the**
217 **motion. The motion was passed unanimously.**

218 Respectfully submitted,

219 Rajmonda Selimi