

1 **TOWN OF SUNAPEE**

2 **ZONING BOARD**

3 **NOVEMBER 5, 2020**

4 Chairman Simpson called the meeting to order at 6:10 pm and read the Governor's Emergency Order
5 #12 that authorizes the Zoning Board to meet electronically: Due to the State of Emergency declared by
6 the Governor as a result of the COVID-19 pandemic and in accordance with the Governor's Emergency
7 Order #12 pursuant to Executive Order 2020-04, this Board is authorized to meet electronically. The
8 public has access to contemporaneously listen and participate in this meeting through video
9 conferencing at <https://zoom.us/> with Meeting ID 97995371537 and Passcode 705609, or by telephone
10 by calling (929) 205-6099.

11 A roll call of members present was taken.

12 **MEMBERS PRESENT BY VIDEO:** Aaron Simpson, Chair; Jeffrey Claus, Vice Chair; Jim Lyons; Daniel
13 Schneider

14 **PRESENT IN THE MEETING ROOM:** Nicole Gage, Zoning Administrator

15 **ALSO PRESENT BY VIDEO:** Michael Hadden; Kent Neirendorf; Jamie Silverstein

16 **MISCELLANEOUS**

17 Ms. Gage explained that Jamie Silverstein is watching the meeting as she is interested in joining the
18 Zoning Board as an alternate member and would like to observe first.

19 **CASE # ZBA20-06: PARCEL ID: 0125-0073-0000 – A VARIANCE IS REQUESTED FROM ZONING**
20 **ORDINANCE ARTICLE III, SECTION 3.10 TO PERMIT THE REDUCTION OF ROAD FRONT SETBACK FROM**
21 **50 FT TO 40 FT TO ALLOW FOR THE CONSTRUCTION OF A REPLACEMENT HOME. 108 LAKE AVE; ZONE**
22 **RS W/SHORELINES OVERLAY; MICHAEL O. HADDEN**

23 Michael Hadden presented the merits of his case.

24 Mr. Hadden said that the current home has two existing non-conformities; the western portion hangs
25 over the property line of Mr. Neirendorf by about 10 inches, and it currently only sits back from the
26 centerline of the existing road approximately 40 ft. He would like to shift the home to the east, more
27 towards the center of the property, in order to fix the non-conformity on the westerly side. However,
28 he is unable to fix the non-conformity of the road setback due to the grade of the site and the nature of
29 Lake Ave.

30 Chairman Simpson asked and Mr. Hadden explained that there are two surveys submitted with the
31 application as the first one he submitted was not stamped and then he sent in a copy of the stamped
32 survey.

33 Mr. Hadden said that this is a project that he has spent the last year working on due to the challenges
34 with the site.

35 Chairman Simpson asked Mr. Hadden to go over his application for a Variance request. Mr. Hadden
36 explained that the reason for the Variance is for the encroachment on the front setback. Granting the
37 Variance would not be contrary to the public's interest because it does not alter the essential character
38 of the neighborhood, nor will it threaten the public health, safety, or welfare. He thinks that it will
39 enhance safety along Lake Ave as it will create off street parking and a turnaround area at the end of the
40 driveway. It will also fix an existing encroachment on the neighbor's property.

41 Mr. Hadden said that he thinks the second Variance requirement goes along with the first one. If the
42 Variance were granted, the spirit of the Ordinance would be observed for all the same reasons as for
43 question one.

44 Mr. Hadden said that granting the Variance would do substantial justice because the benefit of the
45 application is not outweighed by any harm to the general public; it is creating a safer operation at the
46 end of the day.

47 Mr. Hadden said that if the Variance were granted, the values of the surrounding properties would not
48 be diminished because it will enhance the neighborhood. They will be replacing a three-season home
49 that is in serious non-conformance with a four-season new construction home that will enhance the
50 value.

51 Chairman Simpson said that the Board only has four members for this meeting and Mr. Hadden needs to
52 get three votes in favor of the application in order for it to be approved. Mr. Hadden said that he would
53 like to proceed with presenting his case.

54 Mr. Hadden said that regarding unnecessary hardship, no fair and substantial relationship exists
55 between the general public purposes of the Ordinance provision and the specific application of that
56 provision to the property because the existing home currently encroaches on two setbacks, the westerly
57 setback and the Lake Ave setback. The topography of the existing site will allow for easy rectification of
58 the westerly side setback, but not the front setback. The front setback of the existing home is exactly
59 the same as what he is proposing and then he will be fixing the westerly setback. They will also have
60 safer access off and onto Lake Ave and the parking situation will be made better. He thinks that it is
61 reasonable and will not alter the essential character of the neighborhood. He thinks that there has been
62 a lot of excitement from the neighbors and that there were some letters of support from the neighbors.

63 Mr. Schneider asked and Mr. Hadden confirmed that the new house will not be any closer to the road
64 than the exiting house, it is just being moved sideways and eliminating the encroachment on the
65 neighbor's property.

66 Ms. Gage said that she sent the plan out to the Fire Chief, Police Chief, and Highway Director and that
67 she has received a comment from the Police Chief. The concern from Police Chief Cahill is that there are
68 currently about one and a half parking spots carved into the lot that is quite steep going up and that

69 during construction there needs to be a plan to keep all the construction vehicles off the road. She has
70 spoken to Mr. Hadden regarding this issue and he emailed a plan that she has forwarded to the Board.
71 When the CZC is issued, it will include that the Police and Highway Departments will need to be
72 contacted and that construction vehicles will need to be off the road.

73 Ms. Gage said that she is concerned about the slope of the lot and Mr. Hadden may need to provide
74 topo lines when he submits his permit to ensure that there is not going to be a site disturbance of 1000
75 sq ft on slopes greater than 15%.

76 Mr. Schneider said that the parking of construction vehicles is not a Zoning issue. Ms. Gage said that she
77 thinks that the Board should address the parking plan because the parking that is there now is pretty
78 horrendous. Mr. Lyons said that this is not the first time that there has been parking and construction
79 issues on Lake Ave. If there is a plan to deal with the extra construction vehicles, he thinks that will be
80 more than enough. Mr. Schneider said that the problem is that the Town does not seem willing to
81 establish rules for parking on that street and to enforce them; it is not a Zoning issue. Mr. Lyons agreed
82 that this is not a Zoning issue.

83 Chairman Simpson asked and Mr. Hadden confirmed that depending on the size of the vehicle, the
84 existing parking is partially in the road with one of the two parking spots.

85 Chairman Simpson asked and Mr. Hadden said that the existing home is technically one bedroom but
86 they use three rooms as bedrooms. Chairman Simpson asked and Mr. Hadden said that the new home
87 will have three bedrooms. Chairman Simpson asked and Ms. Gage said that for three bedrooms a
88 minimum of two parking spaces is required. Chairman Simpson asked and Mr. Hadden said that the
89 new plan will exceed that requirement.

90 Chairman Simpson asked about the construction layout plan and Mr. Hadden explained it is included as
91 part of the Shoreland Permit as the roadway construction, sediment management and control plans,
92 and temporary impacts to the site were requested by DES. Chairman Simpson asked about a portion of
93 the erosion plan that has a purple line that shows how the equipment will get in and Mr. Hadden
94 explained that it is a temporary roadway that will not be left on the property. Mr. Hadden said that the
95 road will allow construction vehicles to enter and exit the site and remove the material that will need to
96 be excavated out.

97 Chairman Simpson asked why the house cannot be built within the setbacks and be conforming. Mr.
98 Hadden said that the physical house itself does fall within the setback but the house will have a deck
99 that will extend into the setback. He uses a program called Civil 3D that allows him to model the entire
100 site based on the survey and the slope of the site would require a 17 ft deep basement in order to
101 achieve the setback. Pushing the house back would make it encroach on the setback at the back of the
102 property, which would have made the house closer to the lot behind them.

103 Mr. Lyons asked and Mr. Hadden confirmed that the existing structure is 40 ft from the center of the
104 road. Mr. Lyons said that the new structure will basically maintain the status quo. Mr. Schneider said
105 that the structure is much farther from the road than the majority of structures on Lake Ave. Mr.

106 Hadden said that he spent a few months trying to figure out a plan that would not require a Variance,
107 but it was challenging to push the house back far enough to avoid the front setback.

108 Chairman Simpson asked and Mr. Schneider said that looking at the Zoning Ordinance it is possible that
109 the proposal would have qualified for a Special Exception under Section 3.50(b). Chairman Simpson said
110 that it would have to meet the 500 ft requirement. There was further discussion regarding this matter
111 and about the non-conformity of the existing house and proposed house.

112 Vice Chair Claus asked and Mr. Hadden confirmed that the property falls into the 250 ft Shoreland
113 setback and a portion of it falls in the 150 ft Shoreland setback. Vice Chair Claus asked and Mr. Hadden
114 said that he received a Shoreland Permit from the State about 6 months ago and it was submitted with
115 the application.

116 Vice Chair Claus asked and Mr. Hadden said that the retaining walls will not exceed 42 inches and he will
117 have two tiers of retaining walls that will be less than 42 inches apiece.

118 Chairman Simpson asked if there are impervious surface area calculations that were submitted. Mr.
119 Hadden said that all of the surface areas were included in the Shoreland application. Mr. Lyons asked
120 and Mr. Hadden confirmed that this is essentially just a footprint replacement, he is just adding a
121 basement and moving it to the east. Chairman Simpson asked and Mr. Hadden confirmed that he is
122 adding parking as well. Vice Chair Claus asked and Mr. Hadden said that the impervious area is
123 increasing but is still going to be less than the 30% allowed as it will be 29.9%. Mr. Hadden said that he
124 thinks that the existing impervious area is around 20% but as soon as you go over 30% it requires
125 additional runoff management.

126 Mr. Lyons said that he has one letter from the abutter whose property the existing house encroaches on
127 and asked if there are any other letters from abutters. Chairman Simpson said that he believes another
128 letter in favor of the proposal was included with the agenda.

129 Chairman Simpson asked and there were no additional questions from the Board for Mr. Hadden.

130 Kent Nierendorf, 106 Lake Ave, said that he wrote a letter supporting Mr. Hadden in this endeavor.
131 They are excited about the upgrade to the neighborhood and the character of the house as well as the
132 distribution of housing on the lots. He knows that Mr. Hadden has put a lot of thought into this
133 proposal. That corner of Lake Ave is treacherous and he feels for Mr. Hadden on those challenges and is
134 happy that Mr. Hadden can improve the parking conditions on the property, especially for the safety of
135 his family. Mr. Nierendorf said that he is also willing to talk to Mr. Hadden about creating a parking
136 space or two for construction workers if needed.

137 Chairman Simpson asked and there were no additional questions or comments from or for the applicant
138 so he closed the public input portion of the meeting.

139 Mr. Schneider said that this proposal looks good to him and certainly solves what could be a future deed
140 issue if nothing else. The house will not be any closer to Lake Ave and is farther from Lake Ave than the

141 majority of the houses on the road. The proposal meets the criteria and the neighbors are in favor of it
142 so he thinks that the request is reasonable and should be approved.

143 Mr. Lyons agreed with Mr. Schneider as he thinks that this proposal has been worked out very carefully
144 and this seems to be an improvement and should be approved.

145 Vice Chair Claus said that he does think that this is an improvement but worries about the steepness of
146 the site and asked if there is an erosion control plan because it exceeds the 15% slope as there are areas
147 that it is over 25%. Chairman Simpson asked and Vice Chair Claus said that he does not know if it
148 requires another Variance or just a condition that an erosion control plan is required. Ms. Gage said
149 that on the CZC application, Mr. Hadden checked "no" that he will not have any construction on a slope
150 that exceeds 25% and has an elevation of more than 20 ft and also checked "no" that he will not have if
151 1,000 sq ft of land disturbed on a slope greater than 15%. Mr. Schneider said that the approval could be
152 conditioned that the applicant will comply with Section 3.40(n) of the Ordinance.

153 Chairman Simpson said that he would also like a condition to ensure that the conditions of the
154 Ordinance regarding impervious surface also be met. He would also like to have a condition that the
155 retaining walls do not exceed 42 inches. He would also like a condition that what has been presented is
156 what is going to be built and if Mr. Hadden wants to change something then he has to come before the
157 Board again. Mr. Schneider asked and Chairman Simpson said that he wants to have a condition
158 regarding the impervious surface area as reflected in the Shoreland Permit. Mr. Schneider said that the
159 Board always conditions that an applicant comply with provisions of Shoreland Permits so that should
160 cover it. Chairman Simpson said that some of those things also fall under the Town's Zoning Regulations
161 and he would like to capture those. Mr. Schneider said that he does not understand why because the
162 construction complies with the Shoreland Permit and number three of the Permit says that no more
163 than 29.9% of the area of the lot within the protected Shoreland should be covered by impervious
164 surfaces. There was further discussion regarding this matter.

165 Ms. Gage asked if Chairman Simpson would like to make a condition that the plans that have been
166 presented will be what is built. Chairman Simpson confirmed that he would like the approval to be
167 contingent upon the application that has been received.

168 Mr. Lyons said that the State has jurisdiction and so does the Town and it makes sense to make sure the
169 Town's Regulations are followed. Mr. Schneider said that he believes that it is the Zoning
170 Administrator's job to ensure these are followed and that the CZC follows the Zoning Ordinance. Mr.
171 Lyons said that Ms. Gage works for the Town of Sunapee, not the State. The idea is to have the Town of
172 Sunapee make sure that the impervious surface statute for the Town is enforced. Chairman Simpson
173 said that he is just trying to tighten up the approval because people have presented things to the Board
174 and then built something else. He would like there to be conditions that the plans are referred to, that
175 the impervious surface is flagged, that the retaining wall is compliant, and that the steepness of the lot
176 is complied with.

177 Mr. Schneider made a motion to approve ZBA 20-06: Parcel ID: 0125-0073-0000; a Variance is requested
178 from Article III, Section 3.10 to permit the reduction of road front setback from 50 ft to 40 ft to allow for

the construction of a replacement home; location, 108 Lake Ave; subject to the following conditions: 1. that the construction follow the plans submitted with the application to the Board; 2. that the conditions of Shoreland Impact Permit 2020-00267 are complied with; 3. that Section 3.40 is complied with; and 4. that the project is in compliance with Section 3.20 regarding the permitted impervious surface in the Shoreland area. Mr. Lyons seconded the motion. Chairman Simpson said that he sees this lot as a hardship with the steep grade. He thinks that with the improvements to the property, such as the access from the road, the application meets the intent and the Spirit of the Ordinance. Mr. Lyons agreed that this merits a hardship exemption, he is unaware of any other properties on Lake Ave where one house is on someone else's land and to him that is a hardship. Chairman Simpson said that he thinks it meets the hardship criteria due to the physical character of the land, not the encroachment. A roll call vote was taken: Vice Chair Claus voted yes, Mr. Lyons voted yes, Mr. Schneider voted yes, and Chairman Simpson voted yes; the motion passed unanimously.

MINUTES

Changes to the minutes from October 1, 2020: There were no changes to the minutes.

Mr. Schneider made a motion to approve the minutes of October 1, 2020 meeting minutes as written. Mr. Lyons seconded the motion. A roll call vote was taken: Vice Chair Claus voted yes, Mr. Schneider voted yes, Mr. Lyons voted yes, and Chairman Simpson voted yes. The motion passed unanimously.

OTHER BUSINESS

There was a discussion with Ms. Silverstein regarding her thoughts regarding the hearing and becoming an alternate member.

Ms. Gage said that she has received a letter from Cathy Shea and Brad Weiss withdrawing their fifth Variance request. Also, there was a letter from the Lake Sunapee Protective Association regarding their concerns about the White Shutters cases that she included in the Board's packets.

Mr. Schneider made a motion to accept the withdrawal of Variance #5 of Case ZBA 20-04: Parcel ID: 0125-0011-0000; 38 Jobs Creek Rd; Cathleen A Shea and Bradley M Weiss; for maximum surface coverage within the Shoreline Overlay District of 42.9%. Vice Chair Claus seconded the motion. Mr. Lyons asked what this exercise entitles the Board to and Chairman Simpson means that the case is not pending on the Board's calendar anymore. Mr. Lyons said that the Board has granted two out of five Variances. Chairman Simpson said that one of the conditions for one of the Variances that was approved was that it was based on the plans presented. There was further discussion regarding this matter. A roll call vote was taken: Vice Chair Claus voted yes, Mr. Lyons voted yes, Mr. Schneider voted yes, and Chairman Simpson voted yes; the motion passed unanimously.

There was a brief discussion regarding Zoning Amendments and having a meeting with the Planning Board about them.

Mr. Schneider made a motion to adjourn the meeting at 7:18 pm. Mr. Lyons seconded the motion. The motion passed unanimously.

215 Respectfully submitted,

216 Melissa Pollari