

1 **TOWN OF SUNNAPEE**

2 **ZONING BOARD**

3 **SEPTEMBER 1, 2022**

4 **Chairman Claus called the meeting to order at 6:36 PM.**

5 **MEMBERS PRESENT IN THE MEETING ROOM:** Michael Jewczyn, Chairman Jeff Claus, David Andrews,
6 Jamie Silverstein, David Munn, Pierre Lessard.

7 **MEMBERS PRESENT VIA ZOOM:** None

8 **ALSO PRESENT IN THE MEETING ROOM:** Shannon Martinez, Town Manager.

9 **PRESENT VIA ZOOM:**

10 **Chairman Claus made a motion to sit in David Andrews as an acting member of the Board because Jim**
11 **Lyons was absent. Ms. Silverstein seconded the motion. The motion was passed unanimously.**

12 Chairman Claus decided to shift the agenda and start with the Request for Rehearing Case because Ms.
13 Silverstein had a short period of time to attend the meeting.

14 **OTHER BUSINESS:** Request for Rehearing

15 **CASE 22-14 PARCEL ID: 0133-0104-0000 APPEAL OF PETER & ELIZABETH HOEKSTRA 25 MAPLE STREET**
16 **PETER & ELIZABETH HOEKSTRA**

17 Chairman Claus said that he had gone back to the minutes and the video of that meeting and had found
18 out that there was little deliberation amongst the Board members that voted to deny the appeal and
19 therefore he felt he needed to go into a motion.

20 **Chairman Claus made a motion to deny the Request for Rehearing and find that the Boards**
21 **reasonable decision on July 19 will not change. The Board will provide the applicant with a written**
22 **reason for the Boards decision on July 19 that was based on Section 4.2 of the Zoning Ordinance.**

23 **Ms. Silverstein seconded the motion.**

24 Mr. Andrews asked for clarification and Chairman Claus pointed out that this is a public meeting in
25 oppose to public hearing and they will not engage with the applicant nor the public and the applicants
26 are not present at this meeting to try to appeal the case.

27 Ms. Silverstein explained to Mr. Andrews that on the July 19 hearing the Board had denied the use of a
28 travel trailer as a short-term rental unit because according to the Ordinance that is not a permitted use
29 and then the applicants have asked to appeal that decision and now Chairman Claus made a motion to
30 not allow them a rehearing because the Boards opinion regarding to the case has not changed.

31 Mr. Andrews asked if the applicants had submitted any new information about the case to which
32 Chairman Claus answered that they have only send a letter of appeal without new information.

33 **The motion was passed unanimously.**

Chairman Claus made a motion to sit in Pierre Lessard as an acting member of the Board because Jamie Silverstein was leaving the meeting. Mr. Andrews seconded the motion. The motion was passed unanimously.

Chairman Claus announced another change in the order of the agenda about cases #22-13 and 22-16 which are of the same property and decided to hear case #22-16 first.

NEW CASE

CASE #22-16 PARCEL ID: 0126-0021-0000 SEEKING APPROVAL OF A VARIANCE FROM ARTICLE III, SECTION 3.10 FOR THE RELOCATION AND REPLACEMENT OF A LEGAL, NON-CONFORMING BOATHOUSE, TO A LOCATION THAT CONTINUES TO OCCUPY PORTIONS OF THE APPLICABLE SIDE SETBACKS (15'), BUT THAT ADDRESSES AN ENCROACHMENT OVER THE EXTENSION OF THE NORTHERLY PROPERTY BOUNDARY. THE NORTHERLY BOUNDARY, THE EXISTING ENCROACHMENT WOULD BE RESOLVED. THE SOUTHERLY BOUNDARY WOULD REMAIN THE SAME, DUE TO A REDUCTION IN THE ROOF OVERHANG DIMENSIONS. 111 GARNET HILL ROAD RURAL RESIDENTIAL ZONE LEANNE K. PORTER REVOCABLE TRUST

Greg Grigsby from Gradient Landscape Architects presented his clients Leanne and John Porter, his partner Chris Kessler and Ari Pollack from GCG Law and said that they did not anticipate needing a variance for this project prior to July 19 hearing for their other case. He said that wetlands and shorelands applications have been submitted to the Town and the State on April 5, 2022, and the Special Exception application was submitted to the Town on May 9 of this year as well. Prior to that they had gathered other permits and typically would have obtained these permits prior to applying for the variance had they known that they would need a variance. They also checked with the Division of Historic Recourses to make sure that no historical buildings or properties are impacted, and the project got approved on January 13. The Shoreland Permit was issued by DES on May 2, 2022, and to obtain a Special Exception they had needed Conservation Commission Approval which they got on May 4, 2022. On July 1 NH DES had approved their Wetlands Permit and lastly, The US Army Corps of Engineers had reviewed and approved it on July 2. He described the property as a waterfront lot on about 0.164 acres and it has about 83 ½ feet of frontage along the reference line. The existing boathouse on it is 30 ft 4 inch deep and 48 ft 4 inch wide and currently houses four boats and has been in place long before the rules and regulations to the extent that it shares a crib with the abutting boathouse to the north closely located with each other. There is a shoreland impact associated with it with the currently existing conditions on the above portion of the plan were over 70% impervious area on the property. In the plan below he showed the difference with the existing and the proposed plan and that it drops it to about 35-40% of impervious area. The proposal seeks to create parking area and pervious walkway in accordance with EMV 1408.5 (J). The diagram showed how they are improving the boathouse on all sides of the structure and their proposal seeks to move the boathouse off of the piers or the crib shared with the boathouse to the north and in doing so they would need to slide the boathouse 4 ft 7 inch to the west and then also slide the boathouse 11 ½ inch to the south and that gets them off the crib and also improves the encroachment beyond the imaginary extension of the neighbor's property line into the lake which DES uses as one of the criteria to determine whether or not it is a non-conforming structure. Once the boathouse would move, the proposed encroachment area would be 11 ¼ inch onto the neighbor property line and to the neighbor to the south and west would be 8 ft 5 inch and 8 ft 2 ½ inch to the closest point. He said the volume and the footprint of the walls is going to be the same, but the

76 overhangs are going to be significantly reduced to the point that 330 sq ft of roof area are lost and that
77 allows them to move the boathouse to the south. That way they eliminate the trespass also improve the
78 setback issue on both sides. They have also worked together with their abutters to the south and to the
79 north and had their approval for the proposal. He further showed how the place is going to look like
80 once it is set and done and explained that by sliding the building, they are going to eliminate the moat
81 which is not only a safety hazard, but it also gives no opportunity to create an area where they can
82 infiltrate storm water, so they have basically restored the water buffer there and improved the
83 vegetation. The tree cutting application had been filed as well as the land disturbance bond permit.

84 Mr. Pollack added that the oddity of the application is that they are asking for permission to have
85 encroachment that is less than what already exists now and what is already a legal non-conformity. They
86 are doing that because the location of the boathouse is shifting but at the same time, they are coming
87 away from one boundary and moving away from the other. They are asking for a permission to continue
88 the encroachment into that side setback but to a lesser extent that exists today. It is the path of least
89 resistance to ask for this relief and then move to the special exception application.

90 Mr. Lessard asked if it is a fair statement that the variance request is talking about the north-south
91 movement and the special exception is east-west and they are all tied together to which Mr. Pollack
92 answered affirmative.

93 Chairman Claus added that typically they would have to get a variance for each side setback, and the
94 Board will address that when they make their decision.

95 Mr. Jewczyn asked if the boathouse is moving on water to which the answer was that it is not
96 completely moving on water so there are 32 sq ft that are currently landward of the reference line and
97 when they are done with it, there are going to be 129 sq ft landward of the reference line.

98 Mr. Andrews asked if they are going to have to dig down to move the boathouse and the answer was
99 affirmative and that DES had approved it.

100 Holly Davidson and her husband, the property owners on the south side via ZOOM asked why the
101 measurements of the property line to the boat house 8 ft are now when they were 11 ft before. They
102 also wanted to know the overhang dimensions of the building to the property line.

103 Mr. Grigsby said that based on the survey that they had and the dimensions that they have pulled off
104 from the roof line and not from the footprint of the building they had 8 ½ ft as a worst-case scenario and
105 because they have reduced the overhang, it is going to be a negligible amount of difference there. So,
106 the actual roof line and what is closest to their property is going to be 3 inches further. The overhang
107 was 11 ft existing and 10 ft on the proposed plan.

108 Chairman Claus went into deliberative session since there were no other questions and comments.

109 Mr. Andrews stated that to him anything that is reducing a non-conformity is a good thing for the lake
110 and thinks that what is being proposed is beneficial not just for the family but for the lake and the
111 neighbors as well.

112 Chairman Claus referred said that they have to apply the project to the five criteria whether or not they
113 like the project and when he weighs this proposal to the five criteria especially with the section of the
114 Ordinance that prevents the overcrowding on the land, he thinks that it is overcrowding on the land

115 because they are reconstructing a boathouse that is taking up almost the entire length of the lakefront
116 of the property.

117 Mr. Andrews said that if they are reconstructing the boathouse and reducing the non-conformity that
118 seems to be a reasonable decision.

119 Mr. Jewczyn said that he was against it first because it was an encroachment putting it into the shore,
120 but he does not think that DES or the Town of Sunapee have the intent of people losing their
121 boathouses. The other thing is that they are making the tough situation better with getting less non-
122 conformity, there is an effort being made to handle the stormwater which he thinks is a bigger concern
123 because that is adding nutrients to the water. So that reversed his feeling, and he is inclined to allow it
124 even though it runs contrary to the whole idea of the encroachment to the land.

125 Mr. Lessard said that he agrees with both Mr. Andrews and Mr. Jewczyn because it is environmentally
126 sound, it is beneficial to the lake and the property, it eliminates encroachment The spirit of the
127 Ordinance is all about protecting the recourses of the properties, the land, and the lake. They are a little
128 bit in the setback but that will be discussed in the next case. In terms of the value to the properties
129 surrounding it gives them a better view to the lake because they are moving the boathouse and it looks
130 better and more attractive. Regarding to the hardship he said that if they do not do this, they will still
131 have the security issue with the moat.

132 Mr. Munn said that because of the existing building the encroachment into the two 15-foot setbacks
133 cannot be met.

134 Mr. Pollack asked to make a comment and Chairman Claus went to public session.

135 Mr. Pollack commented again that the oddity here is that these encroachments are already existing, and
136 he understands that they are looking at the criteria and the special condition of the property, but they
137 are trying to remedy an encroachment across the property line onto the neighbor's lot. At the same
138 time as the ability to give back some of the municipal setback on both sides of the structure. In terms of
139 regulatory authority, it is the town, or the state and the state have already weighed in and approved the
140 project presented to the Board.

141 Chairman Claus added that regardless of if they feel that this is the better solution, they need to decide
142 if they will allow these things to continue because they think they are good or weigh them against the
143 five criteria.

144 Mr. Andrews asked why they are applying for a variance if they are arguing that the state have already
145 approved the project and it is not under the Boards jurisdiction.

146 Mr. Pollack explained that when they had submitted the special exception application, the staff had told
147 them that they would need a variance as well.

148 Mr. Grigsby added that to be accurate, this building currently does fall under the Boards jurisdiction.

149 Chairman Claus went back into deliberative session.

150 **Mr. Lessard made a motion to approve Case #22-16 Parcel ID: 0126-0021-0000 Seeking approval of a**
151 **Variance from Article III, Section 3.10 for the relocation and replacement of a legal, non-conforming**
152 **boathouse, to a location that continues to occupy portions of the applicable side setbacks (15') per**

proposed drawings that were submitted on August 1, 2022, but that addresses an encroachment over the extension of the northerly property boundary. The northerly boundary, the existing encroachment would be resolved. The southerly boundary would remain the same, due to a reduction in the roof overhang dimensions. 111 Garnet Hill Road Rural Residential Zone Leanne K. Porter Revocable Trust

Mr. Andrews seconded the motion.

The motion passed with 4 votes for (Michael Jewczyn, David Andrews, Pierre Lessard, David Munn), and 1 vote against (Jeff Claus).

Chairman Claus announced the next case.

CONTINUED

CASE #22-13 PARCEL ID: 0126-0021-0000 SEEKING APPROVAL OF A SPECIAL EXCEPTION FROM ARTICLE III, SECTION 3.50(A) TO DEMO & REPLACE A LEGAL NON-CONFORMING 4 SLIP BOATHOUSE 30'-4" X 48'04" LONG WITH A NEW 3 SLIP BOATHOUSE. THE NEW BOATHOUSE WILL BE LOCATED 4' 7" MORE INLAND AND 111/4" SOUTHWARD FOR REASON OUTLINED ON APPLICATION. 111 GARNET HILL ROAD RURAL RESIDENTIAL ZONE LEANNE K. PORTER REVOCABLE TRUST

Mr. Grigsby presented the case and went through the application and the criteria.

Mr. Pollack summarized that Section 3.50 (A) of the Ordinance is clear on the special exceptions for boathouses and their projects fulfills the criteria and they have all the needed permits and recommendations.

Chairman Claus went into deliberative session since there were no other questions and comments.

The Board agreed that the project meets the five criteria and is consistent with the Master Plan and the Ordinance.

Mr. Jewczyn made a motion to approve Case #22-13 Parcel ID: 0126-0021-0000 Seeking approval of a Special Exception from Article III, Section 3.50(A) to demo & replace a legal non-conforming 4 slip boathouse 30'-4" x 48'04" long with a new 3 slip boathouse. The new boathouse will be located 4' 7" more inland and 111/4" southward for reason outlined on application. 111 Garnet Hill Road Rural Residential Zone Leanne K. Porter Revocable Trust

Mr. Andrews seconded the motion.

The motion was voted in favor unanimously.

Chairman Claus announced the next case.

NEW CASE

CASE 22-17 PARCEL ID: 0120-0013-0000 SEEKING A VARIANCE FROM ARTICLE III, SECTION 3.40 (J) TO CONSTRUCT A RETAINING WALL THAT IS INSIDE THE BUILDING SETBACK LINE AND HIGHER THAN 42". 49 FERNWOOD POINT ROAD STEVEN R. JENKINS 2014 REVOCABLE TRUST

Mr. Jenkins was the case representative via ZOOM.

187 Chairman Claus concluded that the information presented on the application were not clear and
188 proposed for this case to be continued due to the lack of information.

189 **Chairman Claus made a motion to continue Case #22-17 Parcel ID: 0120-0013-0000 for the applicant to**
190 **provide more information showing the location of the proposed walls and proximity of setbacks.**

191 **Mr. Lessard seconded the motion.**

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

193 MISCELLANEOUS: Review Minutes from Previous Meeting(s).

194 Mr. Jewczyn reviewed March 3, 2022, Minutes and pointed out that the grammar on the sentence on
195 Line 4 is wrong but there is no need for changes. Line 23 the word than to be replaced with then. Line 36
196 the word listened to be replaced with heard. Line 60 should start with Mr. Bonin's argument was. Line
197 70 the word points to be replaced with pointed out. Line 71 should have the adverb a between not
198 expansion. Line 80 should have the helper verb had before the word never. Line 87 should have the
199 helper adverb would have before the word had. Line 95 to 97 was not clear as to what it means. Line
200 161 the word on to be replaced with in and the sentence should end with the word detail. Line 176 the
201 word in to be replaced with to the. He also reviewed April 7, 2022, Minutes and did not have any
202 comments or concerns.

203 Chairman Claus reviewed May 5, 2022, Minutes and pointed out that on the section MEMBERS PRESENT
204 VIA ZOOM: should be "None". For December 2, 2021, Minutes he recommended that on Line 107 the
205 word etcetera should be taken off. Line 146 the word must be replaced with must. Line 159 the word
206 that to be replaced with this. Line 254 should be Chairman Simpson not Chairman White. He also
207 reviewed August 4, 2022, Minutes and proposed that Line 58-60 should be: whether the use as
208 proposed falls within the Zoning definition of a tourist home and whether that was a change of use from
209 the previous use. Line 64 instead of peoples should be people. Line 76 a in front of the word homes to
210 be removed. Line 82 the words them to view before the words a site review to be removed. Line 90 the
211 word about after the word discussing to be removed. Line 146 should be point instead of part. Line 176
212 this proposed use falls under the Zoning definitions. Line 180 after the word property should be the
213 word in instead of at. Line 186 the word agreed to be replaced with aggrieved.

214 Mr. Munn reviewed June 2, 2022, Minutes and did not have any comments or concerns.

215 **Chairman Claus made a motion to approve the Minutes of Meeting as amended for December 2, 2021,**
216 **March 3, April 7, May 5, June 2, and August 4, 2022. Mr. Andrews seconded the motion. The motion**
217 **was passed unanimously.**

218 **Mr. Lessard made a motion to adjourn the meeting at 8:44PM. Mr. Andrews seconded the motion.**
219 **The motion was passed unanimously.**

220 Respectfully submitted

221 Rajmonda Selimi