

1 **TOWN OF SUNNAPEE**

2 **ZONING BOARD**

3 **NOVEMBER 3, 2022**

4 **Chairman Claus called the meeting to order at 6:31 PM.**

5 **MEMBERS PRESENT IN THE MEETING ROOM:** Michael Jewczyn, Chairman Jeff Claus, Jim Lyons, Pierre
6 Lessard.

7 **MEMBERS PRESENT VIA ZOOM:** Jamie Silverstein

8 **ALSO PRESENT IN THE MEETING ROOM:** Shannon Martinez-Town Manager, Renee Theall, Andrea Cass.

9 **PRESENT VIA ZOOM:**

10 **Chairman Claus made a motion to sit in Pierre Lessard as an acting member of the Board, because**
11 **there is an absent member.**

12 **Mr. Lyons seconded the motion.**

13 **The motion was passed unanimously. 4-0.**

14 **NEW CASE**

15 **CASE #22-18 PARCEL ID: 0118-0059-0000 SEEKING APPROVAL OF A SPECIAL EXCEPTION FOR A**
16 **TOURIST HOME UNDER ARTICLE IV, 4.10 PERMITTED USES – ALL DISTRICTS. RURAL RESIDENTIAL ZONE**
17 **52 BURMA RD JOHN P. MCMAHON & SUZANNE GRAVES MCMAHON**

18 John and Suzanne McMahon are asking for a special exception for a tourist home. They have been
19 renting their home for 27 years, in order to pay their taxes and insurance. They reside in Cambridge but
20 are in Sunapee 120 days, which falls under owner-occupied definition. Their long-term plans are to be
21 full-time residents. They rent their home via Airbnb only to families, adults over 25 years of age, and
22 couples. She said that there have been some rumors in their community that she was trying to be
23 sneaky and slip some things in order to get grandfathered in under the short-term rental. She just wants
24 to make things right because the town had permitted this ability to have exemptions and in the rural
25 residential area, she thinks that they are the first ones.

26 Ms. Silverstein asked how many rooms are in the house. She also asked how they see this as being a
27 benefit to the town.

28 Ms. McMahon answered that there are 3 bedrooms from which they only use 2, 2 beds, a living
29 room/dining room area, and a kitchen. They rent to a maximum of six adults. The second answer was
30 that since there are a lot of rentals in the area, this benefits in a way that people that are coming to the
31 town spend money, and it also helps her, and her husband, pay their taxes and insurance.

32 Mr. Jewczyn asked how do they know that there are plenty of rentals in the area. He also asked if they
33 are prepared to tell them who is renting in the area, since they have presented in their case that there
34 are many people in the area who rent the same way as they do.

35 Ms. McMahon answered that she counted them and there are 17 rentals and that she is prepared to ask
36 them to come forward.

37 Mr. McMahon added that it would be easy to find out looking at these different rental agencies. He had
38 a problem with telling the board/government that these people are doing wrong things, as it is a difficult
39 position to be in.

40 Chairman Claus asked the applicants if they are going to use the information provided about other
41 people renting in the area as part of their case.

42 Ms. McMahon answered it is not her intention to do so and what they are currently doing is not in
43 alignment with the ordinance, so they would like to have a special exception to do that.

44 Chairman Claus stated that if they are not using that as part of their case then they can disregard.

45 Chairman Claus told the applicants that the key with the special exception is the five criteria and ask her
46 to go through her written answers to the 5 criteria for the special exception.

47 Ms. McMahon started with that they are owner-occupied, they are there 120 days a year. This particular
48 year they were there early May thru early September and will be there during long weekends and
49 holidays.

50 Mc. McMahon addressed criteria one and stated that they have one-third an acre on Perkins Pond and
51 two-thirds across the road, so a full acre combined, separate parcels. They have 125 feet of frontage,
52 and there several other properties on the street that are also used as seasonal rentals. She said that it is
53 reasonable that they have the same usage because they only rent to families, only 6 people. She asked if
54 there were any questions.

55 There were no questions.

56 Ms. McMahon went on to criteria two and stated that there is adequate and safe highway access to the
57 site, Burma road is an emergency access road and plowed and planed by the town. There is adequate off
58 street parking, they have about six spots in the driveway and across the street they have two-thirds of
59 an acre and people can park there. There is no parking on the street.

60 Mr. Jewczyn asked how many cars are usually parked since they said that they have six parking spots.
61 The respondents answered there were two sometimes three cars. He also asked about the condition of
62 the roads during the mud season. Ms. McMahon answered that the roads are not that bad during the
63 mud season where they live.

64 Chairman Claus asked for clarification about the set-up of the six parking spaces on their property. The
65 description noted the property has two spaces at the garage and there is a L-shaped driveway which can
66 accommodate the remaining vehicles. He then stated for a 3-bedroom they only need 2 parking spaces.

67 Mr. Lyons asked what the other two structures on the property are for. Ms. McMahon answered there is
68 an actual two car garage. The other garage, which is built into the wall, is not being used at all and needs
69 to be taken down.

70 Mr. Jewczyn asked about the garage that needs to be demolished, as it pertains to criteria number four.
71 The applicants came to the conclusion there is a potential hazard on the property because the spare
72 garage is structurally compromised. The structurally compromised garage is inaccessible, locked, and
73 not in use. Mr. Jewczyn asked whether there are specific things in the rental agreement stating one
74 absolutely cannot use these buildings or go anywhere near them because it's hazardous. Ms. McMahon
75 answered that it is within the written household rules of Airbnb.

76 Ms. Silverstein said that one of the conditions if the special exception is approved could be a site plan
77 review by the Planning Board. She added that she interprets this criterion as how this use relates to the
78 neighborhood. It is private property and the town does not have any liability and the board needs to be
79 focused on the ordinance. The town's Fire Chief and a building inspector are responsible for a building
80 that is considered a hazard and that is outside their purview as a board.

81 Chairman Claus agreed that they need to look at the proposed use of the property. Chairman Claus then
82 directed it back to the criteria and went on to the third one and Ms. McMahon stated that they are on
83 town sewer. They have reviewed number four and not the last one was the spirit of the ordinance.

84 Ms. McMahon then stated to criteria five that they believe it is in spirit with the ordinance and Master
85 Plan in that it allows people coming to the lovely Sunapee community and get to know the area, and
86 hopefully to return time and again.

87 Chairman Claus then asked if Ms. McMahon wanted to read for record the other criteria that they had,
88 Ms. McMahon then stated how they rent to six adults. We do not place a burden on any of the town
89 beaches as they are a waterfront property. Nor do they place an undue burden on the town garbage
90 disposal system because a family has the same amount of garbage. They do not allow renters to bring in
91 boats, dogs, or anything else that is undesirable. They successfully screen those who are appropriate to
92 rent our home and they have been sited exemplars for tourist rentals from neighbors.

93 Chairman Claus asked how they handle garbage, Ms. McMahon stated that they show up within 48hrs.
94 and take care of it and ensure that the home is taken care of.

95 Chairman Claus asked whether there are comment from the public.

96 Lynn Arnold brought up the question about an owner-occupied property and tourist home and was
97 inquiring about clarification on the definitions. The members discussed it briefly.

98 Robin Saunders raised the issue that she lives in an emergency access lane which is a private road with
99 temporary designation by which the town maintains. It is a narrow road and doesn't need additional
100 traffic. She brought up a comment regarding the neighborhood, where she expects it to be peaceful and
101 quiet and she does not expect nor want to have businesses next door. Thus, she asked the board
102 members not to allow businesses, because once you allow one, then you have to allow others, and this
103 will change the fabric of the town.

104 Mr. McMahon added they have not been doing anything different since living in the community. That
105 they are a respectful family and never caused any trouble.

106 **Chairman Claus went into deliberative session.**

107 Chairman Claus asked if there are any problems regarding the 5 criteria.

108 Mr. Lessard has a problem with the special exception of the case. He raises the question of what is the
109 purpose of becoming a tourist home. There is nothing in the ordinance that says you have to be a tourist
110 home to rent your property.

111 Chairman Claus answered the reason might be because their ordinance is of permitted use and anything
112 not mentioned there you are not allowed to do, and they want it to be right and legal.

113 Chairman Claus asked Mr. Lessard if there were any of the five criteria that they don't meet. Mr. Lessard
114 reviewed them and was okay with the first three, but did not know about the spirit of the ordinance.

115 Mr. Lyons mentions that the special exception goes with the property, not with the owners. He has a
116 problem with the extra people coming into the town due to safety concerns and is concerned that the
117 special exception does not allow that.

118 All members of the board discuss the criteria. The definition of transient and rental was discussed.
119 Chairman Claus brought up the road classification and stated that more information on that would be
120 beneficial. The hazardous structure was brought up.

121 Ms. Silverstein said that she would move forward on a condition of a site plan review by the Planning
122 Board and concluded that the site plan is on an appropriate location for the proposed use, there is an
123 adequate parking, sewage disposal through the town, and she does not agree that the hazard needs to
124 be evaluated in terms of the special exception relative to the renters. Number five where the proposed
125 use is consistent with the spirit of the ordinance is where it is challenged. She states that it is a special
126 exception that continues with the property and does not believe the spirit of the ordinance was that a
127 tourist home allows a homeowner to vacate the premises and rent the property.

128 Mr. Lessard stated with the ordinance that there is no legal way for people to rent their homes in
129 Sunapee.

130 Chairman Claus agreed and mentioned as an idea that a third-party engineer could inspect the property
131 as they do on some construction sites. Mr. Jewczyn was concerned about the safety.

132 **Chairman Claus closed the session.**

133 Chairman Claus noted that they need a condition of a site plan approval by the Planning Board and
134 stated that when they vote, if someone votes to deny, should provide a reason why.

135 **Ms. Silverstein made a motion to deny Case #22-18 Parcel ID: 0118-0059-0000 Seeking approval of a**
136 **Special Exception for a Tourist Home under Article IV, 4.10 Permitted Uses – All Districts. Rural**
137 **Residential Zone 52 Burma Rd John P. McMahon & Suzanne Graves McMahon, recognizing that a**
138 **tourist home is a permitted use, that the selected site is appropriate for the location of the proposed**
139 **use, that there is adequate highway access, adequate method of sewage disposal is available, that**
140 **there is extensive discussion that this proposal will be judgmental, hazardous of injurious to the**
141 **neighborhood, because of the home owners recognition of one of the buildings on site and that the**
142 **proposed use is not consistent with the spirit of the ordinance and the intent of the Master Plan, and**
143 **that they have looked at the tourist home as a owner-occupied, and the applicants have stated that**
144 **they are not on the premises at the time when the transient guests lease the property.**

145 **Mr. Lessard seconded the motion.**

146 **The motion was passed unanimously. 5-0.**

147 Ms. Silverstein said that the applicants have mentioned that they do use the property for 120 days, it is
148 not at the time when they are providing rooms to the transient guests.

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

150 There were no minutes reviewed on this meeting. There was a discussion about how and when they
151 need to review the Minutes and Ms. Cass proposed the board to review the Minutes of Meeting from
152 last meeting, on the beginning of the meeting.

153 OTHER BUSINESS:

154 It was discussed about the procedures of going in and out of deliberative session and other meeting
155 procedures.

156 **Mr. Lessard made a motion to adjourn the meeting at 8:48PM. Ms. Silverstein seconded the motion.**
157 **The motion was passed unanimously. 5-0.**

158 Respectfully submitted

159 Rajmonda Selimi