

1 **TOWN OF SUNNAPEE**

2 **ZONING BOARD**

3 **DECEMBER 1, 2022**

4 **Jamie Silverstein called the meeting to order at 6:30 PM.**

5 **MEMBERS PRESENT IN THE MEETING ROOM:** Pierre Lessard, Jamie Silverstein, David Munn, David  
6 Andrews, Jim Lyons.

7 **MEMBERS PRESENT VIA ZOOM:** None

8 **ALSO PRESENT IN THE MEETING ROOM:** Renee Theall, Andrea Cass.

9 **PRESENT VIA ZOOM:** Scott Hazelton, Dan Cave, Robin Saunders, Suzanne Graves

10 **Ms. Silverstein made a motion to appoint David Andrews and Pierre Lessard as acting member of the**  
11 **Board, because there were members absent.**

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

13 **The motion was passed unanimously.**

14 **NEW CASE**

15 **CASE #22-19 PARCEL ID: 0131-0006-0000 REQUESTING A VARIANCE FROM ARTICLE II, SECTION 2.30 (1)**  
16 **WETLANDS OVERLAY DISTRICT - FOR CONSTRUCTION OF A DECK WITHIN THE 25' WETLAND SETBACK.**  
17 **BRIAN COER 116 LOWER MAIN STREET; VILLAGE RESIDENTIAL ZONE**

18 Brian Coer presented himself and his family who he said had lived in Sunapee for the last six years and  
19 he and his wife Danielle both work as nurses. They have a two-year old son and plan to keep him and  
20 their future children as well as other children that would come for visit safe in their backyard. That is  
21 why they want to build a deck. He mentioned that he does not know much about the building process,  
22 so he had reached out to the town of Sunapee's building inspector at the time and the State of NH and  
23 they have suggested that he reach out to the state and get approval for working along the river and near  
24 the river. Initially the deck was supposed to be 16x16 ft, but the NH DES representatives wanted them to  
25 compromise and they had come up with 12x16 ft. deck. So, the deck is going to be 16 feet along the  
26 garage and 12 feet extending out of the garage. So, that leaves 22 feet from the edge of the deck at the  
27 garage to the river and then 10 feet from the closest point of the deck to the river. They are asking for  
28 relieve from the Zoning Ordinance for 15 feet for the closest part of the deck to the river and then 3 feet  
29 from the edge of the deck to the closest house of the river. They are asking for a variance, since they are  
30 pass 25 feet, or within 25 feet. The whole reason that they are doing this and the reason that they are  
31 determined for 12x16 is to have enough room for children and future children to play safe in an  
32 enclosed area, as the river sometimes is moving really fast. The decks are going to be made by vinyl  
33 decking and vinyl railing which fits esthetically with other houses and the neighborhood. NH DES had  
34 given them a permit for the 12x16 ft. deck in the backyard which is submitted with the application. They  
35 have discussed different locations for the deck, but they were unable to move it due to their home's  
36 configuration on the land. The house is really old, built in the 1800's and the only access to the backyard  
37 is through the garage. They have talked to their neighbor across the street who is not an abutter and she  
38 had felt that the best place for the deck is where they have chosen for it to be. He said their property is

39 unique, it is along Sugar River and the garage blocks the second access to the backyard. Being along the  
40 river means stricter rules for building although there are rules that they have exhausted all of their  
41 avenues to have a safe place for their children to play and hangout. The NH DES had approved their deck  
42 with the agreed 12x16 ft. sides. Granting the variance will allow for their children and future children  
43 and friends of children of Sunapee to being enclosed in a safe space and if they do not have it, they  
44 cannot experience their property to the fullest. They have also considered putting a fence, but that  
45 requires digging a lot more holes and pouring concrete and will be an obstruction of view for the  
46 neighbors, while the deck only has three holes, and two will be within the 25 feet of the river.

47 Ms. Silverstein asked if he had used a licensed survey and the answer was negative. She then asked who  
48 took the measurements of the property that were presented for the case and Mr. Coer said that he did.  
49 She said that they will probably need a licensed survey, so they would get measurements that are  
50 certified. The second question was that he had requested a variance under Section 2.3 (1) Wetlands  
51 Overlay District and asked Ms. Theall if they have the communication that there are wetlands on his  
52 property.

53 Ms. Theall replied that she believed it was due to 25 feet setback from wetlands. She said Mr. Hazelton  
54 had gone out there and that the rock wall along the river designated line as wetlands.

55 Ms. Silverstein said that wetlands are neither designated and added that they are probably not looking  
56 at the right ordinance, but will deal with that later.

57 Mr. Coer went over and read the five criteria from the application.

58 Ms. Silverstein said that the hardship has to be connected to the land and she can appreciate that he  
59 wants his kids to be safe, but that is not a hardship that is recognized by the Zoning Ordinance; they  
60 want him to keep his kids safe, but they have to put that into ordinance. The ordinance really focuses on  
61 hardship, as it relates to why the land is unique or why the parcel is unique and therefore has created a  
62 hardship.

63 Mr. Coer said that his property is unique because it is along the river and that is a hardship, and they do  
64 not have a huge yard or anything like that and one of the major aspects is to keep everything enclosed  
65 for safety.

66 Mr. Andrews said that even if he did not have water, he has a side yard, so there is still a variance issue  
67 with the side yard whether there was water or not.

68 Mr. Lyons asked whether there are other properties that also front the river or is his property the only  
69 one that is on the river on that side of the water.

70 Mr. Coer replied that his property is the only one that close to the water and the uniqueness is the size  
71 of it and the location of it and how much of a river frontage they have there.

72 Mr. Lyons then mentioned other properties near the water there, that are similar to Mr. Coer's property  
73 and added that he thinks that it is not a unique piece of property, rather that it is similar to other  
74 properties that front the Sugar River along that particular section.

75 Mr. Lessard said that he thinks that that would come across with the survey.

76 Ms. Silverstein asked if this is pre-existing non-conforming and what year was the house built.

Mr. Coer answered that it was built in 1800's and that he has a picture of the house from the 1900's, after WW1 with the garage there.

Mr. Munn agreed that the measurements are questionable.

Mr. Andrews asked about the location of the deck moving off of the house, floating, Mr. Coer said that it would then take up the whole backyard. Even with that, it was determined that he would still need the variance because of the distance from the river.

Ms. Silverstein mentioned fencing up to 42" would be fine, Mr. Coer said that they have thought of that as previously mentioned but didn't want to obstruct the view of the river from abutters, and that there would be more holes needed to insert fencing.

Mr. Andrews brought up that the property is a triangle, and most properties are a rectangle or square, and the triangle creates the challenge to fit a deck into the space.

Mr. Coer agreed, and that the hardship is not only the size of the yard but also the shape and how it abuts the river.

Ms. Silverstein added that the survey would help, but they need to also look at the hardship and they all appreciate the consideration, but the hardship has to be tied to the land. Keeping children safe is not a hardship that the ordinance will recognize, it is a given. They cannot give him a variance based on him wanting a place for his children to play on a deck. She said that they have a couple of options: they can either continue the discussion/deliberation, or Mr. Coer could ask for continuance and get a survey and think about the hardship. He cannot change the application unless it is a substantial change but he can come back with a survey for his property. She advised him to work with the town and look at which ordinance is he filing and that she does not think it is 2.3 unless they have wetlands that are recognized.

Mr. Hazelton joined the meeting via ZOOM and was asked from Ms. Theall about the correct filing, because this one was put under Section 2.3 which was the wetland buffer, but they believe it should be under 3.4 (c), the minimum setback of 50 feet from waterbodies. He said that he had followed what they have done historically, similar to the other projects. When they have had the discussion with the contractor, they have informed him that there were wetlands there and that it is identified as part of a wetlands overlay district, but if he wanted to dispute that, he could hire a survey or wetland scientist to delineate that and reduce the size. He said that was their approach for it and from his professional experience he knows that the wetland is closer than the waterbody on the property. The wetland is at the top of the bank of the river and the waterbody is the high-water mark of the Sugar River.

Ms. Silverstein asked if they have that in any official document, a survey, town record for that and the answer from Mr. Hazelton was negative.

Mr. Coer said that when he had gotten his driveway permit, he thinks that there was a wetland permit as well there, but could not remember well.

**Ms. Silverstein made a motion to continue Case #22-19 Parcel ID: 0131-0006-0000 Requesting a Variance from Article II, Section 2.30 (1) Wetlands Overlay District - for construction of a deck within the 25' wetland setback. Brian Coer 116 Lower Main Street; Village Residential Zone. It will be a 90-day continuance scheduled for March, 2023 ZBA Meeting.**

**Mr. Andrews seconded the motion.**

116 **The motion was passed unanimously.**

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

118 The Board started reviewing the November 3, 2022 Minutes of Meeting and Ms. Silverstein asked if the  
119 edited Minutes were published on their website. She mentioned that she had asked Ms. Theall to go  
120 through the audio recordings because the whole motion was not captured. Ms. Silverstein asked if they  
121 have the decision sheet so they could reconcile to the Minutes from the November meeting. She said  
122 that the minutes were wrong when she had looked at them. She went to the line of the motion: there is  
123 extensive discussion that this proposal will be judgmental, and said that that was definitely not what she  
124 had said and she wants to make it right by hearing the audio recording.

125 **Note:** The word judgmental was written in the motion by mistake, instead of the word detrimental.

126 Ms. Theall said that the Minutes are posted but not edited, because the process is that they review the  
127 minutes and state the line and edits and will be kept in December's post. She also added that she does  
128 not have the access there.

129 Ms. Silverstein's concern was the statements of fact that are read into the motion and would like them  
130 captured in the Minutes. She did not think that they have done that, so she wanted to make sure that  
131 they do. She asked Ms. Theall to listen to the audio and transcribe it, so she can go back and reconcile it  
132 to the Minutes.

133 The board agreed to continue reviewing the Minutes on the next meeting.

134 OTHER BUSINESS:

135 Ms. Theall informed the board that they have received an appeal on the case from the November  
136 meeting and they have thirty days to decide if they are going to rehear it or deny it. The thirty days  
137 window does not give them enough time until the January's meeting, so, they have to have another  
138 meeting. They are not going to have public comments, the applicant does not have to come and say  
139 anything, they can sit and listen, and it has to be under the minimum of the right to know of 24 hours'  
140 notice. Because they have received the appeal yesterday, they could not have gotten it on the agenda  
141 for this meeting.

142 The Board decided to schedule the meeting for the appeal on December 20, 2022 at 6:30PM.

143 **Mr. Lyons made a motion to adjourn the meeting at 7:38PM.**

144 **Mr. Munn seconded the motion.**

145 **The motion was passed unanimously.**

146 Respectfully submitted

147 Rajmonda Selimi