

1 **TOWN OF SUNAPEE**

2 **ZONING BOARD**

3 **DECEMBER 3, 2020**

4 At 2:00 PM a public site visit was conducted at 40 Garnet Street. Present: Dan Monette of Fuss and
5 O'Neill; Aaron Simpson Chair; Jeff Claus Vice Chair; Jim Lyons; Nicole Gage Zoning Administrator. The
6 members toured the site and reviewed paper copies of the application. At 2:37 PM Bob Henry alternate
7 arrived. At 2:43 PM the site visit ended.

8 Chairman Simpson called the meeting to order at 6:07 pm and read the Governor's Emergency Order
9 #12 that authorizes the Zoning Board to meet electronically: Due to the State of Emergency declared by
10 the Governor as a result of the COVID-19 pandemic and in accordance with the Governor's Emergency
11 Order #12 pursuant to Executive Order 2020-04, this Board is authorized to meet electronically. The
12 public has access to contemporaneously listen and participate in this meeting through video
13 conferencing at <https://zoom.us/> with Meeting ID 97995371537 and Passcode 705609, or by telephone
14 by calling (929) 205-6099.

15 A roll call of members present was taken.

16 **MEMBERS PRESENT BY VIDEO:** Aaron Simpson, Chair; Jeffrey Claus, Vice Chair; Jim Lyons; Daniel
17 Schneider; Jamie Silverstein, Alternate

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

19 **ALSO PRESENT BY VIDEO:** Matthew Bombaci; Eamon Moran; Tim Zappala; Daniel Monette; Lynn Smith;
20 Craig Goodwin; Jonathan Clark; Clayton Platt arrived at approximately 6:55 pm and recused himself from
21 the cases

22 **MINUTES**

23 Changes to the minutes from November 5, 2020: There were no changes to the minutes.

24 Mr. Lyons made a motion to approve the minutes. Vice Chair Claus seconded the motion. A roll call
25 vote was taken: Vice Chair Claus voted yes, Mr. Schneider voted yes, Mr. Lyons voted yes, and Chairman
26 Simpson voted yes. The motion passed unanimously.

27 **ALTERNATE ZBA MEMBER:**

28 Mr. Lyons made a motion to accept Jamie Silverstein as an Alternate Member. Mr. Schneider seconded
29 the motion. A roll call vote was taken: Mr. Schneider voted yes, Mr. Lyons voted yes, Vice Chair Claus
30 voted yes, and Chairman Simpson voted yes. The motion passed unanimously.

31 Chairman Simpson swore Ms. Silverstein in as an alternate member as he is a Justice of the Peace.

Mr. Schneider made a motion to elect Jamie Silverstein as a voting member for the meeting. Vice Chair Claus seconded the motion. A roll call vote was taken: Mr. Schneider voted yes, Mr. Lyons voted yes, Vice Chair Claus voted yes, and Chairman Simpson voted yes. The motion passed unanimously.

CASE # ZBA20-07: PARCEL ID: 0225-0008-0000: A VARIANCE IS REQUESTED FROM ZONING ORDINANCE, ARTICLE III, SECTION 3.20 TO PERMIT GREATER THAN 20% LOT COVERAGE WITHIN THE AQUIFER OVERLAY DISTRICT, FOR A PROPOSED RETAIL STORE AND ASSOCIATED SITE IMPROVEMENTS ON A PREVIOUS DEVELOPED SITE LOCATED AT THE INTERSECTION OF NH ROUTES 11 AND 103; MCDONOUGH FAMILY PROPERTIES, LLC / AUBUCHON REALTY COMPANY.

Mr. Schneider said that it is not clear from the agenda what the applicant is asking the Board to vote on. The agendas used to be clearer about what was being requested and he thinks that they should be that way again. There was further discussion regarding this matter.

Ms. Gage said that there is an authorization letter from the McDonough Family Properties, LLC allowing Aubuchon Realty and their engineers to present their case. There is also a letter that she has forwarded to the Board from the Town of Sunapee Conversation Commission regarding their input about the proposal. Ms. Gage continued that her memo to the Board talks about the lot being 1.90 acres, which is not what the application says.

Ms. Gage said that this property is in the Mixed Use I Zone, which does not currently have a maximum allowance for impermeable surface in the Shoreline Overlay but it is being proposed to have a Zoning Amendment allowing 40% impermeable surface and 80% total lot coverage. Chairman Simpson asked and Ms. Gage said that the public hearing notice has been posted so the building permit may need to be held until that vote happens. Vice Chair Claus asked and Chairman Simpson confirmed that the applicant submitted the application before the Planning Board public hearing notice about the Amendments was posted but will have to wait until after the Town vote in March to get the application approved. Vice Chair Claus asked about the sequence of events. Ms. Gage said that she may need to look into this deeper but the newspaper publication date is November 24th and the application was November 9th but the public hearing was after the newspaper date. The applicant has also not applied for anything regarding the Shoreline, they are before the Board regarding the Aquifer. She will look into the Shoreline issue further.

Ms. Gage said that the Variance request is from Section 3.20, however, the full description as to what is allowed in the Aquifer Overlay is in Section 4.32. Mr. Schneider said that Section 4.32 says that lots cannot be less than 2.0 acres, which he assumes will be addressed during the presentation. Ms. Gage said that it may be pre-existing non-conforming but she believes that this can be addressed by the applicant. Mr. Lyons asked if the Board received a survey with the application.

Matthew Bombaci, Bohler Engineering, and Eamon Moran, Aubuchon Realty Company, presented the case to the Board.

Mr. Bombaci said that the lot is referred to as 1.90 acres in the Assessing records, however, it is actually 2.55 acres when all the boundaries of the lot are considered as approximately 0.6 acres is under the

Sugar River. Regarding the lot coverage, he believes that the proposed Amendment allows for a 40% impervious lot coverage and they are proposing a 30% lot coverage for this project so they would not need any relief for this project.

Chairman Simpson asked and Mr. Bombaci said that the owner of the property has provided them with a boundary and topographic survey but the applicant will do a follow up survey before anything is constructed. Chairman Simpson asked and Mr. Bombaci said that he does not believe that the survey was submitted with the application. Chairman Simpson asked how they determined that the land under the Sugar River was owned as part of the property. Mr. Bombaci said that the survey of the property by a certified surveyor shows that and they would be amenable if the Board needs to condition an approval on showing that boundary. Chairman Simpson asked if Mr. Bombaci knows NH's Statutes regarding ownership of the bed of a river. Mr. Bombaci said that he believes that it is the centerline of the river and the current owner owns both sides of the river. Chairman Simpson said that he believes that the Sugar River is navigable waters which brings in federal laws and may govern who owns the river and he would like to know more about this or put a condition on an approval about this issue.

Mr. Bombaci explained that this property is located at the corner of Route 11 and Route 103. The site is a little degraded; it was previously developed and the buildings were removed sometime in 2012 and the site was then abandoned. The applicant is proposing a redevelopment of the site with a 9,350 sq ft retail store and associated site improvements which include parking, storm water management, utilities, and landscaping. The site sits in the Mixed Use I District and the purpose of that District is to provide opportunities for commercial, light industrial, and tourism related businesses. It is also in the Aquifer Overlay District and there is an impervious coverage requirement of 20%, which is why they need a Variance. The site is also in the Shoreland Protection District, but they will not be requesting any relief from those District requirements. They have also spoken with NH DES regarding their requirements and have received positive feedback from them. Part of the property is also in the FEMA floodplain which will not be part of the developed footprint.

Mr. Bombaci said that Sunapee has a very limited area that has Stratified Drift Aquifers as per a USGS map that he showed the Board. Mr. Bombaci continued to explain Stratified Drift Aquifers to the Board as well as the lot coverage of other businesses in the District and the typical standards that they usually deal with for Stratified Drift Aquifers and NH DES's model for groundwater protection.

Mr. Bombaci said that the proposed development is a 9,350 sq ft retail store with associated parking and site improvements. To meet the NH DES requirements, this use does not propose the outside storage of any hazardous materials or toxic materials. The project will also have a stormwater management system consistent with NH DES stormwater management practices. There will be stormwater basins that will catch stormwater runoff; the basins will have treatment mechanisms that will collect the water and infiltrate it into the ground. Mr. Bombaci continued that the stormwater management system is a key part of the project as far as NH DES is concerned.

Mr. Bombaci said that the project proposes to work entirely within the limits of the previous development on site. There is a previous foundation on site as well as gravel areas and the whole

107 development will be within those areas. The current impervious lot coverage is approximately 39% and
108 they propose to reduce that by approximately 9%; in its place they are proposing landscaping,
109 stormwater practices, or both.

110 Mr. Bombaci said that they looked at other communities with more Stratified Drift Aquifer areas than
111 Sunapee has and both Newport and Goshen's Zoning Ordinances have Districts with the same intents
112 and purposes that Sunapee's Aquifer Overlay District has.

113 Chairman Simpson asked and Mr. Bombaci confirmed that on the plan, everything shown to be to the
114 west of the "Limit of Aquifer" is part of the aquifer. There was further discussion regarding this matter.

115 Chairman Simpson asked and Mr. Bombaci confirmed that the stormwater management plan will
116 include a maintenance plan. Chairman Simpson asked and Mr. Bombaci confirmed that if the catch
117 basins overflow, the water will run into the Sugar River; however, all storm events should be able to be
118 captured and treated on site.

119 Mr. Bombaci went through the five Variance requirements for the Board.

120 Mr. Bombaci said that granting the Variance would not be contrary to the public interest because the
121 purpose of the Aquifer Overlay district is to ensure non-contamination yet insure property aquifer
122 recharge. NH DES has published provisions which they say will be consistent with State laws and
123 groundwater protection and they propose to meet those provisions and exceeds them by quite a bit.
124 The site is located in the Mixed Use I District which, as noted in the Zoning Ordinance, is supposed to
125 encourage opportunities for commercial businesses. Additionally, in the Master Plan, it notes that there
126 will be a need for more small shops and commercial uses over the next 20 years from the date of the
127 publication. This proposes a commercial use in a District that allows it by right. Lastly, they have
128 proposed the overall development areas into areas that have historically existed. While it is an increase
129 from the 20% allowance in the Aquifer District, it is an improvement from the historically existing
130 development on the site.

131 Mr. Bombaci said that if the Variance were granted, the spirit of the Ordinance would be preserved
132 because the proposal meets the purpose of the Aquifer Protection District through the provisions that it
133 meets the NH DES recommendations and it meets the purpose of the Mixed Use I District. It improves
134 the interest of the by-law relative to the previous on-site development by proposing a storm water
135 management system where none historically existed while also reducing the limits of that development.
136 Additionally, the proposed coverage is consistent or below nearby commercial developments in the
137 District.

138 Mr. Bombaci said that the granting of the Variance would do substantial justice because it would allow
139 the reasonable development of the site, which is currently degraded, abandoned, and unused with a use
140 that meets the interests of the underlying Zoning District and provides a redevelopment of the site as a
141 whole.

142 Mr. Bombaci said that if the Variance were granted, the values of the surrounding properties would not
143 diminish because the use is consistent with nearby uses.

144 Mr. Bombaci said that regarding unnecessary hardship, owing to special conditions of the property that
145 distinguish it from other properties in the area, denial of the Variance would result in unnecessary
146 hardship because the project proposes reasonable redevelopment of the property with a use that is
147 consistent with the underlying Zoning District and its location on two major NH Routes. Not granting
148 relief from the strict 20% requirement would not allow a project that would be viable on the parcel,
149 especially considering it is less intensive than nearby uses that are also in this District and less intensive
150 than a use that has historically existed on the site.

151 Mr. Bombaci said that no fair and substantial relationship exists between the general public purposes of
152 the ordinance provision and the specific application of that provision to the property because the
153 interests of the Aquifer Protection District are laid out in the NH DES regulations as to what the interests
154 are and how they should be protected, particularly with a storm water management plan which they
155 have designed. Mr. Bombaci continued that the proposed use will be a reasonable one because it is
156 permitted in the district and in the Aquifer Protection District, and it is a use that limits the amount of
157 disturbance relative to the previously existing development.

158 Mr. Schneider asked if there is a calculation of the proposed lot coverage and Chairman Simpson said
159 that the cover letter says that it will be 30%. Mr. Schneider asked how that number was calculated as
160 normally the Board would have a surveyed plan with the lot coverage calculated by the surveyor. Mr.
161 Bombaci said that in the letter submitted they said that they expect it to be about 30,000 sq ft of
162 impervious surfaces, which would be approximately 27% of the lot. They have requested 30% lot
163 coverage just because they always overestimate but he would expect the lot coverage to be just under
164 30,000 sq ft of area and around 25% - 26% of lot coverage.

165 Chairman Simpson said that the submitted letter talks about a degraded area and asked for more details
166 regarding that matter. Mr. Bombaci said that the site as it exists had previously existing buildings and
167 the foundations are still in place. The areas around the building were used for commercial trucking and
168 materials and such. The area is compacted gravel and in 2011, when one of the aerial photographs were
169 taken, it was essentially impervious to groundwater infiltration. Since the photo was taken, there has
170 been some vegetation that has grown but the area of degraded surface still exists and there is still some
171 preclusion of groundwater infiltration. The degraded area that he wrote about refers to the area that
172 was previously developed which they will be in as they will not be disturbing any natural wooded areas.
173 Mr. Schneider asked and Mr. Bombaci explained that they determined that the existing lot coverage is
174 approximately 39% or 43,460 sq ft. This information came from a survey that the current owner had
175 gotten as it located the foundation and the gravel area around the development.

176 Mr. Schneider said that he thinks that if this project is approved, they will need a NH DES Shoreland
177 Permit due to the proximity of the water body. Mr. Schneider asked if there is an Aquifer Permit from
178 the State and Mr. Bombaci said that there is not. Mr. Bombaci continued that they have spoken with

179 NH DES to get their initial thoughts regarding the project; they need to make a formal application but no
180 concerns were issued during their discussions as the project occurs in a previously developed area.

181 Mr. Lyons said that he visited the site and he found remnants of concrete pours but the area seemed to
182 mostly be grass, which is not impervious. Mr. Bombaci said that the aerial from 2011 more closely
183 reflects the site in its developed state but over the years he is sure that there has been some scrub
184 brush and grass that has come through. When they design the storm water management system, they
185 would be happy to design it as though it is meadow land and grass. They will do pre- and post-
186 development calculations in order to ensure that they do not increase flows. Mr. Lyons said that he
187 would like to see exactly how the impervious surface was calculated because he does not know how big
188 the lot is. Mr. Bombaci drew out the boundary of the lot for the Board using the submitted plan.

189 Clayton Platt joined the meeting. Chairman Simpson said that the Board appointed a new Alternate
190 Member and appointed her to sit in as a voting member for the hearing. Chairman Simpson asked and
191 Mr. Platt confirmed that he would have recused himself from the case.

192 There was further discussion regarding the lot shape and size.

193 Mr. Lyons asked if the building will be a hardware store and Mr. Bombaci said that the site will be used
194 for a retail store. Mr. Lyons said that hardware stores generally have things like ice melt, rock salt, and
195 fertilizers stored outside and asked if that will be addressed given the location. Mr. Bombaci said that
196 there will be not outside storage of salt or anything that would be considered a hazardous material to
197 the groundwater.

198 Ms. Silverstein said that the Sunapee Conservation Committee is not in favor of the project due to the
199 intense use of the site and asked if they have discussed a modification of the design that would remove
200 their concerns. Mr. Bombaci said that they met with the Conservation Committee the night before this
201 meeting and prior to them sending the letter to the Board. He felt as though it was a good conversation,
202 however, he knows that after they finished the conversation, they had an internal discussion and as they
203 were a little uneasy about what they classified as the intensity of the impervious coverage. He
204 understands the Conservation Committee's interests and respects how they came to their conclusion,
205 however what is being proposed is less than nearby similar developments in the area. It is not practical
206 or reasonable to develop this site with something that is under 20% impervious surface. He thinks that
207 what is more important for the Aquifer Protection District is to have a proper design for the treatment
208 and recharge of the storm water management system as well as the type of use to ensure that there are
209 no contaminants.

210 Mr. Moran said that the Aubuchon Realty Company owns numerous commercial properties in the
211 Northeast; they have this property under a Purchase and Sales Agreement. They are proposing a retail
212 store of 9,350 sq ft. When looking at this from a feasibility standpoint, many different things come into
213 play including the actual development costs and square footage of the site and the economics of what a
214 tenant might pay in rent to satisfy the costs. Their intent for development was to try and not have to
215 ask for a Variance. As a real estate investor, the easier path is better. They looked at smaller variations
216 of the building and trying to reconfigure the parking and access, however, there is a 50 ft buffer from

217 the waterfront that needs to be considered as well as some exiting site grade issues due to the
218 foundation. A smaller building would not meet the requirements of economics and such. They had also
219 approached the McDonough Family to try and purchase more land to satisfy the larger denominator but
220 they could not come to an agreement on that.

221 Chairman Simpson asked and Mr. Bombaci confirmed that this is a pre-existing lot, not a proposed
222 subdivision.

223 Mr. Claus said that he agrees with the requirements of economics for a retail site. Looking at the
224 building, the parking does not even meet most general retail parking requirements. He wonders with
225 the Aquifer about the recharge aspect of this area with the calculations and design of the storm water
226 management system.

227 Mr. Claus asked about the disturbed area for the site. Mr. Bombaci said that he does not know that
228 number but can calculate it. He showed the Board the disturbed area on a submitted plan and showed
229 which area they are looking at for the proposal.

230 Mr. Bombaci said that there are specific NH DES calculations and formulas that need to be run based on
231 the soil type and the coverage type. When they were laying out the plan and the proposed basins, they
232 have enough experience with these developments regarding the types of soils and such to determine
233 what is needed to capture any runoff for the majority of up to 50-year storms. Mr. Claus said that he
234 has worked on projects where the primary goal is to handle the pollutants and flush those out and asked
235 if the design is more for retention and infiltration. Mr. Bombaci said that their intention is to capture
236 and hold the water. Mr. Claus asked and Mr. Bombaci confirmed that their system is based on a 50-year
237 storm as that is what NH DES requires. Chairman Simpson asked and Mr. Bombaci that the calculations
238 are based on 50-year storm events based on an area's latitude and longitude and current climate data.
239 The storms are much more intense than they used to be and their calculations are based on that data.

240 Chairman Simpson said that he was under the impression that there may have been hazardous waste on
241 the property and asked for the history of the property. Mr. Moran said that they have reviewed several
242 environmental reports that were supplied to the current owners and that were on file with NH DES.
243 There were files opened in the last 10 years, one was about the old use and existing soils and
244 contaminants, which have since been cleaned out. There was another file about rubber tires and debris
245 that were required to be removed from the site. All the files that were discussed with NH DES where
246 they reviewed the property are now closed. Chairman Simpson said that he had heard there were PCBs
247 on the site and asked if those were part of the oil contaminants. Mr. Moran said that he is not an
248 environmental consultant but he would be happy to provide the reports that they get permission to
249 provide. Chairman Simpson asked and Mr. Moran said that the site has not been deemed a brownfield.
250 Mr. Moran continued that NH DES would never close a file saying that satisfactory conditions have been
251 met if the property is an ongoing brownfield. Chairman Simpson said that he asked because brownfield
252 remediation includes capping and paving a lot is a suitable way to do this and they are talking about
253 capping a lot within an Aquifer. He feels as though it would be in the public's interest to cap the site if
254 there were issues. Mr. Moran said that they are carrying funds in their budget if they meet any soils

255 with issues but do not believe that there was anything that got missed in the cleanup that is excessive.
256 They have bought and sold hundreds of properties in the northeast in the 90 years that they have been
257 in business and they have a robust environmental review process for buying and developing properties.

258 Chairman Simpson asked and Mr. Moran said that they primarily are landowners and lease properties to
259 retailers.

260 Ms. Silverstein asked if this is the only aquifer in Sunapee and it was determined that there is one other.
261 Ms. Silverstein asked and Mr. Bombaci said that it would seem as though this is the only aquifer in a
262 commercial district. Chairman Simpson said that the other aquifer could be in the other Mixed Use I
263 District but it is difficult to see on the map. Ms. Gage shared her screen to show the other aquifer
264 district and part of the other Mixed Use I District does have the other aquifer on it. There was further
265 discussion regarding this matter.

266 Chairman Simpson asked if there were any Board members with additional questions or any members of
267 the public with questions.

268 Lynn Smith, an abutter to the property, said that she does not have any questions regarding the
269 proposal.

270 Chairman Simpson said that he would like to see a survey for the property and he would also like to
271 know if the Sugar River has been deemed a navigable water because if it is then he does not believe that
272 the property owner owns the land beneath it. Mr. Bombaci said that he understands the Board's
273 concerns, however, if the survey is not what it says it is then their request is null and void. Mr. Bombaci
274 said that he knows that the owner has a tight timeline and asked if the Board could condition an
275 approval that the lot is actually 2.55 acres. Mr. Schneider said that he would prefer to see the survey
276 before making a determination on this case. Chairman Simpson said that he would also like to see the
277 lot coverage calculations. Mr. Schneider said that the Board needs the survey to determine the
278 calculations. There was further discussion regarding this matter and Mr. Platt, who prepared the survey,
279 said that he would be happy to share the survey.

280 Mr. Platt said that he believes that navigable waters in the State of NH are defined as tidal waters
281 according to the Attorney General's Office. Chairman Simpson said that Federal law says that states
282 own under waters that are deemed navigable. Mr. Platt said that the Sugar River is not a tidal water so
283 it is not navigable. Chairman Simpson said that Lake Sunapee is a navigable water. Mr. Platt said that is
284 because it is a great pond.

285 Mr. Bombaci said that he has a copy of the survey, he is just trying to get it up on his computer to share
286 with the Board.

287 Ms. Silverstein asked if the Board is allowed to stipulate that the lot coverage can be up to 30% and then
288 the ownness of the amount of acreage is on the applicants to meet those requirements. Chairman
289 Simpson said that the Board can put requirements on an approval; for example, he would like a
290 condition to get a legal opinion that the Sugar River is not navigable.

291 Ms. Gage requested that if a paper copy of the survey is going to be screen-shared, to send a copy to the
292 Town Office to become part of the public record.

293 Mr. Schneider suggested continuing the hearing in order to get a copy of the survey for all the Board
294 members as well as the lot calculations. There was further discussion regarding this matter.

295 Mr. Bombaci asked if the Board could put a condition on the approval that the survey is submitted that
296 shows that the lot is 2.55 acres as there is some urgency with the application. Chairman Simpson asked
297 and Mr. Moran explained that he signed a Purchase and Sales Agreement with the owner and that was
298 signed in June of 2020. For a variety of reasons, they burnt a considerable amount of time and there is
299 only so much time left for him to have rights for the property and he has no indication from them that
300 they will extend his time.

301 Chairman Simpson asked and there were no additional questions for the applicant so closed the meeting
302 to the public and requested that everyone not a Board member be muted.

303 Mr. Schneider said that he has two views regarding this project. The site has been an eyesore ever since
304 he started coming to Sunapee almost 50 years ago; there was an old rail car on the property for many
305 years. One part of him is glad that someone wants to do something with the property and he thinks to
306 have commerce in Sunapee is healthy. He wishes that the Board had more details to address the
307 environmental concerns such as a storm water management plan. He also greatly respects the
308 Conservation Commission's views and he does not take their opinions lightly. He would like to see the
309 survey and a calculation of the lot coverage rather than just a number in a narrative. He believes that
310 this will need to go to Site Plan Review if this is approved and they could look at the storm water
311 management plan in more detail.

312 Mr. Claus agreed that the Planning Board will look at the storm water management plan. He agrees
313 with Mr. Schneider as he would have liked to see more details regarding this matter. With the
314 sensitivity of the site and the aquifer he would have liked to see all the calculations for the impervious
315 surface.

316 Chairman Simpson asked if the Board thinks that all five of the Variance criteria have been met.

317 Mr. Schneider said that he thinks that sometimes the criteria that have been mandated are not directly
318 applicable to a proposal; however, he does not believe that the hardship criteria has been met because
319 there is nothing on the topography of the property that is a cause for the granting of the Variance other
320 than the fact that it is on an aquifer but that is a pre-existing condition.

321 Mr. Claus said that the Board is used to dealing with residential projects where there are things like
322 topography that are hardships. He thinks in this case, looking at the commercial intention of the Zone,
323 he agrees with the applicant that for this to be economically viable, it is probably a minimum of what is
324 needed. There are many larger municipalities that look at site plans like this that would require more
325 parking than what is being proposed, which would be more impervious surface. It would be hard to do
326 less on this site and still have it be economically viable.

327 Chairman Simpson said that in the Mixed Use I District, retail up to 15,000 sq ft is permitted by right; the
328 question is if this lot size is a hardship.

329 Ms. Silverstein said that she agrees with Mr. Schneider's comments regarding the site. The reduction of
330 the degraded surface is highly appealing; however, the question is what level of degradation still exists.
331 She likes that Mr. Bombaci has talked about the water treatment and the soil and she would be
332 comfortable stipulating the need for the numbers and the verification of the survey and then letting the
333 Planning Board work with them on the actual project.

334 Mr. Claus said that he agrees with Ms. Silverstein, however, he does wish there were more details about
335 the Storm Water Management Plan considering the sensitivity of the aquifer but the Planning Board will
336 take a closer look at that issue.

337 Mr. Lyons said that he agrees with Mr. Schneider. Also, he understands that this property will
338 essentially have a cap on it, however, most caps are not plowed and salted and sanded. There is a
339 parking lot with 30 spaces over an aquifer that is for public use and in the event that the drinking water
340 becomes needed that bothers him. Nevertheless, Route 11 and Route 103 are both there and they salt
341 the intersection because it is a sharp curve. He would like to know how much more contaminated
342 runoff would potentially become a problem for the aquifer. He has driven by the property his entire life
343 and it is an eyesore and if someone wants to develop the lot then he thinks it is a good thing. He is
344 worried about the aquifer and what went into the calculations in regards to lot coverage.

345 Chairman Simpson said that he appreciates the input from the Conservation Committee as he thinks
346 that it is a valid concern that this property is Mixed Use I. He believes that the Board needs to look at
347 the use as this fits the District's parameters and it would be great to have the site rehabbed. He
348 appreciates the argument that it is a hardship to create a property that is deemed to be in the Mixed
349 Use I District economically, but he is not sure that is a hardship. His question is why this property would
350 not be viable for a use by an owner / operator rather than having to look at the hardship of ownership
351 of a real estate holding company. He does believe that this meets the spirit of the Ordinance. It is not
352 contrary to the public interest as stated by the Ordinance but in light of the Conservation Commission's
353 comments he cannot say that it meets this requirement. He also does think that the use is reasonable
354 but there is a fair and substantial relationship between the concerns about the use of the property.

355 Ms. Silverstein said that she thinks that there is a benefit to having an investor with experience and
356 knows what they are getting into.

357 Chairman Simpson said that he understands Ms. Silverstein's point, however, it is his experience that it
358 is difficult to get contractors and workers due to the pandemic.

359 Mr. Schneider said that he thinks that the Board should make a list of conditions for a motion. He thinks
360 that there should be a condition that a survey by a licensed surveyor that shows the area of the property
361 is 2.55 acres as claimed be submitted. Another condition should be that the applicant will provide a
362 calculation of lot coverage to the Zoning Administrator that the lot coverage is not higher than the 30%
363 that is being requested. Another condition should be that proposal receives an approved NH DES

Shoreland Permit. Mr. Schneider asked how to word a condition that the proposal meets the NH DES aquifer standards. Mr. Claus said that there are many different systems that can be applied and some are more robust than others which is why he would have liked more details regarding the storm water management system to make the Board more comfortable with the environmental aspects of the lot. Mr. Schneider asked if there should be a condition that the applicant provide a detailed storm water management system at the time of Site Plan Review. Mr. Claus said that the Board should make a condition that would address the sensitivity of the lot and put it on the applicant for them to present a robust system that will make the Planning Board feel comfortable. Chairman Simpson said that he thinks a lot of this is subject to Site Plan Review. He would say that this proposal must meet the storm water guidelines that are in place at the State; he does not know if the Board wants to go too far as they do not have the expertise to say exactly what they may want. He thinks that the Planning Board will have the ability to have the applicants present an engineering study on this site. The Zoning Board could recommend that the Planning Board consider requiring additional engineering or having an engineer hired by the Town review the storm water management plan. Mr. Schneider said that the Board can made a condition that the applicant presents a detailed storm water management plan as part of the Site Plan Review. Mr. Claus asked and Chairman Simpson said that the Zoning Board cannot put a condition on an approval that there is a town engineer to review the plans but they can recommend that to the Planning Board. Mr. Schneider said that he also thinks that there should be a condition that there is no outside storage of hazardous materials. Chairman Simpson said that he also thinks that addresses Mr. Lyon's concerns and would be something he endorses. He would also like a letter of opinion as to if the ownership under the river is subject to State ownership as a navigable water because that would affect the acreage application. There was further discussion about this condition and Mr. Schneider reread the conditions for the Board.

Chairman Simpson said that Mr. Platt had requested to speak. Mr. Schneider made a motion to reopen the meeting to allow comments regarding the criteria proposed. Mr. Claus seconded the motion. The motion passed unanimously.

Mr. Platt said that he feels as though the final wording of the conditions are fine; he was concerned about having an attorney certify the area of the property as he does not believe they are qualified to do so. Chairman Simpson and Mr. Schneider said that the final wording is that the ownership under the Sugar River will be certified.

Mr. Bombaci said that they would be comfortable with a third-party engineering review if it is required.

The Board took a brief recess.

Mr. Bombaci requested that the condition regarding no outdoor storage of materials be amended to be no outdoor storage of hazardous materials. Mr. Lyons said that silt and salt and fertilizers are not hazardous materials but not something that they would want spilt into the aquifer. Mr. Claus said that it lists materials that should not be stored outside in the aquifer district and that can be referenced. There was further discussion regarding this matter and saying, "environmentally sensitive materials" or "materials that may have an adverse environmental impact".

Mr. Moran said that he appreciates Chairman Simpson's concerns that they own a holding company, however, this is a challenging site and the fact that it has been vacant for the past 10 years should speak to the difficulty of developing the property and the hardship that it is. Mr. Schneider said that he thinks the property has been vacant for 50 years and Chairman Simpson said that he thinks that it has been 25-30 years. There was a discussion regarding what was done at the property.

Chairman Simpson closed the meeting to public input.

Mr. Lyons said that the Conservation Commission's letter bothers him and he does not believe that the Board has addressed protections for the Aquifer Overlay. Chairman Simpson asked and Mr. Lyons said that he does not know what was written into the proposal to protect the public interest in the aquifer. Mr. Lyons said that the Conservation Commission's letter says that the property does not adhere to the spirit of the aquifer overlay ordinance and that they do not support a building of that size and the plan for 30 parking spots associated with the development. He would like to find something that allows the Board to approve this Variance that protects the public interest in the overlay. The Board rarely hears from the Conservation Commission and he thinks that Van Webb's opinion should be taken seriously. Chairman Simpson said that he received an email from Mr. Schneider asking if the Conservation Commission would review the application and he did not see a problem with that so he asked the Zoning Administrator this, which is why he assumes the applicants met with the Conservation Commission. He thinks that the Conservation Commission will be able to weigh in on the Shoreland application but jurisdictionally, he appreciates their input but he does not know how much weight to give it. Ms. Silverstein said that she appreciates the Conservation Commission's opinion, however, the property is Zoned as a Mixed Use I area and that, by definition, allows a certain sized building. Mr. Schneider said that there are two sides to this, one is the environmental side and the other is the commercial side. He appreciates what the Conservation Commission says but they only look at one side of the equation. He thinks that the Board needs to consider how much more impact the 30% lot coverage will have over the 20% permitted. Mr. Schneider said that he did ask for the Conservation Commission to review the proposal and he agrees that their concerns should be taken seriously.

Mr. Schneider made a motion for Case ZBA-20-07: Parcel ID: 0225-0008-0000; Location: Route 103; Zone: MI (Mixed Use 1) with Wetlands Overlay (25 ft buffer), Aquifer Overlay, and Shorelines Overlay (Sugar River); Owner: McDonough Family Properties, LLC; Applicant: Aubuchon Realty Company; to approve a Variance from Article III, Section 3.20 to permit a 30% lot coverage within the Aquifer Overlay District where a maximum of 20% is permitted in the Ordinance for a proposed retail store and associated site improvements on a previously developed site located at the intersection of NH Routes 11 and 103 with the following conditions: 1. A survey be provided that shows that the area of the property is 2.55 acres as stated by the applicant; 2. That the applicant will provide an opinion of counsel stating that the survey accurately depicts the ownership of the property under the Sugar River; 3. That the applicant provides a mathematical calculation of the lot coverage as claimed; 4. That a NH DES Shoreland Permit be applied for and received and that all conditions be complied with; 5. That the applicant will provide a detailed storm water management plan at the time of Site Plan Review; and 6. That there be no outside storage of materials that may have an environmental impact. Vice Chair Claus seconded the motion. Mr. Schneider said that he appreciates the environmental

concerns but he thinks that the site is unique in Sunapee and it has been an eye sore for a long time and is happy to see someone try to do something with it. A roll call vote was taken: Mr. Schneider voted yes; Mr. Lyons voted yes; Vice Chair Claus voted yes; Ms. Silverstein voted yes; and Chairman Simpson voted no. The motion passed with four in favor and one opposed.

Chairman Simpson said that he voted no because he thinks that the Aquifer Overlay trumps the underlying Mixed Use I criteria.

CASE # ZBA20-08: PARCEL ID: 0128-0046-0000: A SPECIAL EXCEPTION IS REQUESTED, PER ARTICLE III, SECTION 3.50(B), TO DEMOLISH EXISTING NON-CONFORMING GARAGE AND REBUILD IN A MORE NEARLY CONFORMING LOCATION ON THE LOT; 40 GARNET ST; JUDITH A ZAPPALA TRUST.

Mr. Platt recused himself from the case.

Mr. Schneider said that the agenda is not clear what is being requested and it should be stated clearly for the Board and for the public notice. There was a discussion regarding this matter.

Chairman Simpson asked and it was confirmed that Tim Zappala and Dan Monette both have written permission from Judith Zappala, the trustee of the trust that owns the property, to speak on her behalf.

Mr. Zappala said that he is Judith Zappala's husband. He understands that the Board was able to visit the site and saw that it is a non-conforming lot that is fairly steep. He and his wife would like to rebuild the 1950's house and improve the safety and accessibility. The property is located at 40 Garnet St and is in the Residential Zone. They have owned the property since 2011. The lot is narrow and sloped and like many of the adjacent homes on Garnet St. There are currently three structures on the property including a house, garage, and boathouse, as well as the associated stairs; all of them are grandfathered and non-conforming. The garage sits fairly close to the road and there are approximately 37 steps and 50 ft down to the house on an outside stairway, which makes accessibility fairly difficult. The house is two stories, there are no modern safety features, and the electrical system and heating system are old. Their intent is to remove the current structure and rebuild something that is up to code and safer. They would like to remove the house, the garage, and the connecting stairway. They will be replacing these structures with a garage that is a similar size with a connector that will have inside stairs and an elevator that connects to the back of the house. The current house and garage footprint encroaches on the front setback, the north setback, and the south setback. The proposal only encroaches on the front and north setbacks and in a less non-conforming way. There will be less house and garage footprint area and less house envelope in the front and north setbacks. The additional connector with the stairs and elevator is only located in the center of the buildable area; they tried to make sure that the section that they are adding was in the center of the property and away from the setbacks. They also tried to make sure that nothing is in the south setback. The impervious area of the site will be reduced with this rebuild. They believe that rebuilding will improve safety and accessibility and increase the property value in the neighborhood. They will also be building proper drainage and erosion control, which does not currently exist on the site. They tried to do their very best to reduce the impervious coverage and footprint and the setback non-conformity. They need one Special Exception and three Variances in order to build their proposal; the Variances are for the north setback, to build on the steep slope, and for the

480 maximum structure height because they are building on a slope. The building height itself never
481 exceeds 40 ft, however, measuring from the lowest grade it does.

482 Dan Monette, Fuss & O'Neill, presented the merits of the case to the Board. Mr. Monette shared his
483 screen with the Board in order to present them with a slideshow.

484 Mr. Monette explained that the property is fairly narrow at the road and the total road frontage is 33.3
485 ft and the existing structures are close to the road. The proximity of the proposed garage to the
486 centerline of the road is why the Special Exception is being requested. They sent a crew and did a field
487 measurement from the existing structure up and down Garnet St to the approximate center of the
488 traveled way. The only properties in the area that have been surveyed is the subject property and the
489 property to the north. The others were field measured to see what they had to the nearest point of the
490 structure to the approximate center of the traveled way. The majority of structures both north and
491 south of the property are well less than the requirement for the front setback. They are proposing s
492 structure that is 37.2 ft from the centerline and the existing garage is at 26.4 ft so they are actually
493 moving it back from the existing garage and centering it more on the property.

494 Mr. Monette read through the criteria to meet the Special Exception from his submitted presentation.
495 The lot is pre-existing and is non-conforming due to its size; the lot is 0.19 acres and the minimum for
496 this Zone is 1.0 acre. The second criteria is that within 500 ft of both sides of the subject lot have
497 structures of equal or greater type which do not meet the front setback and most of the structures
498 measured were houses and garages and most do not meet the front setback requirements. Chairman
499 Simpson asked how many total lots are within 500 ft of the subject lot. Mr. Monette said that he thinks
500 that there are approximately 15 lots and about 11 of those have structures that are closer. Chairman
501 Simpson said that they cannot just say that there is a majority, there has to be a number of lots
502 associated with this criterion.

503 Mr. Monette continued with the requirements for the Special Exception. The third criteria is that the
504 proposed structure for which the Special Exception is being sought shall be no closer to the centerline of
505 the road right of way than any other structure of equal or greater type and the closes comparison lot is
506 13 ft from the centerline of the road and the proposed stricture will be 37.2 ft from the centerline. The
507 fourth criteria is that the proposed structure shall be no closer than 10 ft to the right of way line of the
508 road and the proposed structure will be 21 ft from the edge of the right of way. The fifth criteria is that
509 the portion of the proposed structure encroaching on the front setback shall be no higher than 25 ft and
510 the proposed structure will not be higher than 25 ft from any adjacent grade within the setback.

511 Mr. Monette said that the applicants want to move the garage back to connect it with the house but
512 also to provide off street parking in front of the garage. Chairman Simpson said that is not relevant to
513 the Special Exception because if the criteria are met then the Board must approve it. Mr. Monette said
514 that he does not have anything else to present for the Special Exception. Chairman Simpson explained
515 how a Special Exception is approved.

516 Mr. Schneider said that he thinks that the Special Exception requirements have been met. The rest of
517 the Board agreed.

518 Chairman Simpson closed the hearing to public input.

519 **Mr. Schneider made a motion to approve Case ZBA20-08: Parcel ID: 0128-0046-0000; 40 Garnet St;**
520 **Judith A Zappala Trust; to allow a garage to be built not closer than 37.2 ft from the centerline of the**
521 **road where 50 ft is required by the Ordinance. Ms. Silverstein seconded the motion. A roll call vote**
522 **was taken: Ms. Silverstein voted yes; Vice Chair Claus voted yes; Mr. Lyons voted yes; Mr. Schneider**
523 **voted yes; and Chairman Simpson voted yes. The motion passed unanimously.**

524 **CASE # ZBA20-09: PARCEL ID: 0128-0046-0000: A VARIANCE IS REQUESTED FROM ZONING**
525 **ORDINANCE, ARTICLE III, SECTION 3.40(I) TO PERMIT CONSTRUCTION OF A NEW HOME AND**
526 **CONNECTED GARAGE ON A LEGAL NON-CONFORMING STEEP SLOPE; 40 GARNET ST; JUDITH A**
527 **ZAPPALA TRUST.**

528 Chairman Simpson asked and the applicant determined that they would like to go through the entire
529 proposal and then have the Board vote on each of the three Variances.

530 **CASE # ZBA20-10: PARCEL ID: 0128-0046-0000: A VARIANCE IS REQUESTED FROM ZONING**
531 **ORDINANCE, ARTICLE III, SECTION 3.10 TO PERMIT CONSTRUCTION OF A NEW HOME AND ATTACHED**
532 **GARAGE ON A NARROW LEGAL NON-CONFORMING LOT; 40 GARNET ST; JUDITH A ZAPPALA TRUST.**

533 **CASE # ZBA20-11: PARCEL ID: 0128-0046-0000: A VARIANCE IS REQUESTED FROM ZONING**
534 **ORDINANCE, ARTICLE III, SECTION 3.10 TO PERMIT THE DEMOLITION OF AN EXISTING GARAGE AND**
535 **HOUSE IN ORDER TO CONSTRUCT A NEW HOUSE WITH CONNECTED GARAGE FOR YEAR-ROUND**
536 **LIVING, IMPROVED SAFETY, AND ACCESS; OVERALL HEIGHT TO BE 46 FT 6 1/16 INCHES; 40 GARNET ST;**
537 **JUDITH A ZAPPALA TRUST.**

538 Mr. Platt recused himself from the cases.

539 Mr. Monette said that the first Variance request is to replace an existing house and garage with a new
540 house and connected garage on a legal non-conforming steep lot. There is not a lot of choice but to
541 build on a steep slope on this lot as the existing grades on the lot in some places exceed 50%. There are
542 places where retaining walls on the property that are on the property catch up the grade to get up to
543 the level area on Garnet St. The entire lot is greater than 35% slope, there is not really any of the lot,
544 except for the area at the road is less than that.

545 Mr. Monette read the facts supporting the Variance request to the Board per the submitted application
546 (see application in file). He showed the Board pictures of the site for the members who were not able to
547 attend the site visit. There are a series of steep sections and large rocks and a series of retaining walls
548 on the property.

549 Mr. Monette showed the Board a copy of the existing conditions plan that includes the contours of the
550 grades of the property. There is no buildable area on the property that is less than 25% grade until the
551 50 ft waterfront buffer or the area within the front setback. Mr. Zappala asked and Mr. Monette traced
552 the setback lines on the plan for the Board.

553 Mr. Monette explained the plans submitted to the Board with the application. The first plan he
554 explained was the one that shows the parts of the existing structure that will not be rebuilt in, the areas
555 of the proposed house that are in the current footprint and overlap the non-conforming areas, and the
556 areas of the proposed house that are within the setbacks. There is also a plan that shows the area of
557 the proposed house that is outside the current building envelope and within the setbacks. Chairman
558 Simpson asked and Mr. Monette explained that the calculations shown on the plans is the area of the
559 existing and proposed square footage within the setbacks. The square footage in the side setback is
560 going from 589 sq ft to 426 sq ft and the square footage in the front setback is going from 494 sq ft to
561 267 sq ft.

562 Mr. Monette explained that there are a series of jogs that are along the south side of the house. They
563 wanted to pull the house out of one of the setbacks as much as they could and one of their goals for the
564 design was to limit the number of Variances needed for the property and design the house to better fit
565 the lot and buildable constraints. The jobs make the house less uniform but they were able to succeed
566 in pulling the house out of one of the side setbacks.

567 Ms. Silverstein said that she thinks that the design mitigates a lot of the concerns with the property. She
568 questions if there is an ADA component that is a compliance issue within the building as there is an
569 elevator. Mr. Zappala said that neither he nor his wife are disabled but their assumption is that they will
570 live in the house and as they get older it will get more difficult to handle outside stairs. They are trying
571 to plan ahead and make sure that they have access. The stairs will be four levels so an elevator seemed
572 logical.

573 Mr. Schneider asked about 42 Garnet St as he thought the structure is a duplex. Mr. Zappala said that
574 42 Garnet St is a separate property; the properties are not connected.

575 Mr. Monette read the facts supporting the second Variance request to the Board (see application in file).

576 Mr. Monette said that the existing structures was at 6.9 ft and the side setbacks are 10 ft so the
577 structure is being pulled completely out of that setback. There is a portion of the garage within the
578 southern setback but it is also within the front setback. The structure is moving a little out of the
579 northside setback. Mr. Zappala said that the garage will be moved significantly out of the north setback.

580 Chairman Simpson asked if the request is for the 5.6 setback on the southern side. Mr. Monette said
581 that they have a general side setback request for the overall structure. Ms. Gage said that Case ZBA 20-
582 10 is for the side setbacks. Mr. Monette said that they are asking for both of the side setbacks, one is
583 actually within the front setback.

584 Mr. Monette read the facts supporting the third Variance request to the board (see application in file).

585 Mr. Monette said that the measurement for height the way that the Ordinance is written is from the
586 lowest adjacent grade of the structure to the highest point of the structure. The lot is so steep there is
587 50 ft or so of elevation change between the garage and the lakefront. By connecting the garage and the
588 house, the garage roof is what then dictates the height; as that is at the road level, it puts them over the

589 height requirement. If the two structures were not connected, the heights of each structure could be
590 measured independently. The heights measured down are under 40 ft, however, they were unable to
591 keep the total height under 40 ft.

592 Mr. Monette continued to read from the facts supporting the Variance (see application in file).

593 Mr. Monette said that those Board members who walked the site should have been able to see the
594 hardship of access during the winter. If the structures are not connected and there is not an elevator or
595 interior staircase to access the lower levels then access to the house is difficult in the winter.

596 Mr. Monette said that there is shallow bedrock on site and hammering or rock splitting may be required,
597 however, they tried to limit that as much as possible. That meant that they needed to hold the existing
598 structure's floor elevation, at least to within a couple of feet or they would have had more substantial
599 rock cut.

600 Mr. Monette showed the Board the pictures showing the existing house.

601 Mr. Monette said that one way that they are proposing to reduce the impervious area of the property is
602 to have a metal grated catwalk staircase on the north side that will go down to the lower levels that will
603 be completely pervious; they are also proposing pervious pavers.

604 Mr. Monette said that the NH DES permit should be submitted soon. The storm water management
605 proposal is an innovative technique that he has used before on Garnet St with the steep slopes. The
606 plan is to include a cascading system of permanent clean stone check dams that drop about 2 ft every
607 vertical grade and in between the check dams there will be infiltration rain gardens. He has designed a
608 filter media that is a mix of sand and loam that will go into the beds and the ground will be scarified
609 below and supplemented with plants. The plan is meant to slow down the road that comes down the
610 lot from the road. His main focus is something that is permanent, structural, and will be beneficial to
611 the water quality; their goal is to get a net benefit. The current home does not have any storm water
612 management other than some large boulders that are located in the lawn by the lake. They are trying to
613 take care as much of the water that they can by slowing it down and trying to infiltrate it before it
614 reaches the lake. The north side will also have a larger practice with a rain garden that will have a
615 foundation drain or roof gutter discharged to that area.

616 Chairman Simpson asked and Mr. Monette said that they are contemplating an easement or a lot line
617 adjustment for the storm water management system that will be on the north side of the property. The
618 property line can only be moved so far before that property becomes non-conforming. They are trying
619 to keep the grading and walls to a minimum in case they do decide to move the lot line. Chairman
620 Simpson said that he would be concerned to have a storm water system on someone else's property
621 without an easement. There was further discussion regarding this matter.

622 Mr. Monette showed the Board the plans showing the elevation views of the house. All the areas within
623 the side setbacks meet the height requirements. The only place where the height is increased within
624 the buildable area of the lot. Mr. Zappala said that they also reduced the structural volume in the side

625 setbacks. Mr. Monette said that the majority of the house is narrow and within the buildable area. The
626 highest part of the house is the peak of the garage; going up the property, the height of every adjacent
627 grade is 40 ft or less but the overall height is 46.5 ft.

628 Mr. Monette said that on the south side, there are a lot of retaining walls, all of which will be under 42
629 inches. They are placing a lot of check dams along the retaining walls in order to help with erosion.

630 Chairman Simpson asked and Mr. Monette confirmed that people will no longer be able to walk down
631 the south side of the property; there will be a set of open stairs that will lead down the north side to
632 access the doors and lake.

633 Mr. Monette said that the overall height of the garage will increase approximately 4 ft to 14.8 ft.
634 Chairman Simpson asked if there is a reason that the height of the garage needs to be increased as one
635 of the Variance requests is for the height requirement. Mr. Monette said that the height of the garage
636 puts the structure about 6 ft over the 40 ft allowed; removing 6 ft from the garage will not allow the bay
637 doors to be installed. Chairman Simpson asked and Mr. Monette said that if they reduce the height of
638 the roof to be the same as the existing garage they will end up with a flat roof or even lower. He does
639 not think that the garage doors would be able to be accommodated; he believes that the current garage
640 has a custom door. Mr. Zappala said that they went as low as they could go to deal with the snow and
641 the structure. Given the measurement technique of lowest grade to highest peak, they will be over the
642 40 ft allowance no matter what they do. Mr. Claus said that the height of the garage is pretty low. Mr.
643 Zappala said that a normal garage is 17 ft and they could not get it down 6 more feet.

644 Mr. Monette said that they have a storm water management plan that they have been advancing. They
645 will be submitting a Shoreland application; because they are over 30% impervious surface they will be
646 doing an engineered storm water management plan for the State. He sent the newest plan to the
647 Zoning Administrator, however, not much was changed except for more details regarding the cascading
648 rain gardens which are a combination of two details. Mr. Monette shared his screen with the Board to
649 show more details regarding the storm water management plan.

650 Chairman Simpson said that he is not sure if he is comfortable voting for something when they basically
651 told the Board that they plan to move the lot lines. Mr. Monette said that they submitted a survey with
652 how the lot lines are currently located and a lot line adjustment is currently in the works but they do not
653 know if they are going to do it or not. Chairman Simpson said that he does not see a survey. Mr.
654 Monette asked and Chairman Simpson confirmed that he wants a certified boundary survey. Mr.
655 Monette said that there is a certified boundary survey on the Tri-Town website that is public as it is part
656 of the assessing record. The owners also hired Clayton Platt to do a survey and existing conditions plan
657 in 2019 which is the plan that they are referencing for their work. He believes that Wayne McCutcheon
658 did the original boundary survey. Mr. Zappala said that Mr. Platt did another survey in 2019 and that is
659 what all of the submitted plans are built off of. Chairman Simpson asked and Mr. Zappala said that
660 there were no discrepancies between the two surveys. Mr. Monette said that both surveys were
661 boundary surveys, however, Mr. Platt also picked up shoreline elements and put together an existing

662 conditions plan for Shoreline permitting. Mr. Monette said that their existing conditions sheet is based
663 on Mr. Platt's CAD file that he sent to them.

664 Vice Chair Claus asked and Mr. Monette confirmed that there is a decrease in the overall impervious
665 surface and that is being achieved by having the pervious paving system and the metal stairwell. Vice
666 Chair Claus said that he does not see the check dams for the storm water management system on the
667 plan. Mr. Monette showed where the cascading check dams are located on the plan and explained
668 where they will be located. The exact dimensions for the dams will be field fit; they will do a storm
669 water model to see what needs to be captured. They are at a high point in Garnet St so there is not a lot
670 of runoff from the road and most of the runoff will be from the roof and from the driveway. The current
671 driveway is pitched back towards Garnet St; the proposed will be pitched back towards Garnet St
672 slightly, however, it will be more level to try and get infiltration into the pervious pavers. Vice Chair
673 Claus asked and Mr. Monette said that in the front corner he has designed a stone velocity reduction
674 pad along the existing stone walkways. On the north side they will daylight the foundation drain to the
675 rain garden between the two properties; he would consider all of the water to be filtered water.

676 Chairman Simpson asked and Mr. Monette confirmed that the removal of the stairs is part of the
677 calculation for the lot coverage. They will be removing the wooden stairs and leave the current
678 connection between the house and existing stone stairs and those will remain. Vice Chair Claus asked
679 and Mr. Monette said that the connector will be impervious.

680 Mr. Monette showed the Board the location of the drip edge on the plan. He said that there is a lot of
681 stone on the north side as they are infilling behind the walls with crushed stone and under the metal
682 stairs will be a large reservoir of stone to try and prevent vegetation from growing under the stairs and
683 trying to capture some of the runoff to not wash down the side slope.

684 Chairman Simpson asked and Mr. Monette said that they submitted the Zoning application
685 approximately one month ago and have been advancing the Shoreland plans since that point. Chairman
686 Simpson asked if the proposed structure will change in any way or if they will just look at the storm
687 water management. Mr. Monette said that NH DES will just change the erosion and storm water
688 management plans. They may get conditions from the DES approval and sometimes they are project
689 specific and sometimes they are general, however, he has only rarely seen them require a change to the
690 structure itself. Chairman Simpson said that if the Board could condition an approval based on the plans
691 submitted for the structure.

692 Chairman Simpson asked and Mr. Monette explained that the 10 ft setback of the property to the north
693 is shown on the plan as well as part of the storm water management system is located on that property.
694 Vice Chair Claus said that it is not shown on the plan that the storm water management system will also
695 be used for the property to the north. Mr. Monette said that some of the walls will connect and some
696 will not as water still needs to come down in some places. The current garage acts like a retaining wall
697 so there are two retaining walls between the two properties near the driveway that will connect to a
698 new retaining wall. Down below there is a series of retaining walls under the stairs, however, they do

699 not connect to the retaining walls on the other property. There was further discussion regarding the
700 retaining walls.

701 Mr. Schneider asked if they are going to use part of the existing foundation or remove it and put in a
702 new foundation. Mr. Monette said that the existing foundations are being removed. Mr. Schneider
703 asked how much natural ground and stone materials will be removed. Mr. Monette said that all of the
704 proposed house area as shown on the plan will be excavated for the new foundation. There will be a
705 disturbance limit for the Shoreland Permit that they will need to abide by and stay within. The existing
706 ground cover is a mix of boulders and lawn and there is not a lot of valuable vegetation by the house so
707 a lot of that will be removed and replaced by the storm water management system. There will be new
708 grading, new topsoil, new stone, and new retaining walls. Mr. Schneider asked and Mr. Zappala
709 confirmed that the existing house has a basement. Mr. Zappala said that it is a walkout basement as
710 there is a slope; the new house will also have a walkout basement. Mr. Schneider asked and Mr.
711 Zappala confirmed that the connecting area will also need rock and soil removed to construct that area.
712 Mr. Schneider asked and Mr. Zappala said that because that area is already sloping down, very little rock
713 and stone has to be removed in the connecting area. The base of the connector is where the most rock
714 and stone will be removed and that is roughly 20 ft by 16 ft in the buildable portion of the lot. Mr.
715 Schneider asked why that area has to be removed and Mr. Zappala explained that they will need
716 accessibility for the stairs and elevator, it will be the only way to get from the garage to the bottom
717 floor. Chairman Simpson said that when they were on site it looked as though there was a lot of ledge in
718 that location. Mr. Monette said that it will be probably 100 cubic yards of material that will need to be
719 removed there. Mr. Schneider asked why the elevator has to go down to that level. Mr. Zappala said
720 that the point of having accessibility is to be able to get from the road down to the bottom of the house
721 and either way there would need to be stairs there. Mr. Schneider said that it seems to him that they
722 are removing a lot of material from the hillside. There was further discussion regarding this matter.

723 Mr. Schneider said that he thinks that what they are proposing eliminates the steep slope and he does
724 not think that is within the spirit of the Ordinance. Mr. Monette said that the steep slope will still exist,
725 the impacts that they are discussing will be temporary during construction and then there will not be
726 any impact once the house is complete. Mr. Schneider said that it will existing on the sides of the house
727 but not underneath the house. Mr. Zappala agreed with Mr. Schneider but said that it is in the center of
728 the lot and is not within the setbacks; one floor of materials will need to be removed in order to gain
729 accessibility from the garage to the bottom floor of the house. Mr. Monette asked if there is a specific
730 part of the Ordinance that discusses ledge removal and the amount of materials that can be removed.
731 Ms. Silverstein said that it sounds as though the connecting area is within the buildable area. Mr.
732 Zappala confirmed this. Ms. Silverstein asked if this is within the buildable area and they are not asking
733 for a variance for height in this section if this could be built if it was not part of the whole project.
734 Chairman Simpson said that there are restrictions on retaining wall heights. Mr. Zappala said that the
735 retaining walls are 42 inches or less and are not within the house structure. Vice Chair Claus said that he
736 thinks that Mr. Schneider is discussing the variance to build on a slope greater than 25% and in his mind
737 this is digging out the slope with all the earth removal. Mr. Schneider said that he understands the need
738 to replace the house and the desire to build what they want to build but he questions the need to take

739 away a hillside to do it; they are not only replacing a house, they are adding a subterranean floor. Mr.
740 Zappala said that the existing house already has a basement so the only thing they are removing is
741 under the connector portion which is 20 ft by 16 ft. Mr. Schneider said that this is increasing the area of
742 the footprint of the house. Mr. Monette said that it is within the buildable area. Mr. Zappala said that
743 they are removing structure from the front of the house and some of that is being offset by the
744 connector. Mr. Monette said that there are not many ways to reduce the amount of cut as the elevator
745 shaft drives the amount of cut in that section as well as the stairs. Mr. Schneider said that they could
746 have an elevator that only goes two stories. Ms. Gage said that is not what they are asking for.

747 Chairman Simpson asked if the multitiered retaining walls will meet the terrace requirements. Mr.
748 Monette said that they will as all the walls are under 42 inches and the spacing between them is more
749 than 42 inches.

750 Mr. Schneider asked and Mr. Zappala confirmed that the basement under the house portion is existing
751 and will not need to be dug out. Mr. Monette said that it is a challenging lot and the build will be
752 challenging, however, the disturbance will be temporary.

753 Mr. Schneider said that one of the conditions for construction on a steep slope is to provide an erosion
754 control plan per Section 3.40(n), which they said that they are going to do.

755 Ms. Silverstein said that she saw some letters from some of the neighbors and that they had shared
756 their plans with them. Mr. Zappala said that he has spoken to all of his neighbors, including one that is
757 across the road, to let everyone know what is being proposed.

758 Chairman Simpson said that the Board talked to a neighbor when they visited the site who said that he
759 did not receive any information regarding the hearing. Mr. Monette said that was Jonathan Clark and
760 he is attending the meeting.

761 Jonathan Clark, 38 Garnet St, said that he did not receive the notice but that Mr. Zappala had shared all
762 of the plans with him.

763 Chairman Simpson asked if there is anything in the Ordinance regarding erosion control plans that is
764 relevant to this case. He knows that a water garden is defined, however, he does not believe it is
765 referenced in the Ordinance. Ms. Gage said that the entire Shoreline Overlay has requirements for
766 sediment and erosion control plans, no activity can be done in the Overlay without those plans and NH
767 DES permits. Chairman Simpson asked and Ms. Gage said that only 1,000 sq ft of disturbance requires
768 engineered plans. Mr. Monette said that they have advanced the erosion control and stormwater
769 management plan beyond what the original submission was to the Board and he is a licensed profession
770 engineer.

771 Chairman Simpson asked and Mr. Monette said that the lot is about 8,400 sq ft; it is almost 0.20 acres.

772 Mr. Monette asked if the windows shown on the plan to be on the first floor are below the current
773 ground level. Mr. Zappala said that if they put those windows in, they would need to be access wells.
774 Mr. Schneider asked if those windows currently exist. Mr. Zappala said that windows do exist in the

775 existing basement but not on that side. The inside floor plans are not finalized, however, they will need
776 to have egress access if there are rooms in those areas and they showed windows for that.

777 Chairman Simpson asked and Mr. Monette said that there will be four parking spaces, two inside and
778 two outside. Chairman Simpson asked how many bedrooms will be in the house and Mr. Zappala said
779 that they may have five bedrooms. Mr. Monette said that would require three parking spaces. There
780 was further discussion regarding this matter.

781 Chairman Simpson asked if anyone else had any questions for the applicants, as there were none, he
782 closed the hearing to public input.

783 Vice Chair Claus said that he thinks that everything that is being proposed is an improvement. They are
784 proposing filling the space between the garage and the house and the lot has already been constructed
785 on the steep slope. If they want to expand on the home, any way they go they would be building on a
786 25% or greater slope. The connector between the two buildings is, for the most part, all within the
787 buildable area. He does not have an issue with the steep slope. Chairman Simpson asked and Vice Chair
788 Claus said that he thinks that the hardship is that any expansion that they would want to do would be
789 within the steep slope. Chairman Simpson asked if it is a hardship not to be able to expand the house.
790 Vice Chair Simpson said that is how he is looking at it.

791 Ms. Silverstein said that she thinks that the slope comes into play in terms of accessibility and entering
792 the home in the winter. She was not able to attend the site visit, however, from the pictures it looks
793 very precarious. Vice Chair Claus agreed with Ms. Silverstein.

794 Mr. Schneider said that he thinks that if this was a new construction, he would have a large doubt about
795 whether it should be improved, however, there is a house there now and he thinks that it would be a
796 hardship if they could not replace and update their house. On this lot, there is no way to do this unless
797 it is done on a greater than 25% slope. However, he views adding a subterranean story to the house and
798 having to blast and remove the material does not fit the spirit of the Ordinance which is to avoid
799 environmental damage on a steep slope. The process of removing all of the materials he thinks could
800 cause environmental damage and he thinks that particular aspect of the project reflects a want, not a
801 hardship. There is no need to have an elevator go from the garage down to the basement that is
802 subterranean.

803 Mr. Lyons said that he likes the plan as it looks like a number of houses have undergone this type of
804 transformation on Garnet St. He did not think much about the excavation; however, overall, they are
805 taking a non-conforming lot with two non-conforming structures and combining the footprint into a
806 better overall design. At the site visit, it was evident that this house was built as a seasonal residence
807 and he cannot picture anyone getting down the steps in the winter. There are some parts of the design
808 that bother him; however, he does believe that there is a hardship.

809 Chairman Simpson said that he shares Mr. Schneider's concerns, because of the slope there is also a
810 height Variance request, that is directly related to this. There are a number of other conditions in the
811 Ordinance that can be compiled with like the terracing. If the Board approves this, he would like it

conditioned upon it being based on the plans submitted. He does think that there are other ways to deal with the steepness; there is a pre-existing building that is usable and the access could be improved without building a larger house but the impermeable surface area will be addressed, which is not a bad thing.

Ms. Silverstein said that she thinks that the proposal will make it safer at the road level. She walks on Garnet St and she thinks that pulling the garage back will be safer; they are also dropping the impervious coverage and reducing the setback from the amount that is currently non-conforming. She believes that they have mitigated more of the concerns. Chairman Simpson said that the applicants own both lots and there will be a boundary line adjustment done which could put the other building into non-conformance. Vice Chair Claus said that he believes that they said that they were going to do it in such a way to not make the adjacent lot non-conforming. Chairman Simpson said that the house will not be less non-conforming if the Board allows them to build on a steep slope. Ms. Silverstein said that it is easier for her to look at all of the Variance together as they counterweigh each other.

Mr. Schneider made a motion to approve the Variance ZBA20-09 for Parcel ID: 0128-0046-0000; 40 Garnet St; Judith A Zappala Trust; applicant: Fuss & O'Neill, Inc.; for a Variance from Zoning Ordinance Article III, Section 3.40(l) to permit construction of a new home and connected garage on a legal non-conforming steep lot on the conditions that the building will be the same as the plan presented to the Board and that the provisions of the Ordinance under Section 3.40(n) to provide an erosion control plan will be complied with. Mr. Lyons seconded the motion. Mr. Schneider amended his motion to include that the project will receive an approved DES Shoreland Permit and will comply with the conditions thereof. Mr. Lyons seconded the amendment. A roll call vote was taken: Vice Chair Claus voted yes; Ms. Silverstein voted yes; Mr. Schneider voted no; Mr. Lyons voted yes; Chairman Simpson voted no. The motion passed with three in favor and two opposed.

Mr. Schneider said that for the next Variance, he thinks that the Board needs to specify exactly what they would be approving as there are non-conformities on both sides. Chairman Simpson said that he would have rather have seen two Variance requests.

Chairman Simpson said that Mr. Monette would like to speak and the Board agreed to reopen the meeting to public input.

Mr. Monette said that there is one Variance request because they had a pre-application with Ms. Gage and they discussed the side setbacks and that one corner of the garage did not come up as a topic because it is also in the front setback. They just determined that they needed a Variance for the side setback to the north setbacks.

Mr. Schneider asked for the width of the proposed garage and Mr. Monette said that it is 24 ft and the existing garage is approximately 22.5 ft wide. Chairman Simpson asked and Mr. Monette said that the garage is being moved away from the north setback because the existing structure is only 0.8 ft from the setback and further towards the south. Chairman Simpson asked what the current distance is from the edge of the garage and the proposed edge that will be 5.6 ft from the setback. Mr. Monette said that it

849 is roughly 10.6 ft. They will be going from 0.80 ft on the north side to 7.3 ft and from 10.6 ft to 5.6 ft on
850 the south side.

851 Ms. Silverstein asked if there is a letter from the abutting neighbor and Chairman Simpson said one
852 neighbor is Mr. Clark and the other is the applicant.

853 Mr. Monette said that there is 13 ft of buildable area between the side setbacks on the road side of the
854 property so a garage would be non-conforming on both sides. Mr. Monette shared his screen with the
855 Board to further explain this issue.

856 Mr. Monette asked what the minimum distance from the north setback is for the new structure. Mr.
857 Monette said that the minimum distance is 0.70 ft; the existing structure is 0.60 ft.

858 Mr. Zappala said that they moved the garage in order to optimize the construction into the buildable
859 area. There is some flexibility to move it a little but it changes the amount in the buildable area.

860 Mr. Schneider asked about the jag in the lot and Mr. Zappala said that the prior owners sold a corner of
861 the lot to the adjacent property.

862 Chairman Simpson asked and there were no additional questions for the applicant so he closed the
863 hearing to public comments.

864 Mr. Lyons said that he does think that this is an improvement over what is presently there. He thinks
865 that he would like to have a contingency regarding the north side setback as it is slightly improved but
866 there is a drainage problem there because when they were on the site, there was black plastic that was
867 between 40 Garnet St and 42 Garnet St. He thinks ultimately there needs to be a property line
868 adjustment but it is not established in a way that the Board can vote on it. He thinks that they should
869 say that the Variance is approved subject to moving the sideline far enough north to accommodate the
870 rain garden drainage that is envisioned on the side. Mr. Schneider said that he does not think that they
871 can mandate someone moving their property line. Mr. Lyons said that the drainage is critical and
872 cannot be maintained without ownership of the property; both properties have the same owner
873 currently, however, that might not stay the same.

874 Mr. Schneider said that he thinks that the applicants have done what they can other than making the
875 building smaller, which he does not think the Board should require. He does not have a problem with
876 the setback requests other than there should be two requests. Chairman Simpson said that he thinks
877 that both requests should be included in the motion.

878 Chairman Simpson said that one of the conditions that he would like would be that if the lot line is
879 moved that it does not make the other lot more non-conforming. Mr. Schneider said that he thinks that
880 would be up to the Planning Board. Chairman Simpson said that if the boundary line is unclear then it
881 would not have to go before the Planning Board according to the proposed Zoning Amendments. There
882 was further discussion regarding this matter.

883 Chairman Simpson opened the meeting for public comment.

Mr. Zappala said that their intent is to design the drainage so that it works correctly. It may be easier for them to do an easement rather than a lot line adjustment; however, they have not gotten that far. He would like flexibility to so what is the best to combine the arraignment so it works on both sides. Their intent is not to go into the other lot's setback as that lot has 16 ft from the property line. However, they might decide that an easement or a sharing mechanism is best. Mr. Zappala asked and Mr. Monette said that some of the walls and the swale itself is across the lot line because it is 0.70 from the face of the house. The maintenance is what they would put into an easement between the two properties. Also, he does not think that a lot line adjustment can make another structure non-conforming. Mr. Monette requested the Board consider the plans as presented and possibly condition it on an easement. Chairman Simpson said that he does not want to mandate that.

Mr. Lyons said that there should be a condition regarding maintenance of the storm water management system.

Chairman Simpson closed the hearing to public input.

Mr. Schneider made a motion to approve ZBA20-10; Parcel ID: 0128-0046-0000; 40 Garnet St; Judith A Zappala Trust; applicant: Fuss & O'Neill; to approve Variances from the side setbacks from Article III, Section 3.10 for approval of the north setback to be not closer than 0.70 ft and the south setback to be no closer than 5.6 ft on the conditions that the setbacks as shown on the plans submitted to the Board are applicable and that a DES Shoreland Permit is obtained and approved and the conditions are complied with. Mr. Lyons asked if the Board can ask for maintenance of the storm water management system. Ms. Gage said that NH DES requires maintenance in all of their approvals. Ms. Silverstein seconded the motion. A roll call vote was taken: Vice Chair Claus voted yes; Ms. Silverstein voted yes; Mr. Schneider voted yes; Mr. Lyons voted yes; Chairman Simpson voted yes. The motion passed unanimously.

Chairman Simpson opened the meeting to public comments.

Mr. Schneider asked and Mr. Monette confirmed that the proposed structure will comply with Section 3.40(i) of the Ordinance. Mr. Schneider asked and Mr. Monette confirmed that the structure will be no more than 25 ft in the reduced setback as they added a shed roof on one part of the house to keep it lower. Mr. Schneider asked about the maximum height measured at any point in the structure from the ground to the top of the roof. Mr. Monette said that it is less than 40 ft from any adjacent grade but because Sunapee's Ordinance requires measurement from the lowest adjacent grade, they are over 40 ft by just over 6 ft. Mr. Schneider asked and Vice Chair Claus said that the height is 39 ft 8 5/16 inches. Mr. Schneider asked and Mr. Monette confirmed that there is approximately 6 ft between the height of the house and the height of the garage. Mr. Schneider asked and Mr. Zappala said that the existing house is 27 ft high. Mr. Schneider asked and Mr. Zappala that the new house will be 12 ft higher than the current house in the center section but it is lower in the north setback. Mr. Schneider asked and Mr. Zappala confirmed that they are adding another story to the house in the buildable area, not in the setback. Chairman Simpson said that if they did not remove the materials for the connector then they would not have the extra story; the garage makes the extra story because it is all connected.

922 Ms. Silverstein said that this is all part of the design and she thinks that the only way that it works is if
923 the height Variance is approved.

924 Vice Chair Claus said that this building is not going to read like a 46 ft tall building. From the lake looking
925 up, even without the connector people could still see the roofline of the garage. Mr. Schneider said that
926 it is going to read like a 40 ft house. Vice Chair Claus said that is allowable in the buildable area.

927 Chairman Simpson said that part of the garage is in the buildable area so it is more than 40 ft in the
928 buildable area so it is more than 40 ft from the lowest area. Ms. Silverstein said that it is more than 40 ft
929 from the lowest area but from the ground height next to the structure it is still within the 40 ft.

930 Chairman Simpson said that is not where height is measured from. There was further discussion
931 regarding this matter.

932 Chairman Simpson closed the hearing to public input.

933 Ms. Silverstein said that she thinks that the Variance should be approved because it makes the design
934 work. They are not asking to run a 46 ft high roof along the entire house; it is just at the street level and
935 it allows them to not only pull the garage back but it gives them the accessibility and makes the design
936 functional. If they lowered the roofline, they could not get a car into the garage; the practical aspects of
937 making the garage functional leads her to say yes to the Variance.

938 Vice Chair Claus said that he thinks that the structure is so stretched out that it will never read over 40
939 ft. He does not believe that it has the impact of a 46 ft tall structure.

940 Mr. Schneider said that he would add a condition that the plans presented to the Board will be followed
941 because he is looking at this conceptually as a house and a garage and an interim structure in between.
942 He does not want the house itself to be higher than 40 ft as he thinks that 40 ft is overpowering. He also
943 understands why the garage height cannot be lowered.

944 Mr. Lyons said that he agrees with Vice Chair Claus the profile of the structure from the lake will
945 essentially be the same that it is now. The structure that is in the middle is going to be a little more
946 evident but it will not look like a 40 ft tower, the house will gradually step up to Garnet St. He does not
947 see this as a huge difference than what is there now.

948 Chairman Simpson said that he does not see a hardship; the applicants are choosing to connect the
949 garage to the house and that is a want issue, not a need issue. This will be a lot of house on a little lot
950 and the current house is usable. He does not see a hardship requiring an elevator and a connector to go
951 from the garage to the house.

952 **Mr. Schneider made a motion to approve ZBA20-11: Parcel ID: 0128-0046-0000; 40 Garnet St; Judith A**
953 **Zappala Trust; applicant: Fuss & O'Neill; to approve a Variance from Zoning Ordinance, Article III,**
954 **Section 3.10 to permit the demolition of an existing garage and house in order to construct a new**
955 **house with connected garage for year-round living, improved safety, and access with a maximum**
956 **structure height to be not more than 46 ft 6 1/16 inches; with the condition that the height of the**
957 **house itself should be not taller than 40 ft from the lowest point of the ground and that the structure**

958 is constructed based on the plans presented at the meeting. Vice Chair Claus seconded the motion. A
959 roll call vote was taken: Vice Chair Claus voted yes; Ms. Silverstein voted yes; Mr. Schneider voted yes;
960 Mr. Lyons voted yes; and Chairman Simpson voted no. The motion passed with four in favor and one
961 opposed.

962 **OTHER BUSINESS**

963 Chairman Simpson asked and Mr. Schneider said that he wants to have more description of what the
964 Board is voting for in the agenda. Mr. Schneider said that he thinks that when he makes a motion, he
965 should be able to just read it from the agenda item. The Board agreed with Mr. Schneider. Ms. Gage
966 said that she will see if she can send out notices using her own language rather than the language
967 written in an application. Mr. Schneider said that it should be Ms. Gage's language, the applicants do
968 not know how to do it.

969 Chairman Simpson adjourned the meeting at 11:25 pm.

970 Respectfully submitted,

971 Melissa Pollari